

The following Bills, which will in due course be presented to Parliament for enactment, are published for general information.

AGRICULTURE (CONTROL OF PROCEEDINGS)

EXPLANATORY MEMORANDUM

The object of this Bill is to make other provision for the bringing of prosecutions for offences under the Agriculture (Lagos) Ordinance, 1959 and the Agriculture (Control of Importation) Ordinance, 1959 while still requiring the consent of the Director of the Federal Department of Agricultural Research.

The repeal of the sections mentioned will effect that object.

Minister of Economic Development

AGRICULTURE (CONTROL OF PROCEEDINGS)

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Section 8 of Agriculture (Lagos) Ordinance, 1959 amended.
3. Section 9 of Agriculture (Control of Importation) Ordinance, 1959 amended.

(Bills 747)

A BILL FOR

AN ACT TO AMEND CERTAIN ENACTMENTS AND MAKE OTHER PROVISION FOR
THE CONTROL OF PROCEEDINGS.

[

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria
in this present Parliament assembled and by the authority of the same
as follows :—

5 1.—(1) This Act may be cited as the Agriculture (Control of
Proceedings) Act, 1961.

Short title,
etc.

(2) Section 2 of this Act shall have effect in the Federal territory
and section 3 shall have effect throughout the Federation.

2. Section 8 of the Agriculture (Lagos) Ordinance, 1959 is amended
by repealing subsection (2).

Section 8 of
the Agricul-
ture (Lagos)
Ordinance
1959
amended.

10 3. Section 9 of the Agriculture (Control of Importation) Ordinance,
1959 is amended by repealing subsection (2).

Section 9 of
the Agricul-
ture (Con-
trol of
Import-
ation)
Ordinance
1959
amended.

TAFAWA BALEWA SQUARE MANAGEMENT

EXPLANATORY MEMORANDUM

This Bill establishes a new management Board to be known as the Tafawa Balewa Square Management Board for the land formally known as the Lagos Racecourse.

TAFAWA BALEWA SQUARE MANAGEMENT

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
3. Cesser of functions of Lagos Racecourse Management Board.
4. Tafawa Balewa Square Management Board.
5. Term of Service.
6. Appointment, etc., of servants.
7. Funds.
8. Power of making bye-laws.
9. Proceedings for breach, etc., of bye-laws.
10. Power to arrest offenders.
11. Repeal. Cap. 94.

SCHEDULE

(Bills 739)

A BILL FOR

AN ACT TO MAKE OTHER PROVISION FOR THE MANAGEMENT UNDER THE NAME OF TAFAWA BALEWA SQUARE OF THE LAND FORMERLY KNOWN AS THE LAGOS RACECOURSE.

[By Notice, see section 1 (2)]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

5 1.—(1) This Act may be cited as the Tafawa Balewa Square Management Act, 1961, and shall apply to the Federal territory.

Short title,
etc.

(2) This Act shall come into operation on a date to be fixed by the Minister by notice in the Gazette.

2. In this Act unless the context otherwise requires—

Interpre-
tation.

10 “the Board” means the Tafawa Balewa Square Board of Management under this Act ;

“the Minister” means the Minister of the Federation for the time being charged with the responsibility for Lagos Affairs ;

“the Square” means the Tafawa Balewa Square.

15 3. On the coming into operation of this Act, the board of management formed under the Lagos Racecourse Management Ordinance shall cease to exist and,—

Cesser of
functions of
Lagos Race-
course
Management
Board.

20 (a) the land situate in the Island of Lagos and known as the Racecourse the boundaries whereof are delineated by the plan referred to in the Lagos Racecourse (Alteration of Boundaries) Order shall become Crown land within the meaning of the Crown Lands Ordinance ; and

Vol. VIII,
p. 1099 1958
Laws.

25 (b) the funds of the board of management to the extent that they comprise moneys voted by the House of Representatives shall, unless the Federal Minister of Finance by writing otherwise directs, be paid to the Accountant-General and form part of the Consolidated Revenue Fund.

Cap.

Tafawa
Balewa
Square
Management
Board.

4.—(1) There shall be, for the purposes of this Act, a Board of Management to be called the Tafawa Balewa Square Management Board which shall control the land known as Tafawa Balewa Square as described in the Schedule to this Act on behalf of the Government of the Federation and maintain the Square for the use and recreation of the residents of Lagos.

(2) The members of the Board shall be,—

(a) a fit person as Chairman to be appointed from time to time by the Minister ;

(b) three elected members of Parliament while they continue to represent the Federal territory ;

(c) three persons not being public officers, to be appointed by the Minister ;

(d) the Chief Federal Land Officer, and

(e) the Director of Antiquities.

(3) Notwithstanding the provisions of subsection (2) of this section, the Minister may at any time by notice in the Gazette—

(a) appoint additional members to the Board for such period and for such purposes as shall be specified in such notice ;

(b) vary the constitution of the Board by appointing other persons as members of the Board in substitution for those hereby appointed.

(4) In the absence of the Chairman from any meeting of the Board the members present may appoint one of their members to be chairman of that meeting.

(5) In the absence from any meeting of a person who is a member by virtue of office the member may be represented,—

(a) in the case of the Chief Federal Land Officer by another Land Officer, and

(b) in the case of the Director of Antiquities by the Curator of the Nigeria Museum,—

and where a representative attends any meeting he shall have or may exercise the powers of the member who is absent.

(6) The Board may regulate its own procedure at any meeting and where there is an equality of votes the Chairman shall have a casting vote in addition to his deliberative vote.

(7) The quorum for any meeting of the Board shall be five members.

5.—(1) Members of the Board other than those appointed by office shall hold office for one year from the date of appointment, and shall be eligible for re-appointment.

(2) In the event of the death, resignation or absence from Lagos of any member of the Board, the Minister may in any appropriate case appoint such person as he shall think fit to be a member of the Board in the place of such member.

6.—(1) The Board may, with the consent of the Minister,—

(a) appoint a secretary and approve the employment of such other servants as are necessary for the due and proper execution and enforcement of the duties of the Board under this Act ; or

(b) dismiss for any reason whatsoever any servant appointed, or employed.

Term of
service.

Appoint-
ment, etc. of
servants.

(2) Any person appointed or employed by the Board shall be paid such remuneration as the Board, with the approval of the Federal Minister of Finance, may agree.

7.—(1) The funds of the Board shall comprise moneys from time to time voted by Parliament for the management, maintenance, repair or improvement of the Square and also sums received from donations, subscriptions, or amounts received for damages, or otherwise howsoever.

Funds.

(2) The funds of the Board shall be administered by the Board as the Minister may from time to time prescribe.

8.—(1) The Board may, with the consent of the Minister, make bye-laws for all or any of the purposes following—

Power of making bye-laws.

(a) for the appointment and removal of its servants and for regulating their duties, conduct and remuneration.

(b) for the management, control and regulation of the Square, and for the use of the same by the public ;

(c) for the removal by any police constable or person authorised by the Board of any person infringing the bye-laws ;

(d) for the promotion of different forms of recreation ;

(e) for regulating foot tracks and grazing of cattle ;

(f) for the preservation of growing trees, or plants ;

(g) for preventing injury and damages to the land or to any buildings, monuments, fences or seats thereon ; and

(h) generally for carrying into effect the purposes of this Act.

(2) A court before whom any person is convicted of committing a breach of any bye-laws, may, in addition to any penalty which may be imposed, order the person convicted to pay to the Board the actual or estimated cost of repairing any damage or injury done.

9. Proceedings in respect of any breach of a bye-law or damage under this Act shall be taken in the name of the Attorney-General of the Federation.

Proceedings for breach, etc. of bye-laws.

10. Any police constable, who sees any person doing any act or thing contrary to the provisions of this Act or of any bye-laws made under this Act, may arrest such person without warrant.

Power to arrest offenders.

11. The Lagos Racecourse Management Ordinance is hereby repealed.

Repeal. Cap. 94.

SCHEDULE

(Section 4)

All those two parcels of land known as Tafawa Balewa Square in the Federal territory containing respectively areas of approximately 35.19 acres and approximately 4.49 acres, the boundaries of which are described below.

Parcel 1.—Starting from a concrete pillar marked PBL5 1994, the co-ordinates of which are 24,386.87 feet South and 10,603.15 feet East of a concrete pillar marked L.C.S. 165P. The origin of the Lagos Cadastral Surveys. The boundaries run in straight lines the bearings and lengths of which are as follows :—

From	Bearings	Length	To
PBL51994	100° 45'	285.1 feet	PBL3252
PBL3252	102° 27'	631.0 feet	PBL3251
PBL3251	115° 51'	145.0 feet	PBL3250

<i>From</i>	<i>Bearings</i>	<i>Length</i>	<i>To</i>
PBL3250	132° 17'	443.8 feet	PBL3249
PBL3249	148° 17'	114.6 feet	PBL3277
PBL3277	180° 09'	88.6 feet	PBL3276
PBL3276	202° 04'	157.6 feet	PBL3275
PBL3275	218° 59'	163.8 feet	PBL3274
PBL3274	224° 01'	169.6 feet	PBL3265
PBL3265	233° 24'	66.3 feet	PBL3273
PBL3273	225° 07'	138.1 feet	Point 'B'
Point 'B'	134° 23'	17.0 feet	PBL3272
PBL3272	224° 22'	255.1 feet	Point 'A'
Point 'A'	236° 17'	38.0 feet	PBL3271
PBL3271	261° 14'	85.8 feet	PBL3270
PBL3270	279° 00'	34.5 feet	PBL3269
PBL3269	311° 36'	20.2 feet	PBL3268
PBL3268	314° 13'	306.5 feet	PBL3267
PBL3267	321° 35'	265.7 feet	PBL3266
PBL3266	319° 42'	252.7 feet	PBL3265
PBL3265	313° 07'	152.8 feet	PBL3264
PBL3264	301° 59'	39.2 feet	PBL3263
PBL3263	318° 58'	370.1 feet	PBL3262
PBL3262	6° 09'	125.0 feet	PBL3261
PBL3261	11° 34'	160.0 feet	PBL3260
PBL3260	33° 34'	100.0 feet	PBL3259
PBL3259	52° 08'	104.7 feet	PBL3258
PBL3258	72° 37'	105.0 feet	PBL3257

(the starting point)

All property beacons are concrete pillars, all bearings and lengths are approximate and all bearings are referred to True North.

Parcel 2.—Starting from a concrete pillar marked PBL32002 the co-ordinates of which are 25,922.67 feet South and 11,423.25 feet East of a concrete pillar marked L.C.S. 165P the origin of the Lagos Cadastral Surveys. The boundaries run in straight lines the bearings and lengths of which are as follows :—

<i>From</i>	<i>Bearings</i>	<i>Length</i>	<i>To</i>
PBL32002	44° 44'	482.2 feet	PBL32001
PBL32001	138° 53'	184.0 feet	PBL32010
PBL32010	110° 09'	109.9 feet	PBL32009
PBL32009	207° 01'	407.4 feet	PBL32024
PBL32024	230° 44'	164.8 feet	PBL32008
PBL32008	304° 35'	40.7 feet	PBL32007
PBL32007	305° 50'	80.2 feet	PBL32006
PBL32006	314° 00'	191.1 feet	PBL32095
PBL32095	321° 33'	25.1 feet	PBL32094
PBL32094	350° 17'	49.5 feet	PBL32093
PBL32093	17° 13'	31.3 feet	PBL32002

(the starting point)

All property beacons are concrete pillars, all bearings and lengths are approximate and all bearings are referred to True North.

SHERIFFS AND CIVIL PROCESS (No. 2)

EXPLANATORY MEMORANDUM

The Sheriffs and Civil Process Ordinance (Chapter 189) makes provision for the appointment and duties of sheriffs and for the service of civil process. This Ordinance as it stood before amendment this year, had effect throughout Nigeria and it was a matter for the Regions and the Federal territory after the attainment of Independence to make other provision where necessary to suit the requirements of any particular locality.

Certain amendments were made to the Ordinance by the Sheriffs and Civil Process Act, 1961, and it is now necessary to restrict the effect of those amendments in certain parts of that Act to the Federal territory in order to leave open to the Regions the making of whatever amendments are there desired. At the same time opportunity is being taken to restore the provision for the carrying into effect under prison supervision of the death penalty where imposed in the Federal territory.

This Bill seeks to give the necessary effect to these objects.

T. O. ELIAS,
*Attorney-General of the
Federation and Minister
of Justice*

(Bills 726)

SHERIFFS AND CIVIL PROCESS (No. 2)

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Appointment of Sheriff.
3. Appointment of Deputy Sheriffs.
4. Section 12 of the Ordinance replaced.
5. Repeal.

A BILL

FOR

AN ACT TO REPEAL THE SHERIFFS AND CIVIL PROCESS ACT, 1961, AND TO MAKE
OTHER PROVISION FOR THE APPOINTMENT OF SHERIFFS AND TO AMEND THE
SHERIFFS AND CIVIL PROCESS ORDINANCE IN ITS APPLICATION TO THE
FEDERAL TERRITORY.

[]

BE IT ENACTED by the Legislature of the Federation of Nigeria
in this present Parliament assembled and by the authority of the same as
follows :—

Commence-
ment.

5 1.—(1) This Act may be cited as the Sheriffs and Civil Process
(No. 2) Act, 1961, and shall apply to the Federal territory.

Short title,
etc.

(2) This Act shall be deemed to have come into operation on the 1st
day of June, 1961.

2.—(1) There shall from time to time be appointed a fit person to
be Sheriff.

Appoint-
ment of
Sheriff.

10 (2) The person who on the 1st day of June, 1961 (being the date of
commencement of the Sheriffs and Civil Process Act, 1961) held office as
Chief Registrar of the High Court of Lagos shall be deemed to have been
appointed as Sheriff.

Appoint-
ment of
Deputy
Sheriffs.

3.—(1) There may from time to time be appointed one or more fit persons to be Deputy Sheriffs who shall be subject to the general control of the Sheriff; and the fact that a Deputy Sheriff exercises any power shall be sufficient evidence of his authority so to do, and no person shall be concerned to enquire whether the occasion has arisen requiring or authorising him so to do.

5

(2) The persons who on the 1st day of June, 1961 (being the date of commencement of the Sheriffs and Civil Process Act, 1961) held the office of Registrar of any Chief Magistrate's Court in the Federal territory shall be deemed to have been appointed as Deputy Sheriffs.

10

Section 12
of Ordinance
replaced.
Cap. 189
1961 No. 11.

4. Section 12 of the Sheriffs and Civil Process Ordinance (as replaced by section 4 of the Sheriffs and Civil Process Act, 1961) is hereby repealed and the following new section shall be substituted therefor—

"Execution
of sentence
of death.

12. Where sentence of death has been pronounced upon any person, the Sheriff shall as ordered and unless the sentence is commuted or a respite is granted, cause the sentence to be carried into execution by some person appointed in writing by the Sheriff."

15

Repeal
1961 No. 11.

5. The Sheriffs and Civil Process Act, 1961, is hereby repealed.

20

POOL BETTING CONTROL**EXPLANATORY MEMORANDUM**

The purpose of this Bill is to provide for better regulation and management of football pools betting in the Federal Territory.

A BILL FOR

AN ACT TO MAKE BETTER PROVISION FOR THE CONTROL OF THE BUSINESS OF
POOL BETTING AND FOR OTHER PURPOSES CONNECTED THEREWITH

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria
in this present Parliament assembled and by the authority of the same as
follows :—

5 1. This Act may be cited as the Pool Betting Control Act, 1961,
and shall apply to the Federal Territory.

Short title,
etc.

2. In this Act,—

Interpreta-
tion.

“pool betting business” means any business involving the receiving
or negotiating of bets made by way of pool betting and includes—

10 (a) business involving the receiving or negotiating of such bets
on behalf of any person, whether in any case the person on whose
behalf the bet is received or negotiated is inside or outside the
Federal Territory, and

15 (b) where as a part of or incidental to pool betting each of the
persons making a bet knows at the time the bet is placed the amount
likely to be won, the business known as “betting at fixed odds.”

“Minister” means the Federal Minister charged with responsi-
bility for pool betting business.

Pool betting
without
licence
prohibited.

3.—(1) No person shall in the Federal Territory operate any pool betting business without a licence under this Act or distribute, print, or publish any papers incidental to pool betting business not licenced under this Act.

(2) For the purposes of this section, where on the commencement of this Act the term of a licence granted under any other Act has six months or more to run, the licensee shall be deemed to have been granted a licence under this Act and may continue to operate thereunder for the unexpired portion of the term. If the licence has less than six months to run the licensee shall apply for a renewal of his licence under this Act within one month from the commencement of this Act; and the failure by the licensee without lawful excuse to apply for a renewal within the prescribed time shall operate as a revocation of the licence. 5 10

(3) Where a licence is deemed to have been granted under this Act, the licensee shall apply for a renewal of the licence within one month before its expiry, and the failure to apply shall operate as a bar to any subsequent application. 15

(4) Any person who contravenes the provisions of this section commits an offence punishable on conviction by a fine not exceeding five hundred pounds or by imprisonment for two years or by both. 20

Power to
inspect and
confiscate
postal
articles and
certain goods.

4.—(1) Notwithstanding the provisions of any other Act, where the Director of Posts and Telegraphs or the Chairman of the Board of Customs and Excise, as the case may be, has reasonable cause to suspect that there are in any postal articles or goods, papers incidental to pool betting business not licenced under this Act, he may cause the postal articles or goods to be opened in the presence of the sender or addressee as the case may be if the sender or addressee may be found, and if they may not be found then in his sole discretion, and any papers incidental to such pool betting business in the postal article or goods shall be confiscated. 25 30

(2) For the purposes of this section,—

Cap. 156.

“postal article” has the meaning assigned by the Post Office Ordinance; and

No. 55 of
1958.

“goods” has the meaning assigned by the Customs and Excise Management Ordinance, 1958. 35

Licences.

5.—(1) The Minister may on application made in such form as he may approve and on payment of the prescribed fee issue licences for the purposes of this Act, and may from time to time renew such licences. Licences under this section may at any time be revoked where the Minister is satisfied that there has been a breach of any condition. 40

(2) Licences shall be subject to any prescribed conditions or to such special conditions as the Minister may impose.

(3) The issue or renewal of any licence shall be in the discretion of the Minister, and no appeal shall lie from the refusal of the Minister to issue or renew a licence; and the Minister shall not be required to assign any reason for the refusal. 45

Regulations.

6.—(1) The Minister may make regulations generally for the purposes of this Act.

(2) Without limiting the general power conferred by subsection (1) of this section, it is hereby declared that regulations may be made for all or any of the following purposes :—

(a) prescribing the form of licence ;

(b) prescribing the mode of and time for making application for licences and renewals of licences ;

(c) prescribing the fees for licences and renewals ;

(d) prescribing conditions in respect of licences ;

(e) prescribing the term of any licence ;

(f) providing for the supply to the Minister of information relating to pool betting business, and prescribing the mode of verification and the intervals at which the information is to be supplied ;

(g) prescribing penalties for breach of any regulation made under this section.

7.—(1) Subsection (3) of section 239A of the Criminal Code Ordinance (as added by section 2 of the Criminal Code (Pool Betting) (Amendment) Ordinance, 1958) is amended by repealing the words "a pool betting business" and substituting the words "licenced pool betting business".

Repeals
and
Saving.
Cap. 42.
No. 44 of
1958.

(2) Subsections (1), (2) and (4) of section 239A and section 239B of the Criminal Code Ordinance are hereby repealed.

(3) Until the making of regulations under section 7 of this Act, the Criminal Code (Pool Betting) Regulations, 1959 (in this subsection called "the Regulations") shall continue in force and notwithstanding the provisions of the Interpretation Ordinance shall be deemed to have been made under this Act ; but the Regulations shall be modified to the extent that the definition of "pool betting business" therein shall be read and construed as if there were substituted in the Regulations the definition of pool betting business under this Act.

L.N. 48 of
1959.

Cap. 89.

LAW REFORM (TORTS)

EXPLANATORY MEMORANDUM

The first part of the Bill seeks to abolish the English common law doctrine of Common Employment so far as it applies to the Federal Territory. It will have the effect of rendering an employer liable for personal injuries caused by a servant to a fellow-servant in the course of their engagement on a common task. It also provides bases for assessment of damages in cases of personal injuries.

The second part of the Bill seeks to abolish the common law rule laying down different duties owed by an occupier to different categories of visitors upon his premises. It provides that such an occupier shall owe one common duty, the "common duty of care", to all lawful visitors, while leaving the law in respect of trespassers unaffected.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

LAW REFORM (TORTS)

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
3. Common employment.
4. Measure of damages.
5. Application of Part I, to the Crown.
6. Preliminary.
7. Extent of occupier's ordinary duty.
8. Effect of contract on occupier's liability to third party.
9. Landlord's liability in virtue of obligation to repair.
10. Implied terms in contracts.
11. Application of Part II to the Crown.

A BILL FOR

AN ACT TO ABOLISH THE DEFENCE OF COMMON EMPLOYMENT, TO AMEND THE LAW RELATING TO THE MEASURE OF DAMAGES FOR PERSONAL INJURY OR DEATH, TO PROVIDE FOR THE LIABILITY OF OCCUPIERS AND OTHERS FOR INJURY OR DAMAGE RESULTING TO PERSONS OR GOODS LAWFULLY ON ANY LAND OR OTHER PROPERTY FROM DANGERS DUE TO THE STATE OF THE PROPERTY OR TO THINGS DONE OR OMITTED TO BE DONE THERE AND FOR PURPOSES CONNECTED THEREWITH.

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows—

1. This Act may be cited as the Law Reform (Torts) Act, 1961, and shall apply to the Federal Territory of Lagos.

Short title,
etc.

PART I.—COMMON EMPLOYMENT

2. In this Part of this Act the expression “personal injury” includes any disease and any impairment of a person’s physical or mental condition, and the expression “injured” shall be construed accordingly.

Interpreta-
tion.

- 3.—(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was, at the time the injuries were caused, in common employment with the person injured, and accordingly the Employers’ Liability Act, 1880 of the Parliament of the United Kingdom, to the extent to which it applies to the Federal Territory shall cease to be in force.

Common
employment.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, (including a contract or agreement entered into before the commencement of this Act) shall be void insofar as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him. 5

Measure of damages.

4.—(1) In an action for damages for personal injuries (including any such action arising out of a contract) there shall,—

(a) in assessing those damages, be taken into account against loss of earnings or profits which have accrued or probably will accrue to the injured person from the injuries, such proportion as the court may in all the circumstances of the case consider just, of the value of any compensation which has been recovered or will be recovered by him under the Workmen's Compensation Ordinance; 10 15

Cap. 222.

(b) in determining the reasonableness of any expenses, be disregarded the possibility of avoiding those expenses or part of them by taking advantage of facilities available under the National Provident Fund Act, 1961.

(2) the reference in subsection (1) of this section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any enactment or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation. 20 25

(3) For the avoidance of doubts it is hereby declared—

(a) that in assessing damages in respect of the death of a person in any action under the Fatal Accidents Act, 1961, or under the Carriage by Air Act, 1932, of the United Kingdom (as applied to Nigeria by the Carriage by Air (Colonies, Protectorates and Mandated Territories) Order, 1953) there shall not be taken into account a right under any enactment to a benefit resulting from the death of that person; and 30

(b) that nothing in subsection (1) of this section shall be taken as requiring both the gross amount of the damages before taking into account the value of any compensation recovered or recoverable under the Workmen's Compensation Ordinance, and the net amount after taking it into account, to be found separately. 35

5. This Part of this Act shall bind the Crown.

Application of Part I. to the Crown.
Preliminary.

PART II.—OCCUPIER'S LIABILITY

6.—(1) The rules enacted in sections 7 and 8 of this Act shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them. 40

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the 45

rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (subject to subsection (4) of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.

5 (3) The rules so enacted in relation to an occupier or premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

10 (a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft ; and

(b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

15 7.—(1) An occupier of premises owes the same duty, the “common duty of care”, to all his visitors, except insofar as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

Extent of occupier's ordinary duty.

20 (2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

25 (3) The circumstances relevant for the present purposes include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

(a) an occupier must be prepared for children to be less careful than adults ; and

30 (b) an occupier may except that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

35 (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe ; and

40 (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger, if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

45 (5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

50

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

Effect of
contract on
occupier's
liability to
third party.

8.—(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, insofar as those obligations go beyond the obligations otherwise involved in that duty.

(2) A contract shall not by virtue of this section have effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

(3) In this section, "stranger to the contract" means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, insofar as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Act, as well as to those entered into or created after its commencement; but, insofar as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

Landlord's
liability in
virtue of
obligation
to repair.

9.—(1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission (but without contract).

(2) Where premises are occupied under a sub-tenancy, the provisions of subsection (1) of this section shall apply to any landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for the maintenance or repair of the premises is put by the sub-tenancy, and for that purpose any obligation to the occupier which the sub-tenancy puts on a landlord of the premises, or is

treated by virtue of this provision as putting on a landlord, shall be treated as put by it also on any superior landlord on whom the landlord's tenancy puts the like obligation towards the landlord.

5 (3) For the purposes of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his obligation, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises, 10 whether or not they are lawfully there as regards an inferior landlord.

15 (4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

20 (6) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory tenancy which does not in law amount to a tenancy and includes also any contract conferring a right of occupation, and "landlord" shall be construed accordingly.

25 (7) This section applies to tenancies created before the commencement of this Act, as well as to those created after its commencement.

30 10.—(1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes to them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, insofar as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care.

Implied
terms in
contracts.

35 (2) Subsection (1) of this section shall apply to fixed and moveable structures as it applies to premises.

(3) This section does not affect the obligation imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons, or goods in, any vehicle, vessel, aircraft or other means of transport, or by virtue of any contract of bailment.

40 (4) This section does not apply to contracts entered into before the commencement of this Act.

11.—(1) Subject to the provisions of this section, this Part of this Act shall bind the Crown.

Application
of Part II to
the Crown.

45 (2) The liability of the Crown shall be limited to the extent to which the crown is liable in tort under any enactment relating to civil liabilities and rights of the Crown and the provisions of such enactment (if any) as to the liability of the Crown in respect of failure to comply with statutory duties shall apply to duties under sections 7, 8 and 9 of this Act as statutory duties.

LAW REFORM (CONTRACTS)

EXPLANATORY MEMORANDUM

This Bill is in two parts. The first part will make provision for the adjustment of rights and liabilities in cases where, by reason of the frustration of a contract, one party is discharged from the obligation of further performance of the contract. Section 3 deals with this point.

The effect of Part II, on the other hand, is to replace section 4 of the (English) Statute of Frauds 1677 (which required certain types of contract to be evidenced by writing) with new provisions which will restrict this requirement of writing only to contracts of guarantee and to contracts relating to sale or other disposition of land.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

LAW REFORM (CONTRACTS)

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
3. Provision as to application of this Part of this Act.
4. Adjustment of rights and liability of parties to frustrated contract.
5. Enforcement of contracts for sale, etc., of land.
6. Consideration for guarantee need not appear in writing.
7. Repeal of section 4 Sale of Goods Act, 1893.
8. Application of Part II to the Crown.

A BILL FOR

AN ACT TO MAKE PROVISION FOR FRUSTRATION AND ENFORCEMENT OF CONTRACTS

[

]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

1. This Act may be cited as the Law Reform (Contracts) Act, 1961, and shall apply to the Federal Territory.

Short title,
etc.

PART I—FRUSTRATED CONTRACTS

2. For the purposes of this Part of this Act—

Interpreta-
tion.

“court” means, in relation to any matter, the court or arbitrator by or before whom the matter falls to be determined ;

Provision as
to applica-
tion of this
Part of this
Act.

3.—(1) This Part of this Act shall apply to contracts, whether made before or after the commencement of this Act, as respects which the time of discharge occurs on a date not earlier than two months before the commencement of this Act, but not to contracts as respects which the time of discharge is before the said date.

(2) This Part of this Act shall apply to contracts to which the Crown is a party in like manner as to contracts between subjects.

(3) Where any contract to which this Part of this Act applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to section 4 of this Act to such extent, if any, as appears to the court to be consistent with the said provision.

(4) Where it appears to the court that a part of any contract to which this Part of this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 4 of this Act as only applicable to the remainder of that contract.

(5) This Part of this Act shall not apply—

(a) to any charter-party, except a time charter-party or a charter-party by way of demise, or to any contract (other than a charter-party) for the carriage of goods by sea; or

(b) to any contract of insurance, save as is provided by subsection (5) of section 4 of this Act; or

(c) to any contract to which section 7 of the Sale of Goods Act, 1893, of the United Kingdom (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) in its application to the Federal territory applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

Adjustment
of rights and
liability of
parties to
frustrated
contract.

4.—(1) Where a contract governed by law has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section 3 of this Act, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Part of this Act referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers

it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

- 5 (3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, attained a valuable benefit (other than a payment of money to which subsection (2) of this section applies) before the time of discharge, there shall be recoverable from him by the said other party
10 such sum (if any) not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular,—

15 (a) the amount of any expenses incurred before the time of discharge by the benefitted party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2) of this section; and

(b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

- 20 (4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the contract may, without prejudice to the generality of the said provisions, include such sums as appear to be reasonable in respect of overhead expenses and in respect of any work or services performed
25 personally by the said party.

- (5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract,
30 become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

- (6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not,
35 the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) of this section any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

40 PART II—ENFORCEMENT OF CONTRACTS

5.—(1) This section applies to—

(a) every contract for the sale of land;

(b) every contract to enter into any disposition of land being a disposition that is required by any enactment to be made by deed or
45 instrument or in writing or to be proved in writing;

(c) every contract to enter into any mortgage or charge on land; and

(d) every contract by any person to answer to another person for the debt, default or liability of a third person.

Enforce-
ment of
contracts
for sale, etc.
of land.

(2) No contract to which this section applies shall be enforceable by action unless the contract or some memorandum or note in respect thereof is in writing and is signed by the party to be charged therewith or by some other person lawfully authorised by him.

(3) Nothing in this section shall—

(a) apply to any contract for the sale or other disposition of land made under customary law

(b) apply to sale of land by order of any court of competent jurisdiction; and

(c) affect the operation of the law relating to part performance.

(4) The foregoing provisions of this section shall apply only to contracts made after the commencement of this Act.

(5) For the purposes of this section,—“disposition” includes lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property by an instrument and also includes, where appropriate, a devise, bequest or appointment of property contained in a will; “land” includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments and also includes a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over, or derived from land.

(6) This section is in substitution for section 4 of the Statute of Frauds, 1677, of the Parliament of England and that section shall cease to be in force except in respect of contracts made before the commencement of this Act.

Consideration for guarantee need not appear in writing.

6. No contract whereby any person promises to answer to another person for the debt, default or liability of a third person shall, if the contract or some memorandum or note thereof is in writing and is signed by the party to be charged therewith or some other person lawfully authorised by him, be deemed insufficient to support an action or other proceeding to charge the person by whom the promise was made, by reason only that the consideration for the promise does not appear in writing or by necessary inference from a written document.

Repeal of section 4 Sale of Goods Act, 1893.

7.—(1) Section 4 of the Sale of Goods Act, 1893, of the United Kingdom (which provides for the enforcement of contracts for the sale of goods of the value of ten pounds or upwards), shall to the extent to which it applies to the Federal Territory, cease to be in force.

(2) For the purposes of this section,—

“goods” includes all chattels personal other than things in action, emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale; and

“specific goods” means goods identified and agreed upon at the time a contract of sale is made:

(3) Notwithstanding the provisions of subsection (1) of this section, the said section 4 shall continue to apply as if this Act had not been passed, to contracts made before the commencement of this Part of this Act.

Application of Part II to the Crown.

8. This Part of this Act shall bind the Crown.