# ILLITERATE PROTECTION LAW IN NIGERIA: MYTH OR REALITY*

***Abstract***

*Nigeria is home to one of the largest population of illiterates in the world. This is a major impediment to the nation's quest for advanced human capital development that could manage the natural resources for economic growth. In order to protect the illiterates against fraud and economic exploitations, various states governments enacted Illiterate Protection Laws and some other legislations. This paper reviews all these laws and argues that these laws especially the Illiterate Protection Law have not sufficiently protected the illiterates. This is contrary to the intention of the parliament and the notion carried both by the courts and the legal profession who have always read too much into the law and have assumed that Illiterate Protection Law is a law which protects the illiterates. This paper finally calls for an urgent review of the law to make it conform to its name, and further suggests among others that the courts should not look at the protection of illiterates in isolation.*

***Key words:*** Illiterates, Statutes, Document, Language, Instruction, signature, mark, thumb print, interpret, understand

## 1. Introduction

Nigeria like other developing countries is undergoing rapid social economic and political reforms. The government's commitment to implement national and international protocols through programmes such as the Education For All (EFA), Millennium Development Goals (MDGs) as well as the President's Transformation Agenda and Vision 2020 could be cited as examples. However, one should express dismay that the nation's quest to achieve the global and national goals is being hampered by a major challenge of human capital deficit, which is critical for developing the right skills that will manage the abundant material resources for sustainable economic growth. For example, the current Education for All (EFA), Global Monitoring report, ranks Nigeria as one of the countries with the highest level of illiteracy in the world.[1] The report on Nigeria stated that the number of illiterate adults has increased from 25 million in 1997 to 35 million in 2013. Besides, Nigeria has the highest number of out of school children put at 10.5million. According to the (then) Nigeria Minister of Education, the embarrassing literacy statistics on Nigeria, justifies the need for all stakeholders to redouble their efforts.[2] The question then is, how well are these illiterates being protected by the Nigerian Law.

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[1] EFA (Report) 2013, p. 45.

[2] Nigeria Tribune June 30, 2013, p. 10.

The focus of this paper is to draw attention to lack or inadequate protection of these illiterates by the various Nigerian legislations especially the Illiterate Protection Laws. Consequently, the provisions of the Illiterates Protection Law, Land instrument Registration Law, the Constitution of the federation as well as the Common Law position which purport to protect the illiterates shall be critically examined.

## 2. Who is an Illiterate?

There is no statutory definition of the word 'illiterate' but the Oxford English Dictionary[3] defines an illiterate as a person "with little or no education; unable to read or write; show such ignorance."

It should be noted that Illiterate Protection Act was enacted for the federation and Lagos in 1958[4]. This however had been deleted from the Laws of the Federation of Nigeria 1990. This was because that law was made for Lagos. However, the word illiterate came for judicial consideration by the Federal Supreme Court in the case of *P.Z. & Co. Ltd v Malam Gusau & Or: In Re Mallam Baba Kantoma*[5].

The appellant guaranteed in writing the trading account which one Malam Gusau, the 1st defendant had with the Respondent Company. Both the Appellant and Mallam Gusau were sued by the Respondent – Mallam Gusau on the basis of the account and the Appellant on the basis of the guaranteed, the Appellant denied liability on the grounds that he was a person protected by the Illiterates Protection Act and the guarantee did not comply with the requirements of the Act. The evidence on record showed that although the Appellant could not read English, which was the language in which the guarantee was written he was able to read and write in Arabic and further that he understood the Hausa Language, the medium of interpretation used when the document was explained to him.

The trial judge found as a fact that the document truly represented the intention of the Appellant, that it was interpreted to them, and that he understood it and agreed to it before he signed it. The record also showed that the document of guarantee was typed by a typist in the company's office

[3] A.S. Hornby, 6th Edn, p. 430.
[4] (1962) All NLR 24 (FSC).
[5]See Cap. 83 Vol. 3 Laws of the Federation of Nigeria and Lagos.

on the instructions of the manager, and that the manager made manuscript insertions in the document before it was signed by the Appellant.

The trial court held that the guarantee was written by the manager of the company; that the Appellant was an 'illiterate' within the meaning of the Illiterates Protection Act, since he could not read the document in the language in which it was written, that section 3 of the Act had been complied with; and gave judgment in favour of the company for the amount prayed. It was from this judgment that the appellant appealed to the Federal Supreme Court. At the trial court and at the Supreme Court, the point was taken as to whether the appellant was an illiterate at all within the meaning of the Act.

The Federal Supreme Court (then) Taylor F.J (as he then was) held as follows:

1. The word 'illiterate' as used in the Illiterate Protection Act must be construed in its ordinary meaning.
2. An 'illiterate' within the meaning of the Illiterates Protection Act is a person who is unable to read or write in any language i.e. a person who is totally illiterate.
3. A person who is unable to read or write in a language in which a particular document is written, but who can read and write in some language, is not an illiterate within the meaning of the Illiterate Protection Act. Therefore the Appellant did not come within the Protection of that Act.

In an earlier case of *S.C.O.A. Zaria v A.D. Okon*,[6] the Federal Supreme Court had upheld the decision of the High Court, Zaria which had concluded that the defendant was an illiterate since:

> Although he could sign his name, he was not sufficiently literate to have been expected to read and understand the contents of the document and that he had signed the document on the understanding that he was doing so as a witness for Tobe Orok in respect of the company's Provident fund.

With the greatest respect, it is submitted that the Federal Supreme Court was wrong in law to have held than an "Illiterate" is a person who is unable to read or write in any language and that a person who is unable to read or write in the language in which a particular document is written, but who can read and write in some other language is not an illiterate within the meaning of the Illiterates Protection Act.

[6](1959) 4 F.S.C. 220.

Although the dismissal of Mallam Baba Dau Kantoma's appeal is proper, however the appeal was dismissed for wrong reason. It is submitted that the appeal could have been properly dismissed on the ground that the trial court had found that the document was read over and explained to the appellant, and that he subsequently signed it, that he understood it and that he was not misinformed by the respondent's clerk with regard to his liability that the appellant raised no objection when the document was read to him and that it correctly represented his instructions. What the Supreme Court would have done, on the findings of the trial court, was to uphold the decision of the trial court in that these findings amount to saying that although the appellant was an illiterate, the provision of section 3 of the Illiterate Protection Act was complied with as regards him, and that therefore, he could not claim the protection of the Act.

It is submitted with respect that the definition of an Illiterate within the provisions of the Illiterates Protection Act is one who is unable to read or write in the language in which the document by which he is sought to be bound is written and the view of the trial court in the case of the *P.Z & Co Ltd v Mallam Gusau & Anor*[7] as to who is an illiterate within the meaning of the Act is to be preferred to that of the Federal Supreme Court. A contrary new, would mean that the Illiterates Protection Law is a law and would be an engine of fraud instead of being the protector of the illiterate that is meant to be.

The purport of the Federal Supreme Court decision is that, if a Frenchman who is literate in French is to be regarded for all purposes as literate and if he signs a document written in English which does not comply with section 3 of the Act (i.e does not contain the name and address of the writer or a Jurat that it had been read and interpreted to him in the language he understands) then he is not protected by the Act. This seem to be absurd.

It is one of the principles of interpretation that where a statute has been passed so as to remedy a particular mischief the court must use that interpretation which will assist in remedying the mischief in question. This is called the Mischief Rule. This first rule came up in old *Heydon's Case*,[8] where it was held that in constructing a statute, a court must do so in such a manner as to "suppress the mischief and advance the remedy….." Taylor F.J (as he then was) seemed to have adhered strictly to the literal rule of interpretation in *Re Mallam Kantoma's* case, but it is humbly submitted that it was a case in which the mischief rule or the golden rule of interpretation could

[7]Ibid.
[8]Ibid.

have been applied. If the definition of illiterate as stated by the Federal Supreme Court is correct, then the very mischief which the Illiterates Protection Act seeks to prevent would not have been prevented. An illiterate who can barely read the Bible in Yoruba language and write letters in Yoruba is not an illiterate (since he is literate in Yoruba) and so if he signs a guarantee written in English which does not show on the face of it as having been read and interpreted to them will not be protected by the Act as he is not an illiterate.

It is submitted that this cannot be the intention of the legislature and that such a construction leads to manifest absurdity or repugnance. One is inclined to think that the reason for the decision in '*In Re Mallam Kantoma's*[9] was that the document, which sought to bind the Appellant complied with Illiterates Protection Act and not because the Appellant was not an illiterate. It is further submitted that the correct position in Law is that an illiterate is a person who is unable to read the document in question in the language in which it is written, subject to the provision that the expression includes a person who, though not totally illiterate is not sufficiently literate to read and understand the contents of the document as stated by the trial judge in the case of *In Re Mallam Kantoma*[10].

This controversy has been laid to rest in the case of *Ntishaguo v Amodu*[11]where the word "illiterate" was defined to mean "a person who is unable to read and understand and to express his thoughts by writing in the language used in the document made or prepared on his behalf". This definition was endorsed by Kutigi JSC, later CJN (of a blessed memory) in the case of *His Highness v A.Otitoju v Governor of Ondo State O.S*[12]*. Omozeglian v Adjurho*[13], the Supreme Court said

> *"an illiterate is a person who cannot read, understand and express his opinion by writing in the language which is used in writing in the language which is used in writing it on his behalf. In other words, a person who is unable to read or write the language in which a particular document is written, but who can read or write in some other language, is not an illiterate with in the meaning of the illiterates Protection Act.*

[9] Ibid.
[10] Ibid.
[11] (1959) WNLR 273.
[12] (1994) SCNJ (PF.11) 224 at 234.
[13] (2006) 4NWLR (p + 696) 33.

### 3. Legal Protection of Illiterates

The protection of illiterates is governed by statutes specially passed for that purpose; also the constitution and the common Law. The statutory provisions protecting illiterates could be found in (i) Illiterates Protection Law[14] (ii) Land Instrument Registration Law.[15]

### 4. The Illiterates Protection Law

A cursory look at the provisions of the Illiterate Protection Law[16] will show the various forms of protection, which the illiterate Protection Law provides for the illiterate. Section 3 of the said law provides as follows:

> *Any person who shall write any letter or document at the request, on behalf or in the name of any illiterate person shall also write on such letter or other document his own name as the writer thereof and his address, and his so doing shall be equivalent to a statement*
>
> *(a) That he was instructed to write such a letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represents his instructions; and*
>
> *(b) If the letter or document purports to be assigned with the signature or mark of the illiterate person, that prior to its being so assigned it was read over and explained to the illiterate person, and that the signature or mark was made by such person".*

Section 4 of the said Law provides penalty for failure to write the writers name and address, or where the statement is found to be untrue. By virtue of the provisions of section 5, only barristers and solicitors are exempt from the provisions of the illiterate Protection Law, whilst section 6 enjoins the writer to state on the document if he had charged a fee and if so how much, as well as the total number of copies he wrote, including the original.

Section 7 insisted that the writer must give a receipt for fees or reward received, whilst section 8 prescribes the maximum fee that may be charged.

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[14]Cap. 61 Vol III, Laws of Oyo State, 2000, similar legislations exist in the Laws of all the states in Nigeria.
[15]Cap. 70 Vol. III, Laws of Oyo State, 2000.
[16] Ibid.

Having examined the provisions of the illiterate protection Law, would it be correct to say that the law has provided safeguards for the protection of the illiterates, especially section 3 of the Law?

On a literal interpretation of section 3 of the said law, it is submitted that section on the face of it does not provide enough or any protection for the illiterate. For the section is only saying that the writer shall do certain thing, his act shall be equivalent to certain other things which other things place burden on the illiterate and which in my submission are not favourable to him. This implies that if the literate writer shall state on the document his own name as the writer and his address, then it follows.

(i) That the document is saying that it had been interpreted to the illiterate and correctly states his instructions and;
(ii) That if there is a signature or mark on the document, it was the illiterate who signed or made it.

It is therefore legally valid to conclude that rather than being a protection for the illiterate the section can be used as an instrument of fraud. The reason for this is simple: All the literate writer need to do is to write his name and address on the document and present it. The illiterate is bound. The question may be asked; what stops the literate writer from writing on the document that he had interpreted to the illiterate when in fact he had not and make the illiterate sign the document?

Nevertheless, this interpretation would depend on whether the words "*shall be equivalent"* in section 3 of the Illiterate Protection Law, amount to an irrefutable or rebuttable presumption of law. However, the courts in Nigeria have often taken a quite benevolent view of the matter and used the Illiterates Protection Law to protect the illiterate. Thus in *Ezera v Ndukwe*,[17] it was held;

(i) that the Illiterate Protection Ordinance precludes any inference that the illiterate person understood the contents of a document, which does not comply with its provisions.
(ii) evidence to prove that the contents of such a document had been explained to the illiterate person before he thumbprinted, is not admissible in an action brought by the writer of the document against the illiterate person to enforce rights or benefits derived from the document by the writer.

[17](1961) All N.L.R. 564 (Eastern State High Court).

This appears to be a sound decision, having regard to the fact that the document in question in this case did not comply with the provisions of the Illiterate Protection Law. However, suppose it did and the illiterate was complaining that the document was not interpreted to him? The issue is, would evidence have been admissible to show that it was not interpreted to him?

**5. Illiterates Protection Law and the Rule of Admissibility**

For any evidence of fact to be admissible under Section I of the Evidence Act[18], the fact must be relevant and there should not be any provision of the law disallowing its reception. In otherwords the evidence must be both relevant and admissible.

There had been parallel and conflicting decisions of the courts on the admissibility of documents which do not comply with Illiterates Protection Law. In *Eke v Odofin*[19] it was held that failure to comply strictly with the provisions of the Illiterate Protection Law render the document in admissible in evidence while in the case of *Ezera v Ndukwe*[20], it was decided that the Illiterate Protection Law does not render a document which does not comply with its provision in admissible in evidence. It is submitted that *Ezera v Ndukwe*[21]is a better decision. Consequently in *Amao v Ajibike*,[22] it was held that although the Illiterates Protection law requires the writer of a document at the request or on behalf of an illiterate person to write on such document his own name as the writer thereof and his address, any omission on the part of such writer to comply with this requirement would not make the document in admissible in evidence. The decisions however of the court in *Barcklays Bank D.C.O v Hassan and Jiboso v Obadina*[23] were to the effect that failure to comply with the provisions of the Illiterate Protection Law, renders such document unenforceable or voidable but not void. The difference between unenforceability and voidability should be noted. The court will not enforce it if a document is unenforceable. If the document is merely voidable, it means the person against whom it is sought to be tendered has the option whether or not to avoid it. However, a person who alleges that a document is unenforceable against him must specially plead and lead evidence to the same.

[18]Cape E 14. 2011.
[19](1961) All N.L.R. 404.
[20]Ibid.
[21]Ibid.
[22](1955-56) W.N.L.R. 121.
[23](1961) All N.L.R. 836.

Thus in *S.C.O.A. Zaria v Okon*[24], the Supreme Court quoted with approval a portion of the trial judges's judgment to this effect:

> The document on the face of it does not comply with the Section (i.e: Section 3 of the illiterates Protection Law). The object of the Ordinance is to protect an illiterate person from possible fraud. Strict compliance is therefore obligatory as regards the writer of the document. If the document creates legal rights and the writer benefits there under, these benefits are only enforceable by the writer of the document if he complied strictly with the provisions of the Ordinance. If a document which does not comply with the provisions of the ordinance creates legal rights between the illiterates and a third party then evidence may be called to prove what happened at the time the document was prepared by the writer and the parties signed it. But the writer cannot himself adduce evidence in his own favour to remedy the omission.

Also in *Djukpa v Orovuyovbe*[25] which approved the decision in *S.C.O.A. Zaria v Okon*[26] regarding the effect of noncompliance with section 3 of the Illiterates Protection Law but had the following to say with regard to section 6.

> So far as noncompliance with section 6 of the Illiterate Protection Law is concerned, the court does not consider this section, unlike section 3 is, so much for the protection of the illiterate as a penal provision in respect of the writer and noncompliance would not as much affect the admissibility of the instrument.

However the current position of the law in this regard as stated by the supreme court in the case of *Wilson v Oshin*[27]is that absence of Jurat in a document signed by an illiterate does not render such document mill and void since a Jurat is for the protection of the protection of the illiterate and can therefore not be used against his interest.

[24](1962) W.N.L.R. 303.
[25](1967) N.M.L.R. 287.
[26]Ibid.
[27] (2000) 6SC (p +. 11) 1, (2000) 9NWLR (p + 673) 442.

## 6. The Land Instruments Registration Law

The land instruments Registration Law of Oyo State[28] enacts as follows:

> "No instrument executed in Nigeria after commencement of this Law, the grantor or one or more of the grantors whereof is illiterate, shall be registered unless it has been executed by such illiterate grantor or grantors in the presence of:
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> a. A magistrate or
>
> b. The President of a Grade "A" Customary Court or a Grade "B" Customary Court; or
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> c. A Justice of Peace, and is subscribed by such magistrate, Customary Court President or Justice of Peace as a witness thereto".[29]

This provision of the law was made in order to ensure that the illiterate is not taken advantage of on account of his illiteracy and thus protect him against sharp practices. The Registrar of Dees, in practice, always ensure strict compliance with this section of the law. Consequently whenever he was in doubt about the literacy of any grantor, the deed was always returned and the grantor asked to execute the document in accordance with the provision of the above law. The Law does not provide for any direct penalty for non-compliance with section 8 quoted above, except that the instrument shall not be registered if an illiterate executes the instrument other than before a magistrate. However, the court's practice is to reject any such instrument as having not been properly executed. Nevertheless where the Registrar of Deeds refuses to register any such instrument and the grantee does not make effort to get the instrument properly executed, then it would be subject to all the liabilities of an instrument which does not comply with section 16 of the law. Thus in *Ogunbambi v Abowaba*[30] a document was received in evidence not to prove title but as an acknowledgement of the payment of money since the document had not been registered under the Land Instrument Registration Act 1924. The fact that the plaintiff in this case was in possession raised the presumption that he entered into possession under a contract of sale. If so, an equitable interest, capable of being converted into a legal estate by specific performance, no doubt existed. In other word the Land instrument Registration Law offers some measure of protection to the illiterate. However, the court per Nnaemeka-Agu JSC (As he then

[28]Cap 70, Laws of Oyo State of Nigeria 2000.
[29]Section 8.
[30](1951) 13 WACA, 220.

was) has held that the document was executed before a magistrate and carries the illiterate Jurat duty signed by the court clerk as interpreter, the presumption is that its execution was valid and regular, unless fraud was proved.[31]

**The Constitution of Nigeria**

The 1999 constitution of the Federal Republic of Nigeria provides as follows:

> …every person charged with a criminal offence shall be entitled to – (a) be informed promptly, in the language that he understands and in detail of the nature of the offence and (e) have without payment the assistance of all interpreter if he cannot understand the language used at the trial of the offence.[32]

This provision of the Constitution is an indirect enactment into the laws of Nigeria the common law principles in England that an accused person ought to be informed of his offence as promptly as possible and that the information shall be in a language which he understands. Thus in the case of *Christie v Leachinsky*[33] it was held that:

> If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the person to himself or to give a reason, which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

However, the 1999Constitution of Nigeria goes one step further than *Christie v Leachunsky's case*[34] by saying that the man must be informed in the language which he understands of course this in itself is implicit in the Leadunsky's case because a man cannot be said to have been informed of his offence it he was not informed in a language which he understands. This section of the Constitution protects an illiterate in that the law requires that he will be informed in his own language of the offence which is alleged against him.

[31] Awosile v Sotubo (1992) 5NWLR (p + 243) 514, 527.
[32]See 36(6).
[33](1947) 1 All E.R. 567.
[34]Op.cit. P. 3.

Section 36(6)(e)[35] is even more far-reaching than section 36(6)(a) of the Constitution, in that it requires an accused person, and for the purpose of this writing an illiterate to be provided with an interpreter without payment if he cannot understand the language of the court. Where this provision of the Constitution was not complied with, the Supreme Court had found itself unable to support the conviction: thus in *Buraimoh Ajayi v Zara N.A.*[36] the appellants were Yorubas who did not understand Hausa which was the language of the court.

They complained on their appeal that the interpreter did not interpret into Yoruba language sentence by sentence, the evidence for the prosecution but only gave a summary, also that there were several interpreters and that they were not competent. The High Court found that two of the interpreters were of doubtful ability but applying the test in section 382 of the Criminal Procedure Code[37] was not satisfied that there had been a failure of justice. On further appeal to the Supreme Court, it was held that although the burden is on the appellants to show that there is an irregularity, which led to a failure of justice, the burden was discharged as the High Court had found that two of the interpreters were of doubtful ability and that as the burden is discharged if it is shown that a reasonable person who was present at the trial might have supposed that the interpretation was defective to such an extent as to deny the appellants a fair trial.

In essence, the Supreme Court was saying that not only must an accused be provided with an interpreter free of charge, but also that the interpreter must be able to interpret well.

However, in the case of *The Queen v Eguabor*[38] the Supreme Court held that the right of an accused "to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence" conferred by the 1960 constitution[39] cannot be invoked on appeal by an appellant who was represented by counsel at the trial, as a ground for setting aside a conviction, unless he claimed the right at the proper time and was denied it; and where an accused had not expressly asked for the assistance of an interpreter, and the correct practice with regard to the conduct of the proceedings in a language not understood by the accused, had not been followed by the trial court, the Federal Supreme Court will on appeal, treat the matter as a

[35] Ibid.
[36] (1963) 1 All N.L.R. 169.
[37] Laws of Oyo State 2000.
[38] (1962) All N.L.R. 287.
[39] See 21(5)(e).

question of practices, and will consider whether any substantial miscarried of justice had resulted from the failure of the trial court to follow the correct procedure.

In Umaru Sunday v F.R.N[40], the court held that the accused person though represented by a counsel when his confessional statement exhibit A was tendered at the trial court, never raised issue of illiteracy. Similarly, he did not raise the issue that he did not understand the meaning of or the contents of exhibit A when same was tendered by the prosecution. He also did not raise the issue of absence of Jurat or more importantly he failed to establish that he is really an illiterate. The appeal therefore failed.

It is respectfully submitted that the attitude of the Supreme Court in Eguabor's case seemed too strict because it is an erosion of the right of the citizen as enshrined in the constitution. These rights are in alienable and do not need to be claimed before they are given. An omission on the part of an accused counsel to ask for his right ought not to lead to a forfeiture of those rights.

However, the current position of the law, in this regard is as stated in Eguabor's case where the accused is represented by counsel in the trial court, whilst Ajayi's case is the law in cases where the accused is not so represented.

## 8. Common Law

As a general rule, a person is bound by the contents of a document signed by him,[41] whether he read it or not, unless it is procured by fraud or misrepresentation. Where a person is induced by fraud to sign a document containing a contract radically different from that which he contemplated, he is allowed to deny the validity of the contract by pleading *non est factum* in any action brought against him to enforce the contract. Indeed "*non est factum"* literally mean "*It is not his deed*". The plea was originally available for the benefit of blind or illiterate person alone, but it was gradually extended to normal and literate persons.

However, subjects to the provisions of any written law, the Common Law of England and the doctrines of Equity observed by Her Majesty's High Court of Justice in England are applicable in our courts. Consequently, it would be permissible for an illiterate to plead the common law doctrine of *non est factum.* Although this defence is opened to anyone but it is one, which

[40] (2019) 4NWLR (p= 1662) 211, 231.
[41] L'Estrange v Groucob (1934) 2 K.B. 394, George Chagoury v Adebayo 3 U.I.L.R. 5822.

particularly is opened to an illiterate as it will be easier for him to convince the court that a particular document is not his.

The doctrine of *non est factum* was before the decision of the House of Lords in the case of *Gallie v Lee*[42]stated by Cheshire and Fifoot in the Law of Contract[43] as arising:

> where a person is induced by false statement of another, to sign a written document containing a contract that is fundamentally different in character from that which he contemplated.

The author went further

> The origin of the doctrine is to be found in the medieval common law. If a plaintiff based his case upon the production of a document, the only plea open to the defendant was to deny that the deed was his….. in the 15th century the plea was extended so as to enable a defendant who could not read to prove that its written terms did not correspond with its effects as explained to him before he put his seal on it. As late as 1582, it was said to be the "*usual form of pleading*" that the defendant was a layman and without learning and that he had been deceived by a distorted recital of the contents.

However, the law on the doctrine of *non est factum* has been completely changed by the decision of the English House of Lords in the case of *Gallie v Lea*[44] who in the course of their judgments, adopted Lord Denny statement about the scope and operation of *non-est-factum* with some modifications. According to the Master of Rolls:

> Whenever a man of full age and understanding who can read and write, signs a legal document, which is put before him for signature-by which I mean a document which, it is apparent on the fact of it, is intended to have legal consequence then – if he does not take the trouble to read it but sign it as it is, relying on the word of another as to its character or contents or effect he cannot be heard to say it is not his document. By his conduct in signing it; he has represented to all into whose hands it may come, that it is

[42](1970) 3 W.L.R. 1078.
[43]7th Edn, p. 225.
[44]Ibid.

> his document, and once they act upon it as being his document, he cannot go back upon it, and say it was a nullity from beginning.[45]

Adopting this passage and agreeing with the view that the plea of *non est factum* should be confined within narrow units, *Lord Pearson*, however, liberalized the rule prescribed by Lord Denning by adding that the plea should be available for the relief of a person,

> …who for permanent or temporary reasons (not limited to blindness and illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By sufficiently understanding' I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be.

It is submitted that the decision in *Gallie v Lee*[46]only changes the Law in England as well as in those states of Nigeria which retain the doctrines of the Common Law and Equity as they apply from time to time in England. As far as the states which formed part of the old western and Mid-Western states are concerned, any doctrine of the Common Law and Equity which comes into operation after Western Region of Nigeria 1959 and which is not specifically adopted into our law either by legislation or judicial decision cannot be part of the law of those states. Thus as an example section 3 of the Law of England (Application)[47] provides as follow:

> From and after the commencement of this Law and subject to the provisions of any written law, the common law of England and the doctrines of equity observed by Her Majesty's High Court of justice in England shall be in force throughout the state.

The commencement date of the above law it should be noted is 1st day of July 1959. It is therefore, submitted that the doctrine of *non est factum* as far as the states which formed part of the old western and Mid-Western state are concerned remain as stated at by Chesire and Fifoof and not as stated by the principles in *Gallie v Lee's case*. Consequently, the illiterate can still claim the benefit of the doctrine of *non est factum* more readily and with the possibility or better hope of success than a literate at least in the states which formed part of the old western Region.

[45]Pp 227 – 9.
[46]Ibid.
[47]Laws of Oyo State 2000 Cap. 60.

Reason being that the illiterate will be able to show more readily than the literate that owing to illiteracy he was not aware of the contents or a particular term of the contract. For instance, if a notice were displayed at a park in which it is stated that the users do so at their own risk, it will be easy for an illiterate to say that he is unable to read, he is not aware of the impart of the notice and so be able to claim against the occupier for any negligence of the occupier which causes injury to him.

Exemption clauses on a receipt, it is urged should not be held against an illiterate. This is irrespective of whether it is written in English or Yoruba. This is because to an illiterate there is no difference between anything written in English or Yoruba. English is a foreign language to a Yoruba man and so if he is an illiterate he cannot understand them and should not be bound. In the same way, Yoruba is a foreign language to an Ibo or a Hausa and should not be bound by any agreement made in those languages unless he is literate in them.

Although the position had always been different in England where the court held in *Thompson v L.M. & S Railway Company*[48] that the fact that the plaintiff could not read did not alter the legal position; that she was bound by the special contract made on the excursion tickets on the acceptance of the ticket. *Lord Hanworth M.R* at page 46 had this to say:

> The plaintiff in this case cannot read, but having regard to the authorities and the condition of education in this country, I do not think that avails her in any degree.

It is however, gratifying to note that there are two decisions of the Nigerian courts in which the illiterates had been able to avoid liability because they were illiterates. In *Halliday v Apatira*[49],the court of Appeal held that the defendant had notice of the act of bankruptcy but that as the notice was in English and the defendant could not read, the delivery of the printed circular to him without explanation of its contents was not enough notice of an act of bankruptcy under English law; and payment made by him to the bankrupt after receipt of the circular was valid payment. Also in *Otegbeye v Little*[50], it was held that in dealing with illiterates, carriers cannot by printed conditions of the carriage limit their liability, unless the same are brought to the notice of the consigner. It should be noted that in the car park cases particularly, a large well-displayed

[48](1930) 1 K.B. 41.
[49]1 N.L.R. 1.
[50]1 N.L.R. 70.

notice exempting the owner of the premises from any liability for loss or damage to property, is binding and effective.

In Imo *Concorde Hotel v Anya*[51]a case involving the loss of the respondent's car in the appellant's car park, Edozie, J.C.A stated that when the duty of car park owner would have existed, it could be excluded by the occupier by the exhibiting of the appropriate notice to that effect although the question of a higher degree of notice of the existence of an exclusion clause for illiterate person has not arisen in recent times, the issue is still of great relevance in a country like Nigeria.

It is submitted that the courts in the country should always come to the same decision in similar cases moreso as the level of illiteracy has increased despite great strides in education.

## 9. CONCLUSION AND RECOMMENDATIONS

We have above, considered the provisions of the Illiterates Protection Law at large, and have concluded that rather than being a Protection Law for the illiterates, it had better be styled "*Illiterates Liability Law"*. This is contrary to the notion both of the courts and the legal profession that has always read too much into the law and has assumed that it is a law which protects the illiterate. The Land instruments Registration Law, the Constitution of the Federal Republic of Nigeria and the Common Law could be said to have afforded some measure of protection to the illiterates. In this regard the following suggestions are made:

(a) It is absolutely necessary that courts of this country must continue to protect the unsophisticated illiterate from the avarice, caprices, sharp practices of the urbanized and sophisticated elite, in the true spirit and intendment of the Illiterates Protection Act and that all care must be taken to always watch and detect any act of oppression of the former by the latter. However, the golden rule lie in an even handed justice for the rich and for the poor, for the illiterate as well as for the elite.
(b) The policy should not be to look at the protection of illiterates in isolation but in the list of other competing interests and the general convenience of the public.
(c) The question whether or not a person is illiterate should be related directly to the language in which the document in question is prepared. The dictionary definition of the word "illiterate" should be discarded. It is mischievous.
(d) Any person who understands the contents of a document which he signs should not be regarded as an illiterate person under the illiterate protection laws. Those laws are meant for the protection of innocent people and should, therefore not become weapons of fraud in the hands of delinquent illiterates.

[51] (1992) 4 *NWLR* (p + 234) 210 at 222.

(e) Contracts infringing the provisions of these laws are void with respect to a writer who wants to enforce them, but are enforceable by the illiterate person and third parties. But as it was suggested above, there is no reason why the writer should not be allowed to enforce the contract where it is established that the contents of the document was indeed explained to the illiterate person and that the writer did not knowingly and willfully fail to comply with the provisions of the relevant law.

(f) The illiterate protection law needs a drastic revision in order that it may be able to live up to its name.