LEGAL AND REGULATORY FRAMEWORK FOR ARTIFICIAL INTELLIGENCE (AI) IN CUSTOMARY LAW IN NIGERIA*

Abstract

Artificial Intelligence (AI) has come to stay in Nigeria. The absence of a dedicated legal framework for Artificial Intelligence (AI) in customary law creates a regulatory gap that could lead to inconsistencies in the application of Artificial Intelligence (AI) technologies in these culturally sensitive areas. The general legal framework for Artificial Intelligence (AI) in Nigeria is primarily guided by broader legislation on technology and data protection. The National Information Technology Development Agency (NITDA) Act 2007, for instance, outlines the framework for information technology development in Nigeria, but it does not specifically address Artificial Intelligence (AI). Similarly, the Nigeria Data Protection Regulation (NDPR) 2019 provides guidelines on data privacy, but it falls short of addressing the unique challenges posed by Artificial Intelligence (AI), especially in the context of customary law. In this article, the writer shall look at the definitions of basic concepts like legal and regulatory framework, Artificial Intelligence (AI) and customary law. The need for robust regulatory environment was examined. Proposals for legal reform was equally examined as well as future trends in legal governance of Artificial Intelligence (AI) in Nigeria

Key words:
Legal, regulatory framework, Artificial Intelligence (Ai), Customary Law

1. Introduction

In Nigeria, the legal framework governing the application of AI, particularly in customary law contexts, is still in its infancy. The country's legal system is characterized by a dual structure, combining statutory law with customary law, which varies significantly across different ethnic groups. Customary law is recognized under the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides for the application of both statutory and customary laws in matters concerning personal status, such as marriage, inheritance, and land tenure.[1] However, there is currently no specific legislation that addresses the use of AI in the administration or interpretation of customary law. In this article, the writer makes a case for the need for robust regulatory environment for Artificial Intelligence (AI) in Nigeria in the area of customary law as well as proposals for legal reform for its proper footing in Nigeria. The future trend in legal governance of AI in Nigeria in the area of customary law was properly examined.

2. Meaning and Concept of Legal and Regulatory Framework for AI in Customary Law in Nigeria

The Legal and Regulatory Framework for AI in Customary Law in Nigeria refers to the establishment of laws, regulations, and guidelines that govern the application of Artificial Intelligence (AI) systems in the administration of customary law. Customary law is rooted in the cultural and traditional practices of various ethnic communities in Nigeria, and AI presents both an opportunity and a challenge in ensuring that these laws are applied fairly, transparently, and consistently. A regulatory framework would address the following:

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[1] Sections 18, 277-280 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

1. Data Governance: How Artificial Intelligence (AI) systems acquire and process data related to customary law. This includes managing privacy concerns, ensuring data accuracy, and protecting sensitive cultural information.

2. Bias and Fairness: Artificial Intelligence (AI) algorithms must be trained to apply customary law without introducing or perpetuating bias, particularly where customary law conflicts with constitutional rights.

3. Accountability: Clear rules on who is responsible when Artificial Intelligence (AI) systems fail to apply customary law correctly.

4. Transparency: Ensuring that decisions made by Artificial Intelligence (AI) are explainable and understandable to the communities affected by these decisions.

This framework is necessary to integrate Artificial Intelligence (AI) into the legal system, ensure that it respects the diversity of Nigerian customs, and align it with national and international human rights standards. In *Oyewumi v Ogunesan,*[2] the dispute involved inheritance under Yoruba customary law, where a female child was denied inheritance rights. This case highlights the need for Artificial Intelligence (AI) systems to navigate between customary laws and constitutional rights. A framework would mandate that Artificial Intelligence (AI) systems be programmed to respect gender equality, ensuring that customary practices are not enforced when they violate the constitution. In this case, a legal framework would help ensure that Artificial Intelligence (AI) systems applying customary law are in compliance with Section 42 of the Nigerian Constitution, which prohibits gender-based discrimination. In *Lewis v Bankole,*[3] the case established the need for courts to interpret customary law in line with public policy. A framework is necessary to guide Artificial Intelligence (AI) in determining when customary practices are contrary to public policy or natural justice. A regulatory framework would require that Artificial Intelligence (AI) systems consistently apply public policy standards in cases involving customary law. Also in *Anekwe & Anor v Nweke,*[4] the case dealt with the disinheritance of a widow under Igbo customary law, which was found to be discriminatory. This case highlights the importance of having a framework that ensures Artificial Intelligence (AI) systems uphold human rights and the Nigerian Constitution when applying customary law. Artificial Intelligence (AI) systems must be programmed within a regulatory framework to avoid enforcing discriminatory customary practices, adhering to constitutional mandates such as Section 42.[5] In *Agbai v Okogbue,*[6] the case involved a challenge to the exclusion of female children from land inheritance under Igbo customary law. A framework for AI would ensure that decisions respect both customary traditions and constitutional equality rights. Customary law must be interpreted through the lens of constitutional rights, and the regulatory framework would ensure Artificial Intelligence (AI) systems reflect this balance. In *Duru v Nwosu,*[7] the case raised questions about the legitimacy of certain customs that were seen as outdated. A legal framework would allow Artificial Intelligence (AI) systems to identify and avoid applying outdated customary practices, ensuring that they are aligned with contemporary human rights standards. Outdated customs should not be enforced, and Artificial Intelligence (AI) systems need a legal framework to navigate these nuances. Constitution of the Federal Republic of

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[2] (1990) 3 NWLR (Pt 137) 182

[3] (1908) 1 NLR 81

[4] (2014) LPELR-22697(SC)

[5] Constitution of the Federal Republic of Nigeria 1999 (as amended)

[6] (1991) 7 NWLR (Pt 204) 391

[7] (1989) 4 NWLR (Pt 113) 24

Nigeria, 1999 (as amended)[8] prohibits discrimination on the grounds of gender, ethnicity, and religion. This constitutional provision guides Artificial Intelligence (AI) systems in ensuring that discriminatory customary laws are not enforced. Artificial Intelligence (AI) systems applying customary law must ensure compliance with Section 42, avoiding the perpetuation of discriminatory practices. Section 17[9] allows courts to take judicial notice of customary law, provided that it is consistent with public policy and natural justice. A regulatory framework would ensure that Artificial Intelligence (AI) systems applying customary law are aligned with public policy and principles of natural justice as outlined in the Evidence Act. The proposed bill of Artificial Intelligence and Robotics Bill is aimed at regulating Artificial Intelligence (AI) applications in Nigeria, addressing issues such as bias, transparency, and accountability in Artificial Intelligence (AI) decision-making systems. The proposed bill, when enacted, will provide the overarching legal framework for regulating Artificial Intelligence (AI) , including its application in customary law.

3. Concept and Meaning of Artificial Intelligence (AI)

Artificial Intelligence (AI) refers to the simulation of human intelligence in machines that are designed to think and act like humans. These systems can perform tasks that typically require human intelligence, such as learning, reasoning, problem-solving, perception, and language understanding. AI operates through algorithms and can be categorized into various types, including narrow AI[10] and general AI.[11] In *State v Loomis,*[12] Eric Loomis was sentenced based on a risk assessment score generated by an AI-based algorithm, COMPAS.[13] Loomis argued that the use of the AI algorithm violated his due process rights, as he could not assess the accuracy or reliability of the algorithm due to its proprietary nature. The Wisconsin Supreme Court upheld the use of the AI algorithm, stating that while it can be used, it should not be the sole determinant of a sentence. This case highlights the potential risks and challenges associated with the use of AI in judicial decision-making. Section 2(1)[14] mandates that any processing of personal data must be lawful, fair, and transparent. This provision is crucial in the context of AI, as the processing of data by AI systems must adhere to these principles to protect individual rights and prevent misuse. Article 22[15] provides individuals the right not to be subject to a decision based solely on automated processing, including profiling, which significantly affects them. This statutory provision is critical in AI, as it ensures that humans have a say in decisions that impact their lives, rather than being entirely subject to AI-driven outcomes.

4. Meaning and Concept of Customary Law

Customary law refers to traditional norms, practices, and rules that have been accepted by a community as binding, and govern the personal and communal relationships of the people. In Nigeria, customary law typically applies to matters of family, property, and inheritance. It is often unwritten and recognized by courts as long as it does not conflict with statutory law or principles of natural justice, equity, and good conscience. Customary law refers to the rules, practices, and customs that are traditionally observed and adhered to by a particular community

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[8] Section 42
[9] Evidence Act, 2011
[10] Designed for specific tasks like facial recognition or speech translation.
[11] This can theoretically perform any intellectual task a human can do.
[12] 881 N.W.2d 749 (Wis. 2016).
[13] Correctional Offender Management Profiling for Alternative Sanctions.
[14] Nigeria Data Protection Regulation (NDPR) 2019, National Information Technology Development Agency (NITDA).
[15] European Union General Data Protection Regulation (GDPR) 2016.

or group. Customary law derives its authority from long-standing practices that are generally accepted by the community and followed over time. The nature of customary law in Nigeria is pluralistic, with variations in application depending on ethnic, religious, and regional communities. It operates alongside statutory law, with courts determining its applicability based on established norms and practices. Section 18(1) of the Evidence Act 2011 recognizes the existence of customary law as one of the laws applicable in Nigeria, alongside English law and statutory law. It also provides that customary law must be proved in court unless it is so well established as to be judicially noticed.[16] In *Oyewunmi v Ogunesan,*[17] the parties disputed the ownership of land in Ijebu-Ode, which was governed by the customary law of the community. The appellant claimed to have inherited the land under the traditional inheritance system. However, the respondent argued that they acquired the land under different circumstances. The Supreme Court held that customary law would apply since the land was located in a community that recognized the inheritance system governed by their customs. The court recognized the customary law on inheritance and ruled in favor of the appellant. This case illustrates the court's willingness to uphold customary law on land ownership, provided it does not conflict with statutory law. Similarly the case of *Adeseye v Taiwo,*[18] involved a dispute over marriage under Yoruba customary law. The appellant claimed that a valid marriage had occurred under Yoruba customs, but the respondent denied its validity. The court had to examine the elements of customary law marriage, including the performance of traditional rites. The Federal Supreme Court held that the marriage was valid under the recognized Yoruba customary law, since all traditional ceremonies were duly performed. This case demonstrates the importance of customary law in personal matters such as marriage, where statutory law might not provide specific guidance. In *Kimdey v Military Governor of Gongola State,*[19] the court addressed the issue of whether customary law could be applied in the recognition of chieftaincy titles. The appellants contended that they were denied their traditional title under the customary law of their community. The Supreme Court emphasized that customary law is valid and applicable, provided that it does not violate statutory provisions. The court recognized the customary law governing the appointment of chiefs and ruled in favor of the appellants. This case showcases how customary law governs cultural aspects like chieftaincy, where statutory law is silent or leaves discretion to local customs. It should be noted that customary law serves as an essential component of the Nigerian legal system, particularly in areas where statutory law does not fully cover the norms or practices of indigenous communities. Courts often recognize and enforce customary law as long as it is consistent with statutory law and does not breach the principles of fairness or public policy.

5. Need for a robust Regulatory Environment for Artificial Intelligence (AI) in the area of Customary Law in Nigeria

A robust regulatory environment is essential to ensure that the use of Artificial Intelligence (AI) in customary law respects cultural norms, promotes fairness, and upholds human rights. Without clear regulations, there is a risk that AI systems could perpetuate biases, undermine cultural values, or infringe on individuals' rights to privacy and fair treatment. A strong legal framework would provide guidelines for the ethical development and deployment of Artificial Intelligence (AI) in customary law, ensuring that these technologies are used in a way that enhances, rather than detracts from, the integrity of Nigeria's legal system. The regulation of Artificial

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[16] See Section 18(1) of the Evidence Act 2011.
[17] (1990) 3 NWLR (Pt 137) 182.
[18] (1956) 1 FSC 84.
[19] (1988) 2 NWLR (Pt 77) 445.

Intelligence (AI) in customary law should also address the potential for conflicts between statutory and customary laws, particularly in cases where Artificial Intelligence (AI) is used to adjudicate disputes or make decisions that affect individuals' rights under customary law. For example, in *Oyewunmi v Ogunesan,*[20] the Supreme Court of Nigeria emphasized the need to consider local customs when interpreting laws related to land inheritance, illustrating the delicate balance between statutory and customary law.[21] A robust regulatory framework would help to maintain this balance by providing clear guidelines on how AI should navigate the complexities of Nigeria's dual legal system.

Current Legal Gaps
The current legal gaps can be understood through the following lenses:

Absence of specific regulations on Artificial Intelligence (AI) in Customary Law contexts
One of the most significant legal gaps in Nigeria's current framework is the absence of specific regulations addressing the use of Artificial Intelligence (AI) in customary law contexts. While there are general regulations on data protection and technology, such as the NDPR[22] and NITDA[23] Act, these do not provide the necessary guidelines for the application of Artificial Intelligence (AI) in areas governed by customary law. This gap leaves room for potential misuse of Artificial Intelligence (AI) technologies, which could lead to outcomes that are inconsistent with cultural norms or even violate the rights of individuals under customary law. The case of *Kharie Zaidan v Fatima Khalil Mohssen*[24] illustrates the potential conflicts that can arise when statutory and customary laws intersect, particularly in areas such as family law. In this case, the court had to navigate the complexities of applying both Sharia law and statutory law in a custody dispute, highlighting the challenges that could be exacerbated by the introduction of Artificial Intelligence (AI) without clear regulatory guidelines. The absence of specific Artificial Intelligence (AI) regulations could lead to similar conflicts, where Artificial Intelligence (AI) systems may not fully account for the nuances of customary law, resulting in decisions that are legally problematic or culturally insensitive.

Challenges posed by the dual legal system in Nigeria
Nigeria's dual legal system, which allows for the coexistence of statutory and customary laws, poses unique challenges for the regulation of Artificial Intelligence (AI). Customary law, being unwritten and highly variable across different ethnic groups, presents difficulties in codification and standardization, making it challenging to integrate into Artificial Intelligence (AI) systems. The dual system also raises questions about jurisdiction and the appropriate application of Artificial Intelligence (AI) in legal matters that involve both statutory and customary law. For instance, in *Aiyeola v Pedro,*[25] the court had to determine the validity of a marriage under Yoruba customary law, which differed significantly from statutory requirements. This case underscores the complexity of applying Artificial Intelligence (AI) in a legal system where different sets of laws may apply depending on the context. Without clear guidelines, Artificial Intelligence (AI) systems might struggle to accurately interpret and apply the relevant legal principles, leading to potential conflicts or inconsistencies in legal outcomes. The dual legal system also complicates the development of a unified regulatory framework for AI, as any such

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[20] *Oyewunmi v. Ogunesan* (1990) 3 NWLR (Pt 137) 182.
[21] *Supra*.
[22] Nigeria Data Protection Regulation (NDPR) 2019.
[23] National Information Technology Development Agency (NITDA) Act 2007.
[24] (1973) LPELR-SC.71/1972.
[25] 91969) 1 All NLR 289.

framework would need to account for the diversity of customary laws and their interaction with statutory provisions. This complexity highlights the need for a comprehensive approach to AI regulation that takes into account the specific challenges posed by Nigeria's legal pluralism.

The inadequacy of existing Data Protection and Privacy Laws

Existing data protection and privacy laws in Nigeria, such as the NDPR, are inadequate to address the specific challenges posed by Artificial Intelligence (AI), particularly in the context of customary law. The NDPR provides general guidelines on data privacy, focusing primarily on the protection of personal data in digital transactions. However, it does not sufficiently address the ethical and cultural considerations that arise when Artificial Intelligence (AI) systems are used to process or interpret sensitive information related to customary law. For example, in cases involving customary practices around marriage or inheritance, Artificial Intelligence (AI) systems may need to process data that is deeply personal and culturally specific. The lack of clear regulations on how this data should be handled raises concerns about privacy, data security, and the potential for misuse of information. The inadequacy of current laws is evident in the case of *Abubakar v Yar'adua,*[26] where the Supreme Court had to consider both statutory and customary principles in a dispute over the election of the President, illustrating the complexities involved in balancing different legal frameworks. To address these challenges, there is need for more comprehensive data protection laws that specifically consider the implications of Artificial Intelligence (AI) in customary law contexts. These laws should provide clear guidelines on data collection, storage, and processing, with a focus on protecting individuals' rights and ensuring that AI systems are used ethically and responsibly.

Legal and Regulatory Framework for Artificial Intelligence (AI) in Customary Law
Need for legislation addressing Artificial Intelligence (AI) in Customary Law

Given the unique challenges posed by the intersection of Artificial Intelligence (AI) and customary law, there is an urgent need for specific legislation that addresses the application of Artificial Intelligence (AI) in this context. Such legislation should provide clear guidelines on how Artificial Intelligence (AI) systems can be developed and implemented in ways that respect cultural norms and uphold the principles of customary law. This would involve the codification of customary practices in a form that can be integrated into Artificial Intelligence (AI) systems while ensuring that these technologies do not undermine the integrity of customary law. In *Okonkwo v Okagbue,*[27] the Nigerian Supreme Court highlighted the importance of customary law in the context of family relations and inheritance, emphasizing that customary practices must be considered when applying statutory law. This case underscores the need for legislation that ensures Artificial Intelligence (AI) systems are equipped to handle the complexities of customary law in a manner that respects cultural practices and legal traditions. The proposed legislation should also address issues of transparency and accountability in Artificial Intelligence (AI) systems, ensuring that the decision-making processes of Artificial Intelligence (AI) are understandable and that there is recourse for individuals who may be adversely affected by Artificial Intelligence (AI) decisions. Such legislation could draw on international best practices while tailoring provisions to the specific cultural and legal context of Nigeria.

Possible amendments to existing Laws to accommodate Artificial Intelligence (AI)

In addition to enacting new legislation, it is essential to consider amendments to existing laws to accommodate the integration of Artificial Intelligence (AI) in customary law contexts.

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[26] (2008) 19 NWLR (Pt 1120) 1.
[27] (1994) 9 NWLR (Pt. 368) 301.

Amendments could be made to the NITDA Act 2007 and the NDPR 2019 to include specific provisions on Artificial Intelligence (AI), particularly concerning its application in areas governed by customary law. These amendments would ensure that Artificial Intelligence (AI) systems are developed with cultural sensitivity in mind and that they operate within a clear legal framework. For example, the case of *Olomoda v Mustapha*[28] highlights the interplay between statutory and customary laws, particularly in matters of land ownership, where the court had to consider customary principles in determining the rightful owner. This case illustrates the need for existing laws to be amended to better accommodate the nuances of customary law in Artificial Intelligence (AI) applications, ensuring that Artificial Intelligence (AI) systems are capable of interpreting and applying both statutory and customary laws appropriately. Amendments to existing data protection laws could also be necessary to ensure that Artificial Intelligence (AI) systems respect individuals' privacy and data rights, particularly in cases involving sensitive cultural information. These amendments would help to create a legal environment where Artificial Intelligence (AI) can be used effectively and ethically in customary law contexts.

Role of Customary Courts in Artificial Intelligence (AI) Regulation

Customary courts play a crucial role in the administration of justice in areas governed by customary law, and they should be actively involved in the regulation of Artificial Intelligence (AI) . These courts are best positioned to provide insights into the cultural and legal norms that should guide the development and deployment of Artificial Intelligence (AI) systems in customary law contexts. By involving customary courts in the regulatory process, Nigeria can ensure that Artificial Intelligence (AI) systems are aligned with the values and principles of customary law. In *Eshugbayi Eleko v Government of Nigeria,*[29] the Privy Council recognized the authority of customary courts in adjudicating matters related to customary law, emphasizing the importance of respecting local legal traditions. This case underscores the need for customary courts to have a say in the regulation of Artificial Intelligence (AI), ensuring that these technologies are developed in a way that is consistent with customary practices. Customary courts could also play a role in resolving disputes arising from the use of Artificial Intelligence (AI) in customary law contexts, providing a forum where individuals can challenge Artificial Intelligence (AI) decisions that may conflict with customary law or cultural norms. This would help to ensure that Artificial Intelligence (AI) systems are not only legally compliant but also culturally sensitive and responsive to the needs of the communities they serve.

Prospects for a Comprehensive Legal Framework
Steps towards harmonizing AI Regulation with Customary Law Practices

To create a comprehensive legal framework that harmonizes Artificial Intelligence (AI) regulation with customary law practices, it is necessary to take a multi-faceted approach. This would involve codifying key aspects of customary law in a way that can be integrated into Artificial Intelligence (AI) systems while ensuring that the dynamic and evolving nature of customary law is respected. Additionally, collaboration between statutory legal authorities and customary courts will be essential to develop a unified approach to Artificial Intelligence (AI) regulation. A key step in this process would be the establishment of a regulatory body tasked with overseeing the integration of Artificial Intelligence (AI) into the legal system, with a particular focus on customary law. This body could work alongside existing institutions, such as the NITDA and the judiciary, to develop guidelines and standards for the ethical use of AI in

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[28] (2010) 2 NWLR (Pt 1179) 433.
[29] [1931] AC 662.

customary law contexts. In *Oyewunmi v Ogunesan,*[30] the Supreme Court emphasized the need to consider customary law in the interpretation of legal issues, highlighting the importance of harmonizing statutory and customary legal principles. By taking a similar approach to Artificial Intelligence (AI) regulation, Nigeria can ensure that its legal framework supports the effective and ethical use of Artificial Intelligence (AI) in areas governed by customary law.

Potential for International collaboration on Artificial Intelligence (AI) Regulation

International collaboration could play a significant role in the development of a legal framework for Artificial Intelligence (AI) in Nigeria, particularly in the context of customary law. By engaging with other countries and international organizations, Nigeria can learn from global best practices in Artificial Intelligence (AI) regulation and adapt these practices to its unique legal and cultural context. For example, the European Union's General Data Protection Regulation (GDPR) has set a high standard for data protection and privacy, which could serve as a model for Nigeria in terms of regulating Artificial Intelligence (AI's) impact on data privacy in customary law contexts. Collaborating with international bodies, such as the International Association for Artificial Intelligence and Law, could also provide valuable insights into the ethical and legal challenges posed by Artificial Intelligence (AI), helping Nigeria to develop a robust and culturally sensitive regulatory framework. International collaboration could also facilitate the exchange of knowledge and expertise, enabling Nigeria to build capacity in Artificial Intelligence (AI) regulation and ensure that its legal framework is in line with global standards while remaining responsive to local cultural and legal norms.

Future trends in Legal governance of Artificial Intelligence (AI) in Nigeria

As Artificial Intelligence (AI) continues to evolve, the legal governance of these technologies in Nigeria is likely to become increasingly complex. Future trends may include the development of more sophisticated Artificial Intelligence (AI) systems capable of handling the intricacies of customary law, as well as the emergence of new legal and ethical challenges related to Artificial Intelligence (AI's) impact on society. To stay ahead of these trends, Nigeria will need to continuously update its legal framework to reflect the latest developments in AI technology and ensure that these advancements are used in a way that respects cultural values and legal traditions. This could involve regular reviews of Artificial Intelligence (AI) - related legislation, the establishment of advisory bodies to monitor Artificial Intelligence (AI's) impact on customary law, and the development of training programs for legal professionals to equip them with the skills needed to navigate the intersection of AI and customary law. In the case of *Abubakar v Yar'adua,*[31] the court's decision highlighted the need for a legal framework that can adapt to new challenges and technologies. As Artificial Intelligence (AI) continues to advance, the Nigerian legal system will need to remain flexible and responsive to ensure that Artificial Intelligence (AI) is used ethically and effectively in all areas of law, including customary law.

Conclusion

Artificial Intelligence (AI) has come to stay Nigeria in the area of customary law. Though, it has not taken deep root in its existence in Nigeria, the wind of change is so enormous that all hands must be on deck to ensure its reception into the Nigerian legal system, including its application in customary law contexts. All stakeholders in the Nigerian legal system must ensure that the legal and regulatory framework of AI application to customary laws are developed in such a way as to preserve the cultural heritage of our customary laws and traditional systems.

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[30] (1990) 3 NWLR (Pt 137) 182.
[31] *Supra.*