

UNDERSTANDING THE LEGAL MEANING OF CONSENT IN NIGERIAN LAW.



- ✓ CONSENT IN CONTRACT LAW
- ✓ CONSENT IN CRIMINAL LAW
- ✓ CONSENT IN MEDICAL LAW
- ✓ CONSENT IN DATA PRIVACY LAW
- ✓ CONSENT IN THE POLITICAL CONTEXT

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Suite 911, 9th Floor, Western House, 8/10 Broad Street, Lagos.
Tel: 0806 662 0015 | E-mail: Info@krispylegal.com
www.krispylegal.com

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In everyday life, we often hear the word consent especially in discussions as it relates to relationships, medical treatment, and even business transactions. But what does consent actually mean in law?

In simple terms, consent means agreeing to something freely, without force, fraud, or undue influence. In the eyes of the law, consent must be given voluntarily and by someone who fully understands what they are agreeing to.

Consent is a very requisite component in law in has different meanings and effects in various contexts; Under Nigerian law, the meaning and effect of consent appear in various contexts, including contract law, criminal law, Data Privacy Law, family law and even in Political space.

1. CONSENT IN CONTRACT LAW

In contract law, a valid agreement must be based on the free consent of the parties. **Section 13 of the Contract Act, 1872** (which applies in Nigeria through received English law) defines consent as when “two or more persons agree upon the same thing in the same sense.” a legal term called “consensus ad idem” that is “meeting of minds” and for this to be present it means that all parties must have agreed to the Offer, Acceptance and the Consideration (that is what is to be exchanged within the parties along side the conditions if they are)

However, consent is not considered free if it is obtained by coercion, undue influence, fraud, misrepresentation, or mistake (**Section 14, Contract Act**). This means that if someone is forced or deceived into signing an agreement, the contract can be declared invalid. The Nigerian Supreme Court in **Overseas Construction Co. (Nig.) Ltd v. Creek Enterprises (Nig.) Ltd (1985) 3 NWLR (Pt. 13) 407** held that genuine consent is fundamental to the validity of any contract. See also **E.A. Ind. Ltd. v. NERFUND (2009) 8 NWLR (Pt. 1144) 535**. See also **Engr. Emmanuel Eze v. Paul B. Nigeria Plc [2021] 10 NWLR (Pt. 1774) 152 at 165**.

2. CONSENT IN CRIMINAL LAW

In criminal law, consent plays a major role in determining whether an act is lawful or unlawful. For example, in rape or sexual assault cases, the key issue is whether the victim consented. The **Criminal Code Act (Section 357)** defines rape as having unlawful carnal knowledge of a woman or girl without her consent or with her consent obtained by force, threat, intimidation, or false representation.

Similarly, under **Section 282 of the Penal Code** (applicable in Northern Nigeria), consent must be

voluntary and given by a person capable of understanding the act. The Nigerian courts have consistently emphasized that consent obtained under fear or pressure is no consent at all. In **Posu v. The State (2011) 3 NWLR (Pt. 1233) 310**, the Court of Appeal held that true consent must be the product of a free and independent will.

Further a Consent obtained from a Minor to have her canal knowledge is no consent in law even where there is no evidence of struggle to suggest obvious ingredient of rape it is regarded as “STATUTORY RAPE” for the law frowns at it.

3. CONSENT IN MEDICAL LAW

In the medical field, doctors must obtain a patient’ s consent before performing any treatment or surgery. Performing a medical procedure without consent can amount to assault or negligence. The principle was highlighted in **Schloendorff v. Society of New York Hospital (1914) 211 N.Y. 125**, where Justice Cardozo famously stated that “every human being of adult years and sound mind has a right to determine what shall be done with his own body.”

In the case of **MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL v. DR JOHN EMEWULU NICHOLAS OKONKWO (2001) LPELR-1856(SC)**, the Supreme Court was faced with the question of a right of a patient to accept or reject to a particular form of medical treatment and the SC has this to say:

"If a competent adult patient exercising his right to reject life-saving treatment on religious grounds, thereby chooses a path that may ultimately lead to his death, in the absence of judicial intervention overriding the patient's decision, what meaningful option is the practitioner left with, other, perhaps than to give the patient comfort? In several cases the Courts have refused to override the patient's decision, in others, they have found ways round the problem of the paramountcy of the patient's consent. What is important is that in no case has the decision to override the patient's decision been left with the medical practitioner or the hospital. Several of these cases have been noted in 93 ALR 3d 67-85. In Re-Yetter (1973) 62Pa D & C2d 619, upon evidence that the patient was a mature, competent adult, had no children, and had not sought medical attention and then attempted to restrict it, the Court said that the constitutional right of privacy includes the right of a competent, mature adult to refuse treatment that may prolong one's life even though that refusal may seem unwise, foolish or ridiculous to others. (see 93 ALR 3d 77). In Re Osborne (1972, Dist Col App) 294 A2d 372, the Court affirmed the lower Court's order refusing to appoint a guardian to give consent for the administration of a blood transfusion to a patient who had refused it on religious grounds, and whom the physician feared would die without blood, upon evidence that the patient had

validly and knowingly chosen this course, and upon the lower Court's finding that there was no compelling state interest which justified overriding the patient's decision to refuse blood transfusions. The principle of these cases is to some extent reflected in the opinions in Sideway v. Board of Governors Bethlem, Royal Hospital (supra) where at page 645 (of [1985] 1 All ER) Lord Scarman, albeit in a slightly different context, said: "... the Courts should not allow medical opinion of what is best for the patient to over-ride the patient's right to decide for himself whether he will submit to the treatment offered him.", and Lord Templeman, at p. 666, said: " The patient is free to decide whether or not to submit to treatment recommended by the doctor ... If the doctor making a balanced judgment advises the patient to submit to the operation, the patient is entitled to reject the advice for reasons which are rational or irrational or for no reason."

4. CONSENT IN DATA PRIVACY LAW.

This is something that affects the regular life of every citizen as we now live in a digital world where consent could be accessed just by tapping our phone screens. Going by the **Nigerian Data protection Act 2023**, Consent can be said to mean an agreement that is freely given that is with no coercion or condition, that is specific that must relate to a particular purpose, that is informed, that is unambiguous and can be withdrawn. For instance, as it is rampant now a-days where you find a couple of sites pop up on your phone and tells you to Accept all cookies because this pop-up has no Reject option which amounts to an invalid consent.

And at times most of these sites makes use of your personal data, See the case of **Chukwunweike Akosa Araka v. Ecart Internet Services Ltd & Eat 'N' Go Limited, FHC/ ABJ/ CS/ 195/ 2024.**

5. CONSENT IN THE POLITICAL CONTEXT.

Nigeria is now in a digital governance era where many governmental agencies handle citizens personal information, such as NIN, BVN, Phone Number, addresses and the likes. Under the NDPA Act, these agencies are bound to seek consent or show lawful authority before collecting or sharing such data. See Sections 24-26 of the NDPA Act.

See **Incorporated Trustees of Digital Rights Lawyers Initiative & Ors. V. National Identity Management Commission (2021) LPER-5562 (CA)**

Beyond this, consent in political consent refers to approval or participation in governance and decision making as this is not limited to election alone but also down to policies like Fuel Subsidy, Electricity Tariffs and so on. Will the consent of the Citizen be sought and obtain before these policies are meted out to the citizens? The answer to this is Yes and in political space that is

usually obtained through the representatives of people at the National assembly who are bound to make laws and even approve these policies that are put in the budget. In democracy it is always a game of majority and Majority always have their ways while the minority has their say and since everybody cannot be in government, the law is put in place for some sects of people to represent the people at the helms of affairs. Whether these policies are truly reflective of the wills and consent of the people is totally another ball game altogether.

CONCLUSION

In summary, consent is more than just saying “yes.” In law, it means an informed, voluntary, and genuine agreement. Whether in contracts, criminal cases, or medical decisions, the absence of true consent can make an otherwise legal act unlawful. Members of the public should always ensure they understand what they are agreeing to because in law, ignorance or pressure can invalidate consent.



KRISPY LEGAL
ATTORNEY-AT-LAW



A.D Olaniyi, ESQ.

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