

**APPLICABILITY OF THE DOCTRINE OF COVERING THE FIELD UNDER THE NIGERIAN TAX
LAW: PITFALLS IN ATTORNEY-GENERAL OF THE FEDERATION v
ATTORNEY-GENERAL OF LAGOS STATE¹**

Abstract

The politics of the doctrine of covering the field in tax matters on division of taxing powers of government in Nigeria has always been controversial in practice. The legislative powers of Nigeria are shared between the federation and components states. The truism is that the National Assembly exclusively legislates on matters within the Exclusive legislative list while both the federal and the state exercise power on the concurrent legislative list. By this practice and politics of covering the field, the states are left with nothing as far as the constitutionally enumerated powers are concerned in tax matters. Hence, where the state's law provides for any item in the concurrent legislative list, it may be void on the grounds of inconsistency or of covering the field generally. In resolving the issue in tax matters, recourse is had to the intention of the words or provisions of the constitution concerning the item. This paper examined the relevant provisions of the constitution juxtaposed with some income tax statutes to find out the interpretations giving to the legislation of the state vis-a-vis the federal statutes in tax matters. The paper adopted doctrinal method of data collection using analytical approach in examining the research materials like the constitution, taxing statutes, judicial decisions, textbooks, journals articles and internet sources. The paper discovered that in most constitutional interpretations relating to the doctrine of covering the field in tax matters resort had always been placed on "borrowing" definition of word from other countries which do not have similar or resemblance in meaning. By this attitude the states are left at the mercy of the federal government. The paper recommends that broad interpretations should be given in order not restrict their meaning or matters mentioned therein to a particular provision but other provisions relating to the issue must be read together and not disjoint. This is to know when to declare a particular provision of a legislation of either state or federal void as a result of inconsistency and when to keep the legislation in abeyance or in operative. The states following the recent decisions of courts should resist any attempt to muzzle out residual powers from them hiding under the principle of covering the field.

Keywords: Covering the field, Tax, Legislative, Conflict, Residual, Powers

1. Introduction

The Constitution of the Federal Republic of Nigeria is the *Fon Juris* or the source of law from which all other laws flow and derive their validity in Nigeria. In *AG Abia State v AG Federation*,² the court recognized it as the alpha and omega of the judicial system. It is the *grundnorm*. The National Assembly which comprises of the Senate and House of Representatives is vested with the power to make laws for the peace, order and good government of the federation and any part thereof.³ In the same vein, the legislative power of a state is vested in the State Houses of Assembly.⁴ In practice, however, it does appear that the constitution did not allocate any legislative power to the states of the Federation. This is why Adebayo⁵ said that the constitution assigns to the Federal Government power over the enumerated matters, leaving to the State Governments the residue of the matter not so enumerated which are termed residual matters. In *UAC of Nigeria & Ors v AG Lagos State*,⁶ it was held that both the State Government and Local Governments have concurrent powers in tax matters with regards to the residual powers of Local Government so enumerated. The enumerated matters under the constitution are expressly and specifically provided for in the body of the constitution and the schedules.⁷ Note that any state legislation which conflicts with that of the National Assembly is declared invalid *pro tanto*.⁸ Note that as the State Houses of Assembly are not allowed to exercise powers as per the Exclusive Legislative list, the National Assembly cannot exercise legislative powers in matters in the Residual Legislative List,⁹ as declared in *AG Lagos State v AG Federation*¹⁰ meant to be under the legislative competence of the State Government. A law

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¹ VOL. 8 ALL NTC 425

² (2006) 16 NWLR (pt 1005) 265

³ Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended, S.4 (1) to (4)

⁴ Ibid, S.4 (7)

⁵ A M Adebayo, 1999 *Constitution of the Federal Republic of Nigeria as amended*, Annotated with cases (Lagos; Princeton pub.co, 2012)12.

⁶ 7 All NTC 119

⁷ CFRN, 1999 as amended, S 4 and the first, second and the 4th schedules to the Constitution.

⁸ *AG Ogun state v AG Federation* (1982) 3 NCLR 166

⁹ *Idowu v AG Lagos State & ors* 7All NTC 417 at 423, *AG Lagos State v AG Federation*, *Supra*, and *AG Ogun State v Aberuagba* (1985) 1 NLR (pt 3) 395

¹⁰ (2003) 12 NWLR (pt 833) 1

enacted by a State government might be void either on the ground of inconsistency¹¹ or on the ground of covering the field where identical legislations, without any inconsistency on the same subject matter were validly made by the State and the Federation.¹² In such a situation generally, the State's law must give way but it is different where the State's law was validly made under the residual powers. It is in this scenario where the two laws made by the Federal and State should be allowed to co-exist having emanated or validly made in accordance with the requisite areas of exclusive jurisdiction of each of them in tax matters that the paper explored.

2. Constitutionally enumerated Legislative Powers

In a true Federal State, power within the constitution is shared among the states and the federation. This is the definitive feature of the Federal State.¹³ It is in recognition of this separateness and independence of each government that makes up the Federation. Again in recognition of this principle, the constitution¹⁴ provides that Nigeria shall be a federation consisting of States and a Federal Capital Territory. The enumerated power sharing of the legislative powers of the Federation in the Constitution¹⁵ are as follows;

- a. The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the federation which shall consist of a Senate and a House of Representatives.¹⁶
- b. The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in part 1 of the second schedule to this constitution.¹⁷
- c. The powers of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive legislative list shall save as otherwise provided in this constitution be to the exclusion of the House of Assembly of States.¹⁸
- d. In addition and without prejudice to the powers conferred by subsection (2) of this constitution; the National Assembly shall have power to make laws with respect to the following matter, that is to say;¹⁹
 - i. Any matter in the concurrent legislative list of out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto.²⁰
 - ii. Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.²¹
- e. If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of inconsistency be void.²²
- f. The legislative powers of a state of the federation shall be vested in the House of Assembly of the State.²³
- g. The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say;²⁴
 - i. any matter not included in the Exclusive legislative list set out in part 1 of the second schedule to this constitution; second schedule to part II.²⁵
 - ii. any matter included in the concurrent legislation list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto.²⁶
 - iii. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.²⁷

A perusal and proper construction of the enumerated powers or provisions would reveal that it is only the residual power or residual legislative powers of government that is vested in the States.²⁸ By residual legislative

¹¹ CFRN, 1999, as amended

¹² *AG Ogun State v AG of the Federation*, supra

¹³ *Hon. Minister for justice & AG Federation v AG Lagos State* 8, All NTC 425 at 445

¹⁴ CFRN, 1999 as amended, Ibid, S.2(2)

¹⁵ *Ibid*, S.4(1) to (7)

¹⁶ *Ibid*, S.4(1)

¹⁷ *Ibid*, S.4(2)

¹⁸ *Ibid*, S.4(3)

¹⁹ *Ibid*, S.4(4)

²⁰ *Ibid*, S.4 (4) (a)

²¹ *Ibid*, S.4 (4) (b)

²² *Ibid*, S.4 (5)

²³ *Ibid*, S.4 (6)

²⁴ *Ibid*, S.4(7)

²⁵ *Ibid*, S.4 (7) (a)

²⁶ *Ibid*, S.4 (7) (b)

²⁷ *Ibid*, S.4 (7) (c)

powers within the context of the above provisions, it is what was left after the matters in the Exclusive and concurrent legislative lists and those matter which the constitution expressly empowered the Federal and the States to legislate upon has been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature.²⁹

From the foregoing, the federation had no power to make laws on the residual tax matters as same is a special reserve of the States.³⁰ This is based on the fact that when the constitution has granted jurisdiction, it cannot be lightly be divested, as declared in *Orhiunu v FRN*,³¹ that where it is intended to be divested, it must be done by clear, express and unambiguous words and by a competent amendment of the Constitution, not by any other method.

3. The Enumerated taxing powers under the Legislative List

The constitution³² provides for two lists under which the legislative powers of the federation are exercisable, these are the Exclusive and Concurrent legislative lists.

Exclusive Legislative List

This contains matters that are within the exclusive legislative competence of the federal government.³³ The federal government has jurisdiction to exercise power on the provision to the exclusion of the state governments. The list included customs and exercise duties,³⁴ export duties,³⁵ revenue from shipping and navigation on international waters, inland waterways and from federal ports,³⁶ mining rents and royalties,³⁷ stamp Duties,³⁸ taxation of income, profits and capital gains.³⁹

The federal government has exclusive power to legislate on the taxation of individuals and companies throughout the federation.⁴⁰ The federal government has the further power to legislate on the following: Trade and commerce,⁴¹ which comprises of;

- (a) trade and commerce between Nigeria and other countries, including import of commodities into and export of commodities from Nigeria and commerce between the States.⁴²
- (b) Establishment of purchasing authority with power to acquire for export or sale in world markets such as agricultural produce as may be designated by the National Assembly.
- (c) Inspection of produce to be exported from Nigeria and the enforcement of grades and standards of quality in respect of produce inspected.
- (d) Establishment of a body to prescribe and enforce standards of goods and commodities offered for sale;
- (e) Control of the prices of goods and commodities designated by the National Assembly as essential goods or commodities; and
- (f) Registration of business name

In wireless, broadcasting and television other than broadcasting and television provided by the government of the state; allocation of wave lengths for wireless, broadcasting and television transmission.⁴³

The implication of the list enumerated is that no other level of government can impose tax on the following;

- a. Excise duty, import and export duty, companies tax or any other type of tax levied on companies, petroleum tax or taxes relating to mines and minerals, stamp duties, incomes, profits and capital gain taxes, taxes

²⁸ *AG Ogun State v Aberugba, supra*

²⁹ *AG Ogun State v Aberugba, Supra*

³⁰ *AG Lagos State v AG Federation Supra*

³¹ (2005) 1 NWLR (pt. 0906) 39

³² CFRN, 19999 as amended, S.4(3), matters in the exclusive legislative list are set out in part 1 of the second schedule to the constitution

³³ *Ibid*, S.4(2)

³⁴ *Ibid*, Second schedule, part 1, item 16

³⁵ *Ibid*, Item 25

³⁶ *Ibid*, Item 36

³⁷ *Ibid*, Item 37

³⁸ *Ibid*, Item 58

³⁹ *Ibid*, Item 59

⁴⁰ *Ibid*, S.4(2) & item 59

⁴¹ *Ibid*, item 67

⁴² *AG Ogun State v Aberugba, Supra*.

⁴³ CFRN 1999 as amended, second schedule part 1, item 66

relating to trade and commerce, communities, communication (e. radio and television licence) and telecommunication tax.

There is little or no controversy in matters contained in the exclusive legislative list, as should not be a room for conflict between the federal government and state governments, since the state governments are expressly excluded from legislating on the matters therein. But it is only where there is a vacuum which will make the subject matter residual for instance, in trade and commerce. The particularization should be limited and should not include trade and commerce within the State (Intra state) as held in *AG Ogun State v Agberuagba*.⁴⁴ The reasoning is that states should be capable of regulating the carrying on of any business or trade within their boundaries.

Concurrent Legislative List

The list contains matters upon which both the Federal Government and State Governments can exercise legislative powers. But legislations made by the National Assembly on matter within the concurrent list have supremacy over state's legislations on the same matters. In *Attorney-General of Ogun State v Attorney-General of the federation*,⁴⁵ the court held that a law enacted by a state might be void either on the ground of inconsistency,⁴⁶ or on the ground of covering the field where identical legislations are made. But there are situations where legislations validly made on the same subject matter by the state and the federation may not be set aside on ground of inconsistency. In *Olafisoye v FRN*⁴⁷ concurrent was defined to mean existing together. What this meant therefore is that when a matter is said to be concurrent to Federal and State Governments, their powers in respect of it exists side by side and together. In other words, the powers of both governments in respect of the matter are co-existent nor mutually exclusive; the power of one does not exclude that of the other. Both governments can in theory at least, act on the matter. But their powers need not necessarily be co-existence in the sense of extending over the entire field of the matter; they may co-exist only in respect of some aspects of it.

Residual Legislative List

The constitution did not expressly mention a list to be known as residual legislative list. In *AG Ogun State v Aberugba*⁴⁸ the Supreme Court held;

a careful perusal and proper construction of section 4 (of 1999 constitution) would reveal that the residual legislative powers of government were vested in the states. By residual legislative powers within the context of section 4, is meant what was left after the matters in the Exclusive and concurrent legislative lists and these matters which the constitution expressly empowered the federation and the states to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The federation had no power to make laws on residual matters.

From the above and the constitution,⁴⁹ there are conferred appropriate powers to the National and State Houses of Assembly to make laws for the peace, order and good government of the federation and state respectively. The powers so appropriate have delimited areas where each assembly is empowered to make law. The State Houses of Assembly are empowered to make laws for the control of those matters under the concurrent list and they have exclusive power to make laws with respect to the control of all those matter not included in both the exclusive and concurrent lists. For instance, there is no such function or provision in respect of Local Government council. For their functions, the local government depends on the law validly made by the State House of Assembly.⁵⁰ It therefore, means that there is no provision prohibiting the state from participating or controlling some of the functions enumerated under the constitution.

In the light of the forgoing, the Federal government lacks the constitutional *vires* to make law outside its legislative competence which are by implication residue matters for the State Assembly.

⁴⁴ *Supra*, *Uwaifo v Attorney-General Bendel* (1982) 7 SC 124, *Rabius v State* (1980) 8-111 SC 130 at 195, *Awolowo v Shagari* 1979) 6-9 SC 51 at 66-68

⁴⁵ *supra*

⁴⁶ CFRN, 1999 as amended, S.4 (5)

⁴⁷ (2040) 4 NWLR (pt 864) 580

⁴⁸ *supra*

⁴⁹ CFRN, 1999 as amended, S.4 (1) – (7), Part 11, second schedule

⁵⁰ *Ibid*, S.8(3) (a)-(d). In *AG Lagos State v AG Federation* (2005) All FWLR (pt 244) 805, an act of the National Assembly for the creation of Local Government in Lagos State was declared null and void.

4. Inconsistency Rule

The inconsistency rule presupposed that through the State law is in existence; its application and enforceability are suspended. Thus the state law which is inconsistent with the federal law may become operational and enforceable if the federal law is repealed or expired thereafter. Inconsistency between a federal and state law may arise in two ways. It could be where the state law is directly in conflict or inconsistent with the federal law. Where this is the situation, the federal law must prevail over the state law. The constitution⁵¹ provided thus: 'If any law enacted by the House of Assembly of a state is in consistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void'. In *AG Ogun State v AG federation*,⁵² the Supreme Court held it to be void to the extent of its inconsistency. However, from the decision, it is to be noted that the fact that the state law is inconsistent federal law under the inconsistency rule does not mean that the state law is illegal or unlawful so as to nullify its existence.

5. Doctrine of Covering the Field

The power of a government to legislate on a given matter must be traceable to the body of the constitution either in the exclusive or concurrent legislative lists and or residual list. Any other resort to nay legislation outside the ambit of the said constitutional provisions is null and void.⁵³ The doctrine of covering the field can also arise when a State House of Assembly, purportedly exercise legislative powers on a subject matter already enacted by the National Assembly.⁵⁴ In *Cylde Engineering Company Ltd v Cowborn*,⁵⁵ the court held that if a competent legislature expressly or impliedly evinces its intention to cover the whole field that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field. The inconsistency is demonstrated, not by comparison of detailed provisions, but by the mere existence of the two sets of provisions. In *Ex Parte Mclean*,⁵⁶ Dixon J developed a *locus classicus* when he observed that when the parliament of the common wealth and the parliament of a state each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes and the section applies. This is settled, at least, when the sanctions they impose are diverse. But the reasons is that by prescribing the rule to be observed, the federal statutes shows an intention to cover the subject matter and provides what the law upon it shall be. If it appeared that the federal law was intended to be supplementary to or cumulative upon state law, then no inconsistency would be exhibited in imposing the same duties or inflicting different penalties. The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment, completely, exhaustively, what shall be the law governing the particular conductor matter to which it attention is directed. When a federal statute discloses such an intention, it is inconsistent with it for the law of a state to govern the same conduct or matter. In Nigeria, the above dictum in *Ex parte Mclean* adopted in *AG Abia State v AG Federation*,⁵⁷ where the Supreme Court considered the doctrine to substantively amount to when a state law, if valid, would alter, impair or detract from the operations of law of the common wealth parliament, then to that extent it is valid. Moreover, if it appears from the terms, the nature or the subject matter of a federal enactment, that it was intended as a complete statement of the law governing a particular matter or set of rights and duties. Where state laws regulates or apply to the same matter or relation is regarded as detraction from the full operation of the commonwealth law and it is inconsistent. The doctrine is a situation where identical legislations on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly. It would be more appropriate to invalidate the identical law passed by the state House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter.

6. Application of the doctrine in judicial interpretations of Taxing Legislations

The application of the doctrine was exhaustively thrashed in the *locus classicus* on the matter of taxation in *Lakami v Attorney-General Western Region*.⁵⁸ But the dictum in the *Lakami* case was re-echoed in *Attorney-General of Ogun State v Attorney-General of the federation*,⁵⁹ that in tax matters, the court will always adopt the natural meaning of the provisions of the statutes and the allocations of power in the constitution in order to determine whether the two legislations are conflicting. In *Hon. Minister of Justice & AG of the federation v AG*

⁵¹ *Ibid*, S4(5)

⁵² *Supra*

⁵³ CFRN, 1999 as amended, S.1(3)

⁵⁴ *INEC v Musa* (2003) 3 NWLR (pt.806) 72

⁵⁵ (1926) 37 CLR 466

⁵⁶ (1920) 43 CLR 472, *Hume v Palmer* (1926)38 CRL441

⁵⁷ (2002) All FWLR (pt 1010) 1419

⁵⁸ (1970) 6 NSCC 143

⁵⁹ *Supra* at 35

Lagos State,⁶⁰ an originating summons taken by the federal Government against the Lagos State was on a challenge to the validity of enactment of the following laws by the Lagos State Government; the Hotel licensing law,⁶¹ the Hotel occupancy and Restaurant Consumption Law,⁶² and the Hotel Licensing (Amendment) law.⁶³ The issues that were raised for determination are:

- i. Whether the Lagos State Government and Lagos State House of Assembly can enact law in respect of any items listed under the exclusive legislative list of the constitution of the Federal Republic of Nigeria, 1999.
- ii. Whether by virtue of the provisions of item 60(d) part I of the second schedule of the constitution of the federal republic of Nigeria which lists the regulation of tourist traffic as a legislative item under the exclusive legislative list, the National assembly is entitled to the subsequent provisions of the Nigeria Tourism Development Corporation Act,⁶⁴ which gives the Nigeria Tourism Development Corporation, the right to license, regulate, register, clarify and grade hotel, motels, guest inns, travels Agencies, Tour operating outfits, Resorts, cafeterias, restaurants, fast food outlets and other related tourist establishments situated and located within the geographical boundaries of Lagos State.
- iii. Whether the Lagos State Government and the Lagos State House of Assembly can enact a law which directly conflicts with an existing law enacted by the National Assembly and where such law is enacted whether such law or enactments made by the Lagos State Government and the Lagos State House of Assembly can remain valid where such a law or enactment made by the Federal Government of Nigeria, the National Assembly exists.

On the part of the Lagos State, it formulated the following issues;

- i. Whether regulation, Registration, classification and grading of hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishment are matters in the Exclusive and concurrent legislative list and outside the legislative power of Lagos State House of Assembly.
- ii. Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provisions of the Nigeria Tourism Development Act; Hotel licensing law, Hotel Licensing (Amendment) law and Hotel occupancy and Restaurant Consumption law.

The Supreme Court considered the provisions of the Constitution and Nigeria Tourism Development Commission Act to find out whether the Federal Government has exclusive legislative power over tourism and the regulation of hotels, motels and restaurants. In resolving the issue, it was held that the power of National Assembly over tourist related matters is limited to the regulation of tourist traffic.⁶⁵ The court interpreted the wordings in the constitution and said that a simple and natural meaning of tourist is traveler and traffic is to be a movement of people or goods from one place to another, along railway, road and aircrafts and others. The combined reading of the provisions it is concerned with the ingress and egress of tourists from other countries; the control of international visitors or foreigners. The court followed its hallowed decisions in *NEW Ltd v Denap Ltd*,⁶⁶ and *Ogugu v The State*.⁶⁷ An interesting innovation in the decision is that the court refused and rejected to follow or borrow definition from other countries as was persuaded. For instance the court saw the Republic of Ireland which did not have a similar constitution like Nigeria and for the reason that it practices Unitary System of Government, whereas Nigeria is a Federal Republic with the division of legislative powers between the Federal Government and component states. Moreover, as highlighted above, the interpretation of the provisions of the constitution with reference to tax matters is to ascertain the intention of the law makers. Significantly, instead of alluding to the overwhelming and swooping doctrine of covering the field, the court noted that the federal government lacks the constitutional *vires* to make a law outside its legislative competence which by implication on the residue matters reserved for the State House of Assembly. By this decision, the overreaching provisions of the constitution,⁶⁸ and the doctrine of covering the field was made to have no application on the exercise of the residual legislative power,⁶⁹ by the state government. It is notable that rather than subjugate the laws of the state government, the court nullified the provisions of the Nigeria Tourism Development

⁶⁰ 8 All NTC 425

⁶¹ Cap H6 Laws of Lagos State of Nigeria, 2003

⁶² No 30 Vol. 42, Lagos State of Nigeria Official Gazette 2009

⁶³ No 23, Lagos State of Nigeria Official Gazette, July 2010

⁶⁴ Cap N137, laws of the federation of Nigeria, 2004, S.4(2) (d)

⁶⁵ CFRN, 1999 as amended, part1, second schedule, Exclusive legislative list, item 60(d). This connotes that a tourist is an international traveler who travel from one country to another for the purpose of sightseeing and who must obtain a visa to visit other country.

⁶⁶ (1997) 10 NWLR (pt. 526) 481, *Ojokolobo v Alamu* (1982) 3 NWLR (pt 61) 377

⁶⁷ (1994) 4 NWLR (pt 366) 43

⁶⁸ CFRN, 1999 as amended, S.4(4)

⁶⁹ *AG Lagos State v Attorney-General of the federation* (2003) 12 NWLR (pt 833) 1

Corporation Act,⁷⁰ as the exercise of such power was not traceable to the constitution. The doctrine was not also applied here as the exercise of the legislative power by the state was not on the concurrent legislative list on the same subject matter.⁷¹ The same reasoning was adopted by court in *Ag Ogun state v Aberuagaba*.⁷² In the case the validity of the Ogun State Sales Tax Law⁷³ was questioned in relation with the provisions of item 61 part1 of the second schedule to the constitution. The examination of item 61 reads:

1. Trade and commerce between Nigeria and in particular

- a. Trade and commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria and trade and commerce between the states.⁷⁴
- b. Establishment of a purchasing authority with power to acquire for export or sale in world markets such as agricultural produce as may be designated by the National Assembly.⁷⁵
- c. Inspection of produce to be exported from Nigeria and the enforcement of grades and standard of quality in respect of produce so inspected.⁷⁶
- d. Establishment of a body to prescribe and enforce standards of goods and commodities offered for sale,⁷⁷
- e. Control of the prices of goods or commodities designated by the National Assembly as essential goods or commodities⁷⁸ and
- f. Registration of business names⁷⁹

The interpretation giving by the court on the taxing power of the federal and state government on trade and commerce is a liberal and natural meaning of the word trade and commerce. The control of the economy is not within the exclusive power of the federation. This means that the federal and state governments have share in the control of the economy.⁸⁰ The blue pencil rule was then applied to declare that while the federal government has the power to control interstate and international trade, the state government should control intra state trade and commerce. Although the other view being expressed is that even if the two legislations are in *pari materia*, the state legislation is in abeyance and becomes inoperative for the period the federal legislation is in force. It is not void and if for any reason the federal legislation is repealed, the state legislation, which is in abeyance, is revived and becomes operative until there is another federal legislation that covers the field.⁸¹ This approach is adopted when the subject matter in controversy is on the provision in the concurrent legislative list.

From the foregoing, court's interpretation of the applicability of the doctrine of covering the field is that the federation has implied exclusive power to make laws in all matters within the Exclusive and Concurrent lists which the state have implied or residuary power to enact tax legislation on all the matters outside the said lists.

7. Conclusion

The relevant authorities particularly decided cases examined is to be the effect that the doctrine is only applicable in tax matters where concurrent legislative powers are validly exercised on the same subject matter. The doctrine is in applicable when the taxing power exercised is in the Exclusive legislative list with respect to which the federal government has exclusive power to legislate on. From experience and practice, states do not venture into exercise of taxing powers except the item falls under the reserved residual powers in the constitution. It is as a result of the above reasons that the Lagos State laws on registration, classification and grading of hospitality enterprises was held not to be inconsistent with the provisions of the constitution and have

⁷⁰ NTDC Act, S.4(1), (2) and (3) read in conjunction with the provisions of section 4(1) (2) (3) (4) (6) and (7) with particular reference to part 1, second schedule, item 60(d)

⁷¹ In *O Sullive n v Noar Lunga Meat Ltd* (1957) AC 1 it was held that the inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous of simultaneous obedience.

⁷² *Supra*

⁷³ Sales Tax Law, Ogun State, 1982, S.3(1), (4) (11) & (7), 4,5,8, and 21

⁷⁴ CFRN, 1999 as amended , part 1, second schedule, item 61(a)

⁷⁵ *Ibid*, item 61 (b)

⁷⁶ *Ibid*, item 61 (c)

⁷⁷ *Ibid*, item 61 (d)

⁷⁸ *Ibid*, item 61 (e)

⁷⁹ *Ibid*, item 61 (f)

⁸⁰ *Ibid*, s. 16,. 18 and 7(3). Under section 16, the Federal Government is directed to control the National economy in such manner as to ensure maximum welfare, freedom and happiness of every citizen. Under section 18, it provides that subject to the provisions of the constitution House of Assembly may make laws for that state with respect to industrial, commercial or agricultural development of the state. Note that under section 7(3) it provides that it shall be the duty of a local government council within the state to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a law enacted by the House of Assembly of the state.

⁸¹ *Barr. Odo v ESIRB* (2020) 5 TLRN27, *Ag. Lagos state v Eko Hotels Ltd* (2018)7 NWLR (PT. 1619)518.

no negative implication for tourist's safety or national security as alleged. Infact, it was held that such laws as a matter of fact are in conformity with the principles of federalism that is enshrined in the constitution. The court has always interpreted the intention of the law makers as that which envisages devolution of powers among the federating states. It is therefore trite that when a state legislation was made within the ambit of the legislative competence of the State House of Assembly, it does not matter whether the National Assembly extended their powers to those areas or not. Both the Federal and States have limitations as to their competence under the law and where any law is passed beyond the limits, the law of any of the governments that violates this becomes otiose considering the doctrine of covering the field.