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## A Case for Priest-Penitent Privilege in Nigerian Jurisprudence

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### Abstract

Law is an instrument of human development. Its principles touch on every aspect of man's endeavour. The science of jurisprudence enquires into all these areas with a view to prescribing an adequate role for law. This paper has examined the Nigerian evidence law of privilege which inures in certain specified human communications. The study has discovered that such privilege does not cover the confidential interactions between a priest and a penitent, and which lacuna is detrimental to the religious rights and lives of many a Nigerian. Besides, under this legal regime, a priest is rendered vulnerable to some form of prosecutory and court torments that would nevertheless be met with conscientious objections. After a critical and comparative analysis of issues, this paper has suggested a review of the relevant Nigerian legislation in order to vest the all-important priest-penitent communications with privilege.

**Key Words:** Religious Freedom, Priest, Penitent, Jurisprudence, Privilege, Law

### Introduction

Time and time again, many socio-legal systems treat certain forms of interpersonal communications with great respect and dignity. Doctor-patient, lawyer-client, husband-wife, priest-penitent relations are just few instances thereof. Often times, these relationships which the law sometimes calls *fiduciary*,

have enormous implications for the administration of justice in the relevant jurisdictions. For instance, under the Nigerian law of contract, the law assumes that in this type of relationship one person is in a superior position to the other and the trust and confidence of that other is reposed in him. This assumption, no doubt, triggers off some legal consequences. Thus, in every contract between persons in fiduciary relationship, the law, at the event of litigation *prima facie*, reads undue influence from the part of the superior party over and against the other unless an independent advice is proved. This is perhaps as a result of what Lord Denning calls 'Inequality of Bargaining Power'<sup>1</sup> on account of which there is a duty imposed on the superior *ab initio* to disclose all relevant facts associated with the contract, otherwise, the said contract may be vitiated by misrepresentation.

In the same manner, the law treats communications between persons in some of the above relationships and more as privileged and thus cannot be required to be tendered in evidence in any proceeding save and except where there is a waiver. Hence, in Nigerian evidence law and practice, a judge cannot be compelled to answer any questions as to anything which came to his knowledge in court in his capacity as a judge.<sup>2</sup> Similarly, "no public officer

<sup>1</sup> I. E. Sagay, *Nigerian Law of Contract* (Ibadan: Spectrum Books Ltd., 1993) 345.

<sup>2</sup> *R v Heavey* (1858) & Cox C.C. 99 at 164; *Buckley (Duke) v Metropolitan Board of*



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