

EGGSHELL RULE UNDER THE NIGERIAN LEGAL SYSTEM: LIABILITIES OF CONTENT CREATORS

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ABSTRACT

Content creators in Nigeria have gained significant influence through various platforms, but this influence comes with potential consequences and legal responsibilities. Under the eggshell rule content creators can be held liable for the full extent of harm caused by their creations, regardless of the victim's vulnerability or pre-existing condition. Liabilities of content creators in Nigeria encompass issues such as defamation, intellectual property infringement, invasion of privacy, dissemination of false information, and incitement to violence. To mitigate liabilities, content creators must exercise caution and adhere to legal and ethical standards. This paper seeks to discuss the liabilities of content creators in Nigeria with respect to production of prank videos. It discusses legal issues with respect to the entertainment sector while also proffering recommendations on how content creators can navigate successfully and enjoy the entertainment sector without facing unnecessary law suits. It therefore concludes that by understanding and abiding by legal obligations, content creators can navigate potential liabilities while positively contributing to the digital landscape in Nigeria.

1.0 INTRODUCTION

In Nigeria today, the entertainment industry has witnessed immense growth and development. This has placed Nigeria among the list of countries with a

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viable and flourishing entertainment industry with international recognition.²⁹⁷ The worrisome situation of the country and the current inflation in the country has brought harsh living realities for many. This has made entertainment a much-needed escape for millions across the country who value their physical and mental wellbeing.²⁹⁸ It is important to note however that despite the fact that this industry has positive impact on the physical and mental health of the citizens, it has also in recent time entered the list of the 1,001 ways to die. The popularity of pranking and creating content for social media users has grown significantly in Nigeria, with many content creators going to great lengths to *scare and shock* people for entertainment purpose. However, this trend has raised concerns about the potential harm that could result from these pranks, especially for people who have pre-existing health conditions such as hypertension.

Premise on the above, this article shall explore the implications of the Eggshell Rule under the Nigeria criminal law and tort law, as it relates to these types of content creation (pranks videos)

2.0 LIABILITIES OF CONTENT CREATORS

The “Eggshell Rule” also known as the “Thin skull rule” is a legal principle in Tort law that states that a tortfeasor (someone who commits a tort) must take their victim as they find them, regardless of any pre-existing conditions that

²⁹⁷Nigeria’s entertainment consumption’, <https://businessday.ng/life-arts/article/nigeria-to-make-top-four-fastest-growing-entertainment-consumer-revenue-globally/#:~:text=Based%20on%20Statista%2C%20total%20revenue,entertainment%20consumer%20revenue%20is%20technology>, accessed 23rd May, 2023.

²⁹⁸Ibid.

may make the victim more vulnerable to injury.²⁹⁹ In other words, if a tortfeasor causes harm to a victim, they are responsible for all the harm caused, even if the harm was more severe due to a pre-existing condition of the victim. Apart from physical harm, harmful content can also cause emotional and psychological harm. For example, a prank that involves scaring someone may seem harmless, but it could trigger a panic attack or severe anxiety in some individuals. With respect to its applicability in Nigeria's entertainment law, the Eggshell Skull Rule could potentially apply in cases where a person or entity in the entertainment industry causes harm to someone with a pre-existing condition.³⁰⁰

It is expedient to state that no artiste or content creator identity would be revealed in this article, however, illustration shall be made purely for the purpose of knowledge, understanding and clarity.

3.0 ILLUSTRATIONS

In a viral post on the internet, a particular man would hold an “artificial but big snake” like structure and throw it on the floor to scare and prank unsuspecting passer-by who do not have prior consent of the content creator. This act would normally scare and frighten an adult because a snake is not like an earthworm people see without any form of reaction. It would most likely frighten the individuals and as such, they may scream for help. It is after this content is recorded that the victim would be told that it was just a prank. This

²⁹⁹ EggShellRule’ <https://www.law.cornell.edu/wex/eggshell_skull_rule>, Last accessed 24th May, 2023.

³⁰⁰ Okonkwo and Naish, ‘Criminal Law in Nigeria (Sweet & Maxwell Publishers, 1980) p. 112.

kind of prank is now popular and prevalent among content creators in Nigeria. Depending on the content creator, some of them may use giant scorpion or any other animal that could incite fear and shock.

Similarly, a post went viral on the internet in 2022, a young man in his 20's headed to the street solely for the purpose of pranking innocent and unsuspecting passersby. He had with him an object that could produce a trainlike sound if blown. This man would subsequently stay behind an unsuspecting passerby moving around the railway track and produce the sound heavily giving these people a scary reaction and make them believe the train is very much close. Most of the times, their victims would be seriously frightened that they may develop panic attack and shock which may lead to death for patient with pre-existing health condition like hypertension.

It is important to note that audience enjoys those videos basically for three reasons in the view of this writer. Firstly, most audience are not aware that content creators do seek the content of these people at all. Secondly, the vast majority of people are actually unaware that there is a legal implication of this act whether or not casualties occur. Thirdly, the attitude of victims who do not take serious legal action against the content creators. It is the view of this writer that these three major reasons among other are the rationale behind growing rate of serious prank videos in Nigeria.

4.0 EGGHELL RULE IN TORT LAW

It is important to note that the applicability of the Eggshell or Skull Rule would depend on the specific facts and circumstances of each case. In as

situation whereby there is an informed consent of the victim³⁰¹ prior to the creation of such content, the content creator shall escape liability.³⁰² This is so because the general rule of law is that a person who consents cannot claim for injury.³⁰³ he cannot approve and disapprove.³⁰⁴ He cannot approbate and reprobate. He who comes to equity for justice must come with clean hands. Therefore, risk voluntarily, deliberately or impliedly undertaken cannot be the basis of a claim.³⁰⁵ Nevertheless, as a general rule consent is not binding when it is obtained by coercion, fraud or undue influence.³⁰⁶

Hence, it is important to note that the Eggshell/Skull Rule is a legal principle in Tort law that holds that a tortfeasor must take their victim as they find them, regardless of any pre-existing conditions that may make the victim more vulnerable to injury.¹² In the context of pranks and content creation, this means that content creators who scare people (without their consent) and causes harm, such as anxiety or shock, to someone with hypertension could be held liable for any resulting harm, regardless of the fact that the victim had a pre-existing condition.

³⁰¹ Informed Consent" by National Institutes of Health (NIH), <https://www.nih.gov/health-information/informedconsent>, Accessed 25th May, 2023

³⁰²G. Kodilinye and O. Aluko 'Nigeria Law of Torts (Princeton Publishing Company, Spectrum Books Ltd,1999).

³⁰³ Ibid.

³⁰⁴Ese Malemi, *Law of Tort* (PrincetonPublishingCo,3rd Edition, Nigeria,2008).

³⁰⁵ Ibid.

³⁰⁶Abass v People of Lagos Stat e[2016]NGCA65.

5.0 EGG SHELL RULE UNDER THE NIGERIA CRIMINAL LAW

The position of the law is that an accused person shall not escape liability nor will his punishment be reduced just because the victim is more susceptible to injuries.³⁰⁷

In *Dulieu v. White & Sons*³⁰⁸, the Judge opined:

If a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages that he would have suffered less injury, or no injury at all, if he had not had an unusually thin skull or an unusually weak heart.

In *Patrick v State (Supra)*, the Supreme Court held that the defendant is not entitled to make assumptions about the victim Any characteristics, which the victim happens to have, must be taken into account in the judgment, whether or not, the defendant could reasonably have known about them. In addition, since the matter happened in Lagos State, the court's decision was further strengthened by the provision of section 311 of the Criminal Code Law of Lagos State.³⁰⁹ The said provision has a statutory provision for the eggshell principle which states *that a person who does any act which hastens the death of a person who has a disorder or disease arising from another cause is deemed to have killed that other person.*

Hence, under the Nigeria Criminal law, depending on the specific facts and

³⁰⁷See; *Patrick v State* 16NWLR(PT.1643) 263 SC.

³⁰⁸(1901) 2 KB 669 at 679 (called the "thin-skull" case)

³⁰⁹Tort Law in Nigeria by Taylor Wessing', <https://www.taylorwessing.com/download/article-tort-law-in-nigeria.html>, Accessed 25th May, 2023

circumstances of each case criminal liabilities may arise. However, it is clear that content creators have a duty of care towards innocent citizens and should take into account any pre-existing health conditions that may make them more vulnerable to harm.³¹⁰

For example, if a content creator pranks someone with hypertension and that person subsequently suffers a heart attack or other serious health complication, the content creator could be charged with criminal negligence, assault, or even manslaughter if the victim dies as a result.

Furthermore, the victim or their family could also file a civil lawsuit against the content creator, seeking appropriate compensation for any harm caused.³¹¹ The Eggshell Skull Rule would come into play here, as the content creator would be responsible for all the harm caused, even if the harm was more severe due to the victim's pre-existing condition.

6.0 CONCLUSION

In conclusion, the Eggshell/Skull Rule has significant implications for content creators in Nigeria, especially when it comes to pranking and creating content that could potentially harm innocent citizens of our dear country. The harm caused by harmful content creation is significant and cannot be ignored. Steps must be taken to address this issue and it must be ensured that entertainment content is safe and enjoyable for everyone. By doing so, it would be possible to protect the vulnerable individuals, prevent emotional and psychological harm,

³¹⁰Section 311 of the Criminal Code Law of Lagos State

³¹¹Law Library Congress 'CriminalLawinNigeria:Overview', <https://www.loc.gov/law/help/criminal-law-innigeria/overview.php>, Accessed 6th June, 2023.

and promote social harmony and unity on the technology space. Content creators therefore need to exercise caution and take into account any pre-existing health conditions that may expose citizens to more vulnerable to harm. Failure to do so could result in criminal charges and civil liability under tort law.³¹²

7.0 RECOMMENDATION

- There is need for codifications of laws regulating the Nigeria Entertainment sector.³¹³The laws regulating the entertainment industry in Nigeria is still fragmented. It is important that the legislature enact a specialized law like Tax Law, Finance, Health Law, Consumer Protection Law etc. This will help regulate players in the entertainment industry as well as protects the economic resources which the industry currently possesses.
- It is also the recommendation of this writer that guidelines and regulations be established to protect the safety and well-being of the public.³¹⁴ These guidelines could set standards for content creation and prohibit the creation of any potentially dangerous content.³¹⁵ By doing so, regulators could help reduce the risk of harm to vulnerable

³¹²Creating an Enabling Environment for Nigeria’s Entertainment Industry: the Role of Law’ <https://primeraal.com/news/creating-an-enabling-environment-for-nigerias-entertainment-industry-the-role-of-law/>, Accessed 6th June, 2023.

³¹³Codification of entertainment law in Nigeria, <https://omaplex.com.ng/entertainment-law-in-nigeria-a-need-for-codification/>, Accessed 6th June, 2023.

³¹⁴Alade John and Ibrahim Abdulateef M. ‘A treatise into Entertainment Law and Taxability of the Entertainment Industry in Nigeria’The *Jurist* Vol. 25, 2021, An Annual Publication of the Law Students’ Society, Faculty of Law, University of Ilorin, p. 144.

³¹⁵Legal considerations for content creations’ <https://talkutalku.com/legal-considerations-for-content-creation-agencies/>, Accessed 6th June, 2023.

individuals and ensure that content creators are held accountable for any harm caused. This could include increasing the level of moderation on the platform, improving reporting mechanisms, and implementing more stringent penalties for those who violate the guidelines.

- Furthermore, it is essential for content creators to obtain informed consent from their victims before filming and disseminating any pranks or content that could potentially cause harm. Informed consent means that the people are fully aware of the potential risks and are consenting to participate in the activity with full knowledge of these risks. Failure to obtain informed consent could result in legal liability, especially if harm occurs.³¹⁶
- It is also important to monitor and regulate the role social media platforms in the creation and dissemination of potentially harmful content. Social media platforms have become a popular medium for content creators to share their work, and many platforms have guidelines in place to address the issue of harmful content. However, enforcement of these guidelines can be challenging, and content creators may seek to circumvent these guidelines in order to gain views and followers.
- Therefore, it is essential for content creators, regulators, and social

³¹⁶The Legal Framework Governing The Media and Entertainment Industry in Nigeria, <https://www.tekedia.com/the-legal-framework-governing-the-media-and-entertainment-industry-in-nigeria/>, Accessed 5 June 2023.

media platforms to work together to address the issue of harmful content creation. By doing so, it will be possible to ensure that entertainment content is safe and enjoyable for everyone.