**SOURCES OF NIGERIAN LAW**

**COURSE CODE:CPE 505**

**COURSE TITLE: ENGINEERING LAW**

**NUMBER OF UNITS: 2 Units**

**COURSE DURATION: 2 hours per week.**

**COURSE LECTURER:**

**TOPIC: SOURCES OF NIGERIAN**

**INTENDED LEARNING OUTCOMES**

At the completion of this topic, students are expected to:

1. Know what a source of law is

2. Know the Sources of Nigeria law.

a. Know the Received English Laws

i. The Common Law

ii. The Doctrine of Equity and

iii. The Statutes of General Application as a source of law.

b. Know Statutes or Legislatue

i. Ordinance

ii. Acts

iii. Laws

iv. Decrees

v. Edicts

vi. Bye-laws

c. Judicial precedent/Case law

i. Stare Decisis

ii. Ratio decidendi

iii. Obiter dictum

iv. Hierarchy of courts

d. Customary/ Islamic law.

3. Answer questions on the topics in the interactive session.

**COURSE DETAILS:**

***Week 1:*** *Know what a source of law is and the Received English Laws*

*The text for the applicability of the Received English laws in Nigeria* ***:***

*General review of the topics and posers*

**RESOURCES**

**Lecture time:**

Tuesady 10:00 am-12:00 noon.

 The English Legal System 3rd Edition, by Jacqueline Martin 2007. ISBN: 0-340-848-545•

 Nigerian Legal System by Akintunde Olusegun Obilade,Sweet & Maxwell Limited.ISBN 0421 239 204

 Sources of Nigerian Law by A.E.W Park, Sweet & Maxwell Limited 1980 ISBN 0421 172703

**Introduction**

The term sources of law among others means or refers to the fountain of authorities of a rule of law. It equally means the origin of law that has at one point or the other been in force in Nigeria whether or not it is still applicable or has been repealed.

The major sources of Nigeria laws are:

1. The received English law

i Common law

ii Equity

iii Statute of General Applications

1. Statutes / Legislature.
2. Judicial precedent.
3. Customary law.

**The Received English Laws**

Following the colonization and imposition of British rule in Nigeria between 1861 & 1914. English law was introduced into different part of the country at different times by series of Proclamation & Ordinance. This to an extents points to the fact that the sources of Nigerian law are not wholly local by reason of our history.

The Received English Law is regarded as an important source of Nigerian Law this is as a result of Nigeria’s historical antecedent with Great Britain as its colony. The British brought and left behind their way of life including their laws which became applicable in Nigeria.

The English law that was introduced into Nigeria in three categories

1. Common Law
2. The Doctrine of Equity
3. Statute of General Application

**Common Law:**

Common law is that part of English law that was formulated developed and administered by the judges of the old common law courts of England, namely the Kings Bench, the court of common pleas, and the court of exchequers from the custom of the various English communities which were applicable to England and Wales.

Common law is the law that grew from the custom and practices that were common to the people of England and Whales,

The major feature of common law is the fact that it is unwritten because it wasn’t made by the legislature or by parliament but by the kings interest in meetings the adjudicatory needs of his subjects.

The king in a bid to sustain the support of his subjects, received petitions from aggrieved parties which he handled himself, Subsequently, due to the busy schedule of the king and the influx of petition the king had to appoint judges who comprised of noble personalities such as bishops, barons earls, knight and other nobility from the kings council to hear matters on behalf of the king.

The judge met from time to time to discuss the judgement they had given thus far and reaching a consensus on the reasonable ones to that seemed fair were adopted discarding the unreasonable ones. This process continued to grow and brought forth the doctrine of **STARE DECISIS** that made it incumbent on the judges to adopt an already existing principle to decide new cases. Common law continued to grow in its application of stare decisis meaning let the decision stand whereby any legal rule or law rightly stated or formed in any new case was applied or followed by other judges in subsequent matters and problems of law which are similar to the earlier case sought to be followed as precedent.

Despite possessing the qualities of a good law, the people claimed common law wasn’t flexible enough, worked hardship in some cases and in some other cases did not provide sufficient redress. At the inception of common law, it was no doubt a good law because it catered for the need of the people, but due to growth and human nature, new problems arose which wasn’t within the ambit of customary law. The inflexible nature of common law diid not make provisions for them thereby working hardship in some regard. These inadequacies led to of the doctrine of equity.

**The Doctrine of Equity**:

Equity means fairness, natural justice and good conscience. Equity came into existence due to the petition of some litigants who common law either did not provide redress for or the redress provided was inadequate. The king appointed a Lord Chancellor who was regarded **as the “keeper of the king’s conscience”.**

The Lord Chancellor exercised the power to hear and determine appeal from the complaint emanating as a result of the rigidity of common law, which he did by ameliorating the injustice that arose as a result of the application of common law rule.

The need to remedy the shortcomings of common law led to the development of the doctrine of equity as it provided rooms for litigants who felt common law didn’t do justice to their case. These categories of litigants were given the opportunity of further petitioning to the king who transferred same to the Lord Chancellor.

The common law judges felt he was frustrating the rules of common law, but he however protested that he was not contesting the validity of customary law but was however applying his own rule in other to effect better justice.

Equity maxims applied by courts in order to achieve the desired justice in case including

* + [Equity considers that done what ought to be done](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_considers_that_done_what_ought_to_be_done)
  + [Equity will not suffer a wrong to be without a remedy](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_not_suffer_a_wrong_to_be_without_a_remedy)
  + [Equity delights in equality/Equality is equity (*Aequalitus est quasi equitas*)](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_delights_in_equality/Equality_is_equity_%28Aequalitus_est_quasi_equitas%29)
  + [One who seeks equity must do equity](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#One_who_seeks_equity_must_do_equity)
  + [Equity aids the vigilant not the indolent](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_aids_the_vigilant_not_the_indolent)
  + [Equity imputes an intent to fulfill an obligation](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_imputes_an_intent_to_fulfill_an_obligation)
  + [Equity acts *in personam* (i.e. on persons rather than on objects)](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_acts_in_personam_%28i.e._on_persons_rather_than_on_objects%29)
  + [Equity abhors a forfeiture](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_abhors_a_forfeiture)
  + [Equity does not require an idle gesture](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_does_not_require_an_idle_gesture)
  + [He who comes into equity must come with clean hands](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#He_who_comes_into_equity_must_come_with_clean_hands)
  + [Equity delights to do justice and not by halves](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_delights_to_do_justice_and_not_by_halves)
  + [Equity will take jurisdiction to avoid a multiplicity of suits](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_take_jurisdiction_to_avoid_a_multiplicity_of_suits)
  + [Equity follows the law](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_follows_the_law)
  + [Equity will not assist a volunteer](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_not_assist_a_volunteer)
  + [Equity will not complete an imperfect gift](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_not_complete_an_imperfect_gift)
  + [Where equities are equal, the law will prevail](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Where_equities_are_equal,_the_law_will_prevail)
  + [Between equal equities the first in order of time shall prevail](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Between_equal_equities_the_first_in_order_of_time_shall_prevail)
  + [Equity will not allow a statute to be used as a cloak for fraud](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_not_allow_a_statute_to_be_used_as_a_cloak_for_fraud)
  + [Equity will not allow a trust to fail for want of a trustee](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_will_not_allow_a_trust_to_fail_for_want_of_a_trustee)
  + [Equity regards the beneficiary as the true owner](file:///C:\Users\ODUNAGBON%20.T.%20OSAGIE\Downloads\Maxims%20of%20equity%20-%20Wikipedia.htm#Equity_regards_the_beneficiary_as_the_true_owner)

**Statutes of General Application.**

For a statute of general application in England on or before January 1, 1900 to be applicable to Nigeria, it must have been applied to all civil or criminal courts and classes of persons in England. Where a statute however applied to a specified class of persons or to specific court, it was usually held no to be a statute of general application therefore making it inapplicable generally in Nigeria.

These are laws made by the English parliaments. It is also called an enacted law of England which were in force before 1st January 1900 have been received in all states in Nigeria, except in states which comprised the former Western Region. In those states, only common law and the doctrine of Equity were applied. The state under the former Western Region took the step of enacting the Statute of general application which they deemed was important into law.

The applicability of Statute of General application to Nigeria is dependent these conditions below.

1. The statute must have been in force in England before January 1st 1900 in order to be a statute of general application
2. The court the statute applied to is also a condition, if on the first of January 1900, the statute was applied by all the civil and criminal court in England, its most likely considered a statute of general application.
3. The classes of people the statute applied to is also a condition , if the statute applies to all classes of the community, it is most likely going to be considered a statute of general application. If it applies to a certain classes of the community it may be held not to be a statute of general application. In **Lawal v. Younan (1961)1 ALL N.L.R.245.** it was held that the Fatal Accident Act was a statute of general application.

It is important to note that all other laws that were made in England after 1st January 1900 are not applicable to Nigeria because British Parliament no longer make laws for Nigeria.

**Legislature/ Statute.**

Despite the fact that common law and the doctrine of equity has played a major role as a source of Nigeria Law, statute is a still remains the major source of our laws.

This is the most potent and formidable source of Nigeria law, it is home grown in the sense that the legislative arm of Government arm of government is specifically saddled with the sole responsibility to make laws for the peace, order and good governance and these laws have a distinctive feature of being written even before they are been assented to or passed into law.

Nigeria operates a bicameral system of government at the federal level the national assembly comprising of the Senate and the House of Representatives. While at the states level we have the State Houses of Assembly. Under Military dispensation, it was referred to as the Supreme ruling council, Armed forces ruling council, Provisional ruling council or the Military Governors for the states.

1. Ordinances: these are the sets of that were passed by the Nigeria central legislature before the 1st day of October 1954 when the first constitution was introduced.
2. Acts are federal laws made by the federal legislature that is the National Assembly, the National assembly in a democratic dispensation is saddled with the responsibility to make laws at the federal level.
3. Decree: these are laws enacted by the federal military Government under a military dispensation, no court of law has the power to look into the validity of an decree but can determine if a decree is inconsistent with a later decree with a view of deciding whether the earlier decree has been repealed.
4. Laws: these are laws that are made by the various houses of assembly
5. Edicts:these are laws enacted by the military Governor of a state
6. Bye-Laws: These are laws made by Local Government Council or by designated government officials pursuant to a principal statute and the provisions of the statute must not be in conflict with the provisions of the enabling statute.

**JUDICIAL PRECEDENT.**

It is the primary responsibility of the legislature to make laws and that of the judiciary to interpret such laws made by the legislature. While performing their constitutional duties, judges makes law which is referred to as judicial precedent or case law.

Judicial precedent originates from the principle of stare decisis which means ‘let the decision stand’. It means that similar cases must be treated alike. The reason for this is to achieve uniformity and certainty in the administration of justice.  Therefore judicial precedent can be defined as the decisions of the court based on the material facts of a case, it could be called judicial precedent, stare decisis or case law. It is the principle of law upon which a judicial decision is made.

Judicial precedents are the laws found in judicial decisions and it is the legal principle upon which upon which a judicial decision is based.

The courts system operates in such a way that the decision of a higher court binds that of the lower courtwhen faced with the same facts and principle. This doctrine was curled from the common law principle of stare decisis.

In **Ogunsola v. Nikon**  the court of appeal held that for the sake of uniformity, consistency and certainty the principle of applied in a case should be applied in subsequent cases with similar facts.

The principle of stare decisis is founded on the ground that precedents are authoritative, binding and must be followed unless there is a reasonable reason to deviate.

1. Ratio Decidendi : the ratio decidendi of a case means the material facts of a particular case together with the decision reached in the case. It is the ratio decidendi of a case that the same court or lower court must follow provided provided the fact of the previous and the present are similar.
2. Obiter dictum: refers to the statement that are made by the way in the course of a judgement. this is also the aspect of a decision of a court that is not binding on either the court itself or the court below as it is not the principle of law upon which the decision in a particular case is based.

An obiter is not binding as a rule of law but merely persuasive opinion and the respect or authority placed on it depends on the reputation or the status of the judge and even the hierarchy of the court concerned.

**Hierarchy of courts in Nigeria**

For the doctrine of stare decisis to be fully operational in Nigeria, it is important to have a settled hierarchy of court and an effective system of law reporting. Hierarchy of court refers to grades of court in Nigeria in relation to the level of bindingness of their decision.

The hierarchy of court in descending order of authority.

1. The Supreme Court.
2. The Court of Appeal
3. i. the Federal and States High Court

ii. the Customary Court of Appeal of the FCT and the States

1. The Sharia Court of Appeal of FCT and the States
2. National Industrial Court.
3. i. the Magistrate Court

ii.Area Customary Courts

iii.Alkali Court

1. District Customary Court.

**Customary/ Islamic Law.**

s. 2 of Evidence Act defines Custom as a rule which in a particular district has from long usage obtained forces of law. Customary law is a custom accepted by members of a community as binding among them. It does not refer to a single uniform set of custom but to describe a wide range of customs. That is to say that all ethnic groups have their own unique custom and within the same ethnic groups still have different custom.

Customary law in Nigeria is devided into two ambit, the Ethnic customary law and the Islamic law.

Ethnic customary law is indigenous, unwritten and diverse form one ethnic group to another. Its diversity is the major obstacle for its uniformity.

Islamic law is largely written and it is sourced from the Quaran, the Practice of Prophet Mohammed and other Islamic scholars.

The characteristics of customary law are:

1. It must be in existence at the material time
2. It must enjoy general application among the people
3. It must be accepted as a binding custom.
4. It is flexible or elastic.
5. Its largely unwritten.

For a customary law to be applicable it must pass the validity test prescribed by the statue which are:

1. It must not be repugnant to natural justice equity and good conscience. See Edet v. Essien(1932)11N.L.R. 49 and Dawodu v. Danmole (1950)3F.S.C.40
2. It must not be contrary to public policy. Ukeje v. Ukeje.
3. It must not be incompatible directly or indirectly with any law for the time being in force. Adesubokan v. Yinusa