NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF SCIENCE AND TECHNOLOGY

COURSE CODE: CHS 411

COURSE TITLE:
INTRODUCTION TO PUBLIC HEALTH LAWS

CHS 411: INTRODUCTION TO PUBLIC HEALTH LAWS

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COURSE GUIDE
CHS 411: INTRODUCTION TO PUBLIC HEALTH LAWS

Introduction to Public Health Laws is a second semester course. It is a two unit credit load degree course to be offered by all students studying Bachelors of Community Health (B.Com) Degree.

Introduction to Public Health Laws is meant to introduce the student to related public health laws that will assist them to maintain high ethical standards of the profession and to also deliver qualitative, efficient and effective health services to Nigerians especially those in rural and semi-urban-areas.

Community Health Practice in Nigeria is associated with the adoption of the Basic Health Service Scheme later christened Primary Health Care (PHC). And over the years the Primary Health Care system has been adjudged to be performing dismally. The attitude of the personnel and the quality of the services they deliver has been largely said to be responsible for the inefficiency and ineffectiveness of the system.

The course therefore provides an opportunity to be kept abreast of the expected roles of the Community Health Practitioner in the implementation of the Primary Health Care to maintain high professional ethics, integrity and show decorum at work, and in accordance with laid down guidelines. Remember; where there is no law, there is no offence.

What You Will Learn in this Course

This course consists of a course material and course guide. The course guide gives you a brief of what materials you will be using and how you can work on own with the materials. In addition, it states general guidelines with regards to the amount of time you are to spend while studying each unit of the course in order to enable you successfully completes its study on schedule.

The course guide helps guide you with respect to your Tutor Marked Assignment which are to be made available in the assignment file. Also, there would be regular tutorial classes in this course to be conducted by a facilitator. It is important that you attend these tutorial classes. You are equally encouraged to form study group with your classmates in order to have thorough discussions before the tutorial classes. The course is intended to prepare you for the ethical

challenges you are likely to meet in the field of community health practice and primary health care service delivery.

Course Aims

The aim of this course is to introduce the student to related public health laws with the background knowledge of how to avoid unprofessional conduct which could lead to breach of duty that has severe consequence.

Course Objectives

In order to achieve the aims of this course, there are some set of objectives that have been stated. Each unit of this course has its own objective which is indicated immediately after the introduction at the beginning of the unit. You should read these objectives before you study the unit. It is also advisable to refer to them as you study the unit and at the end of your study of the unit to enable you determine the progress you are making.

However, below are the general objectives of the course. It is important you meet the objectives as they would enable you achieve the aims of this course. Therefore, at the end of studying the course you should be able to:

- Describe the Nigerian health system and community health practice in Nigeria.
- Define ethics, professional ethics and list some community health ethics, etiquettes and code of conduct.
- Explain the concept of morality, law and other legal concepts relating to ethics as well as the differences and similarities between law and morality.
- What are the law making process in both military and democratic regime
- Define Public Health Law offences.
- What are the process of enforcing public health laws and the enforcement agencies?

Working through this Course

To complete this course you are required to read each unit, read the textbooks and other materials which may be provided by the National Open University of Nigeria.

Each unit contains a Tutor Marked Assignment which you must attempt to answer on your own and which you will be required at certain point in this

course to submit for purposes of assessment. At the end of the course there will be a final examination. The course should take you about a total of 16 weeks to complete. Also, stated below is the list of the all things you need to do in this course and how to allocate your time as you study each unit.

The nature of study of the Open University requires that you spend a lot of time studying alone. You are therefore advised to spend between 2 – 3 hours studying each unit, in addition to availing yourself of the tutorial classes to be facilitated in order to be able to get explanations from your facilitator and compare notes with your classmates.

The Course Material

The main components of this course material include:

1. The Course Guide
2. Study Unit
3. Tutor Marked Assignment
4. Reference/Further Readings
5. Presentation Schedule

Each unit is made up of about one to two weeks work and it includes an Introduction, Objective, the main Content, Conclusion, Summary, Tutor Marked Assignment (TMA) and Reference/Further Reading. The unit helps you to work on your Tutor Marked Assignments which will enable you determine the progress you are making and also help you achieve the learning objectives stated in each unit, and the course as a whole.

Presentation Schedule

Your course materials have some important date to ensure early and timely completion and submission of your TMAs and attendance of tutorial classes. You should endeavour to submit all your TMAs by the stipulated time and date. You should not lack behind in any of your work.

Assessment

There are two aspects to the assessment in this course. The first consist of the Tutor Marked Assignment and the second is the written examination at the end of the course. The Tutor Marked Assignment which you will submit to your tutor for marking will count for 30% of your total course scores, while the final

examination you shall write at the end of the course which shall last for three hours counts for 70% of your total course scores.

Tutor Marked Assignment

The TMA is a continuous assessment component of your course. It accounts for 30% of the total score. You will be given four (4) TMAs to answer. Three of these must be answered before you are allowed to sit for the end of course examination. The TMAs would be given to you by your facilitator and returned after you have done the assignment. You should be able to answer your assignment from the information and material contained in your further reading, reference and study units. However, it is desirable in all degree level of education to demonstrate that you have read and researched more into your reference, which will give you a wider view point and may provide you with a deeper understanding of the subject.

Also make sure that each TMA reaches your facilitator on or before the last date stipulated in the presentation schedule and assignment file. If for any reason you are unable to complete your work on time, contact your facilitator before the assignment is due to discuss the possibility of an extension. Extension may not be granted after the due date except for exceptional circumstances.

Final Examination and Grading

The end of course examination for professional ethics will be for about 3 hours and it has a value of 70% of the total course work. The examination will consist of questions, which will reflect the type of self-testing, practice exercise and tutor marked assignment problems you have previously encountered. All areas of the course will be examined,

Endeavour to use the period between finishing the last unit and sitting for examination to revise the whole course. You might find it useful to review your TMAs and comments on them before the examination. This is because the end of course examination covers all aspects of the course.

Course Marking Scheme

Assignment	Marks
Assignment 1 - 4	Four TMAs, best three marks of the four count at 10% each – 30% of course marks.
End of course examination	70% of overall course marks.
Total	100%

Facilitators/Tutors and Tutorials

There shall be 16 hours of tutorial provided in support of this course. You will be informed of the times, dates and location for these tutorials. You will also be given the name and phone number(s) of your facilitators, as soon as you are allocated a tutorial group.

The facilitator will mark and comment on your assignment, keep a close watch on your progress and in case of any difficulty you might encounter during the course he will provide you with assistance. You are expected to mail your Tutor Marked Assignment to your facilitator before the stipulated date (at least two working days are required). These would be marked and returned to you as soon as possible.

Please do not hesitate to contact your facilitator by telephone or e-mail whenever you need assistance.

The following might be circumstances in which you would find assistance necessary, hence you would have to contact your facilitator if:

- You do not understand any part of the study material or the assigned readings.
- You have difficulty with the Tutor Marked Assignment
- You have a question or problem with an assignment or with the grading of an assignment,

You should endeavour to attend the tutorial classes. This is the only chance to have face to face contact with your course facilitator and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study.

To gain much benefit from the tutorial classes prepare a list of questions before attending them. You will learn a lot from participating actively in discussions.

Summary

Introduction to Public Health Laws is a course that intends to introduce concept of high moral, ethical conduct, discipline among community health practitioners and also concerned with improvement of their competences, efficient and effective health service delivery as well as encourage good interpersonal and group relationship in the sector. Upon completing this course, you will be equipped with the basic knowledge of the nature of the Nigerian health system, community health, ethics and community health ethics, law and morality, their difference and similarities, other legal concept especially duty of a community health practitioner, the various regulatory bodies and their role, unprofessional conducts in community health, disciplinary procedures and the disciplinary committee of community health practitioners. In the end you will be able to answer the following questions:

- What is the concept of law?
- What are the classification and function of law?
- What are the main sources of Law in Nigeria?
- What is morality?
- What are the definition, sources and types of Public Health Laws**?**
- Defining the rights of patient.
- What are the law making process in both military and democratic regime
- Define Public Health Law offences.
- What are the process of enforcing public health laws and the enforcement agencies?

It is important to state that the questions you should be able to answer are not limited to the one listed above. And in order to have maximum gain from this course you should endeavour to apply the principles you have learnt to your understanding of professional ethics.

While wishing you success in this course, I hope will you find it both interesting and useful in your study and work

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UNIT 1: THE CONCEPT OF LAW

1.0 INTRODUCTION

In this unit we shall be considering the origin of the concept of law, some definitions of law and theories of law.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Describe the origin of law
- Define the term law
- Mention and describe some of the theories of law.

3.0 MAIN CONTENT

3.1 ORIGIN OF LAW

There are several arguments regarding the origin of law. While one school of thought holds that law started before the creation of man, the other school contends that law started after the creation of man. Those who hold the first school of thought argue that it was through law that God brought the chaotic nature of the world to order and it was only after order has been restored by God that man was created. The second school argues that although God created man last He never gave a command to any creature but to man with the first law forbidding him from eating of the fruit of life and death that was at the centre of the Garden of Eden and therefore that was the beginning of law. However, as Ogbu (2002) rightly pointed very early in life, man has become aware that he is living in a world of laws. He went further to assert that that man becomes aware that to live in any society, he has to abide by the law of that society.

Although, man is always the centre of attraction each time the issue of law is discussed, suffice it to note that all other creation of God have laws which they obey. Hence there times and season, also hence among animals, birds and plants there is some form of regulation that ensure mutual co-existence and cohabitation. According to Soyinka (2000) there is some kind of system, or codes of cohabitation that regulate the conduct and relation between individuals and groups even within the communities of bees, ants, geese and fishes. Some scholars such as Karl Marx have predicted the disappearance of law at some time because they perceive it as an oppressive tool in the hand of capitalists to exploit the working class. Unfortunately several after this postulation law still remain according to Kayode Eso JSC the social modulator and regulate of all forms of relationship both legal, social, religious, political, economic and technological relationships. This shows that no society can exist without law

and law is the beginning and end of all human and non-human society. Take law out of the gravity of the world and see what will happen.

From the above discussion so far you can see how the concept of law began. Also you can see that law is not a creation of recent times and that law has existed in the very early years of man creation and that there law regulate the behavior of all God's creation, although law is more often discussed within human circle.

3.2 **DEFINITION OF LAW**

The next issue we shall be discussing in this unit is the definition of law. There are several definitions of law, this is because it has been difficult to build consensus among jurists, legal practitioners, legal scholars, social scientists and even among anthropologists as to the actual meaning of law. As Elegido (2006) rightly notes law is a very complex phenomenon which can be studied from many different perspectives. However, this does not mean that there no accepted definition of law. And on this note we shall examine some definitions which we consider appropriate for the purpose of this course.

According to Jegede (1981) law is an instrument of social change, instructional framework employed by man in society either to dictate and promote the required change in the development of values of the society or to respond to and control changes dictated by the political and socio-economic facts of life of the society. Law may also be defined as set of rules that regulate the relationship between members of a given society a breach of which attracts sanction.

Law can also be defined as major means by which institutions that provide public service such as health care, education or other social amenities and benefits are established, regulated, structured and the conduct of their affair monitored. What the above means is that law is not only meant to regulate the affairs of people in their relationship with one another, but also the affairs of institutions that provide public service. This aspect of law appears to have been very much neglected in Nigeria, because most public institutions are not made to account, their activities are poor or sometimes totally unregulated. This brings about arbitrariness and acting with impunity. This is most important if viewed from the public health law perspective, because most institutions do not obey public health laws which perhaps is one of the reasons for the high rate of public health diseases. Even organization such Environmental Sanitation Authorities do not abide by rules regarding the collection and disposal of refuse. However, from the above you will notice that the intention of the law is to ensure rules, regulation and a decent society where everything is done according

to rules and not based on might or brute power. As Ogbu (2002) states “every human activity is carried on within the framework of the law”.

3.3 **THEORIES OF LAW**

We shall now consider some of the theories of law. There are several theories of law just like the definition of law because several scholars and philosophers’ have viewed it how law works from their own personal construct or world view. Some of the major theories of law include: the natural school, the positivist theory, the utilitarian theory and the Marxist theory of law among others. We shall now consider each of these theories briefly in turn.

3.3.1 NATURAL THEORY OF LAW.

One of the earliest if not the first theory of law is the natural theory of law. It expound that laws are ordained by God and not subject to any man made law. It is universal and immutable achieves justice where justice means righting of wrongs and proper distribution of burdens and benefits is society. It is a higher law (it is legal) It is discoverable by reason (natural). Their application is unchanging and everlasting, it summons to duty by its command, and averts from wrong-doing by its prohibition (Harris, 1997). According to St. Thomas Aquinas natural law ranks higher in the order of laws next eternal law which is the law governing the universe, this followed by divine law which are laws dictated by religion and at the bottom man made law which is often referred to positive law.

What you need to know is that the natural law scholars are arguing that law is inherent in human nature, it existed before man because it was by law God created the universe as it was law that was used to bring the disorder that existed before creation to order. They are also arguing that no matter where we find ourselves there are certain things that are naturally forbidding in all society. For example, to kill somebody, telling lies, taking another person’s property without their consent. Even until recently marriage between man and man was regarded as wrong. As we can see in the case of Corbett v. Corbett (1971) p. 83 at 106 where Ormerod J. Held that a “a marriage between a man and a person who had undergone a sex change was a nullity since it could not involve the natural, biologically determined consequences of marriage”.

On the whole there are certain things that are wrong and since they are wrong nobody should do them because they are wrong. People should rather do what is right as doing wrong will definitely attract punishment from God. As Elegido (2006) rightly points out “some actions are objectively right and others are objectively wrong. For instance, it is objectively right to keep promises or to be

kind to neighbours and it is objectively wrong to indulge in gratuitous cruelty towards other human beings. Some of the scholars associated with the natural school of law theory include: Aristotle, Cicero, St. Augustine (354 – 430), St. Thomas Aquinas (1225 – 1274), others are Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704), John Rawls and Sir William Blackstone (1723 – 1780) who argued that "natural law is willed by God and discoverable by reason, positive law deriving its binding force from natural law; therefore any positive law that conflicts with natural law is a nullity". However, some scholars disagree with this line of reasoning this led to positivist movement.

3.3.2 **POSITIVE THEORY OF LAW**

The positive theory of law which is also sometimes referred to as the command theory is based on the fact that laws are made by man and for man not by God or any super or supra-natural being. Also that there is need to separate morality and law, because morality is not objective as what may be considered moral in one particular society may be immoral in another society. For example, same sex marriage may be moral in the West, but in Africa in Nigeria in particular it is considered immoral. Therefore, laws should be what the authorities of the given society regard as law that is the law. According to John Austin (1790 – 1859)) one of the leading lights of the positive school of thought "every law simply and strictly so-called, is set, directly or circuitously, by a sovereign person or body, to a member or members of the independent political society wherein that person or body is sovereign or supreme.

Basically, what Austin and his co-positivist scholars are saying is that it is the sovereign that is the person who heads the society that gives the law and what he says is the law is what is the law and everybody within the society have a duty to obey or face sanctions from the sovereign. The underpinning of their argument according to Harris (1997) is that every human act should be seen either as commanded or prohibited; or not commanded or prohibited, by law. Where an act was commanded or prohibited, it was the subject of legal duty. So, if the sovereign says everybody should have one child and nobody should have a female child. That becomes the law and everybody is expected to obey because it is a command from the sovereign. Some example, include the one child policy of China, the extermination of the Jews by Nazi Germany on the orders of Adolf Hitler and the killing of girl children in India because of discrimination against women is recent past. Some local example, in Nigeria would be the four children policy of the Babaginda administration which has been abandoned and the War Against Indiscipline of the Buhari and Idiagbon administration.

However, the flaw of the positivist theory is that there are challenges in defining who or what constitute a sovereign. Again the sovereign does not last forever in fact it last to extend to which the people of the society allows it to last and it is because the people willingly accept to obey and not necessary based on the command that the laws made are observed. For example, Hitler and his Nazi policy were overthrown and put on trial. Here in Nigeria after the June 12 annulment the Babaginda administration was brought to its knees by the peoples' resistance which forced him to step aside. These are some of the weakness of the positive theory which appears to have made of its proponents like Jeremy Bentham to propose the Utilitarian theory.

3.3.3. **UTILITARIAN THEORY**

The utilitarian theory of law is basically an attempt to overcome the flaws of the natural and positive theories, because they are considered not to satisfy the interest of the majority of members of society. First morality is not objective and what you may consider moral may be immoral to me. Again to allow the sovereign to dictate what is the law is to encourage arbitrariness and the imposition of an individual will over the society. On the contrary the law should be what will bring about the greatest happiness of the greater number of the society. Therefore, any act or statement that will not lead to the welfare and happiness of the greater majority is immoral and should not be regarded as the law.

According to Bentham who is the father of the utilitarian theory a measure may be justified by utility which increases the happiness of a few greatly even though it marginally diminishes that of the many. And what is meant by the principle of utility is that the principle approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; or, what is the same thing in other words, to promote or to oppose the happiness.

The point been made here which may appear little complex and difficult to understand is that every action should be weigh against a number of variables which add pleasure and pain to members of the society and if adding more pain to a particular person or group of persons would lead to the greater happiness of the majority of members of that society then that person or group of persons happiness should be augmented with pain so that there will be greater happiness for the majority of society. Bentham developed a list of 14 pleasures, 12 pains and 7 criteria which all actions should be tested against to determine the happiness and relevant consequences. The seven criteria include: intensity, duration, certainty, propinquity, fecundity, purity and extent.

However, just like the earlier two theories the utilitarian theory has come under heavy criticism. First, because the so called felicific calculus is impracticable as know nobody can know all the consequences of his action before they are carried out. Secondly, it lack morality because we cannot justify inflicting pain on some people in order to let some enjoy and this is what some scholars argue that the pleasures and pain of different people are not intra-commensurable. Thirdly, most human desires and satisfaction are capable of manipulation and finally who is the lamb that Bentham thinks should be offered for the satisfaction of society in every action. This again appears to have motivated another school of legal thought called the Marxist theory.

3.3.4. **MARXIST THEORY**

The last theory of law we shall be discussing is the Marxist theory of law, although there are other theories of law we shall just mention them and the scholars with whom they are associated. The Marxist theory of law has been described by some scholars as more of an economic concept than a legal phenomenology because it gave a lot of economic analogy. Theory presupposes that there are class relations in every society and laws are made to ensure the maintenance of this class differential at every stage of the society. Thus, as society changes the laws are also change to ensure that the class status is not obliterated. Basically the pillars upon which this theory of law rest are three: first is that the law is a product of evolving economic forces; secondly it is a tool used by the ruling class to maintain its power and control over the lower class; and finally, that in the communist society of the future law as an instrument of social control will wither away and disappear.

According to Marx in every society there are production forces which include: facilities, materials, machinery, labour and conditions of production including the technological knowledge available in that society. In this system there is a relationship between the force of production and the social class which he categorized into three namely: the proletarians (who are the labourer or lower member of the society who sell their labour (skills) in order to earn a living), the capitalists (who are the owners of the means of production and who hire the labour or make him to sell his labour at a given price) and the land-owners (who are the law lords who decide what happens in the society). That while the labourer is made to sell is labour at a fixed price which paid for by the capitalist, the capitalist is not compel to sell the product produced by the labour at a fixed rate. He decides how much to sell it and in the process make huge profit which is never shared with the labourer who was responsible for the process of producing the product. And in most cases what the labour gets for his labour is never commensurate with the effort he puts into the production. At the end the capitalists and land owner make and retain huge profit and further exploit the

labour by selling is product to him (the labourer) at a high price. At every given time in society the law is made to ensure that this class status is maintained and the labourer is unable to move from the class he belongs and if attempt is made by the proletarians to bridge the gap, the capitalists and land owners make laws to either widen it or maintain.

The Marxist theory to say the least is one of the most complex theories of law, because it tried to combine economic, social and legal concepts together. However, the point you need to note is that in any given society there are three broad groups of classes and laws are made to ensure that people in one class continue to remain in their class and to be exploited by others especially the capitalists and the land owner. Although, this is common to all societies including developed, developing and less developed societies, however, these illustrations are more apt when you consider most African society in particular Nigeria. Where laws are made to ensure that rich get richer and poor get poorer through the policies that are never targeted at obliterating the various social class. Thus, the children of the poor continue to attend poor school, have access to poor health care, while the children of the rich and the ruling class continue to attend better school, receive better health care and at the end are more healthy and better suitable to get a good job while the child of poor if he is luck to survive disease and poor education ends doing menial job. Thus the rich and ruling class children grow into the rich and ruling class automatically, while the children of the poor struggle to get out of the proletarian class which is not easy because of the laws that are made to deliberately make it near impossible for them to break into either of the upper social classes.

Some other theories of law include: the historical school of law which is associated with scholars like Friedrich Karl Von Savigny (1779 – 1861); the pure theory of law popularized by Hans Kelson (1881 – 1973); the Legal Realism School which is has most recent scholars of law and predominantly spearhead by American legal scholars and judges like Oliver Holmes who argue that is what the courts say that is the law not the what is contained in the statute and Sociological school of thought associated with Dean Roscoe.

From the above discussion you can see that there are several theories of law and none of them is generally accepted because each has some weakness. But you now know that we have the natural, positive, utilitarian, Marxist and other several schools or theories of law.

4.0 CONCLUSION

In this unit you will recall we discussed the origin of the concept of law, the definition of law and some theories of law. And you will remember we said there are several arguments about the origin of law, however, we agreed that law is as old as man. We equally defined law as rules made to regulate peoples relationship in given society including institutions found in that society. Finally, we consider some theories of law which included: the natural school, the positivist school, the utilitarian theory and the Marxist theory. We also mentioned other theories of law.

It is hoped that you can describe the origin of law, define law in your own words and be able to mention some theories of law.

5.0 SUMMARY

In this unit our discussion was focused on the origin of law in which we attempted to trace the beginning of law which we agreed is from the beginning of creation. We also defined law and mentioned several theories of law and briefly discussed four of the theories.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the term law in own words.

2. (a). Mention at least four theories of law you have learnt
   (b). Describe at least two of the theories of law you have mentioned in your own words.

7.0 REFERENCE/FURTHER READING

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UNIT 2: MORALITY

1.0 INTRODUCTION

In this unit we shall be considering the concept of morality, socially accepted moral standards, the difference between law and morality and finally the similarities between law and morality.

2.0 OBJECTIVE

At the end of studying this unit the learner should be able to:

- Define morality
- State what is socially accepted moral standard
- Enumerate the difference between law and morality
- Enumerate the similarities between law and morality

3.0 MAIN CONTENT

3.1 DEFINITION OF MORALITY

Just like law defining morality is not an easy task and also considering the rate of modernity and the pressure on the need for the respect of fundamental or basic human rights. As Mandal (2004) rightly states "law and morality are too vague to understand. It must be added here that the notion of law and justice cannot be captured and presented before us within a few sentence". Kawashima (1971) on his part points out that the word morality or moral is ambiguous therefore cannot be given a precise definition.

However, this does not mean that there are no accepted definitions of morality. We shall now attempt to consider some definitions of morality. According Oxford Advanced Learner's English Dictionary "morality is principle concerning right and wrong or good and bad behaviour". The Online Dictionary defined morality as code of conduct in matter of right and wrong. Morals may be created by and defined by one society, philosophy, religion or individual conscience". While Mandal (2004) states that "morals are actually certain yardsticks in our which work as prescription to human behaviour". William (1906) argues that "morality refers to norms of conduct whose legitimacy is justified on the ground that they are good or right or necessary for social welfare or social life".

From the definitions we have considered so far have you been able to notice some key issue about morality? Can you see that when discussing morality we are actually referring to:

- What is good and bad
- What is right and wrong
- What is not prescribed by the sovereignty that is the government
- It is based on what the society considers or what their religion or they as individuals consider reasonable.

Therefore, we can say that morality deals with what one consider as standard behaviour which makes it vary from one person to another and from one society to another society. For example, as a Community Health Practitioner you are expected to use your stethoscope in the examination of patients in the clinic and probably in the consulting room. But some Community Health Practitioners have been seen wearing the stethoscope outside the clinic over their necks. Although, this might be an unacceptable behaviour to you but to them there is nothing wrong. Also the issue of same sex marriage. The western democracies, for example, Britain, Canada, Germany and other countries sees nothing wrong in the same sex marrying each other but here in Africa especially, Nigeria we say it is wrong and have made a law to ban it. These western countries are asking us to repeal the law because to them there is nothing wrong in fact they are rather saying that our law is violation of the fundamental right of these gay people to marry and privacy. This is shows that morality is what a person or a group consider as the standard behaviour.

3.2 SOCIALLY ACCEPTED MORAL STANDARD

Like morality it is difficult for one to say exactly what is the socially morally accepted standard because it is a matter of individuality as well. It appears it is more of a matter of individual conscience than what the society at large holds. According Elegido (2006) “many writers draw attention to the fact that in modern societies there is much difference of ideas in respect of morality and stress that it would be unfair for a group even if it constitute a majority to impose its moral ideas on the rest of the population. The ideal they advocate is that everybody should be left free as much as possible, to live according to his or her moral ideas”. While Elegido and his co-travellers who hold the idea of free thought and society might be right, it seems they are missing some very important puts, because there is no way society would not have what the majority considers as the ideal and ensure everybody tries to conform to it. To say everybody should do what he thinks is right is to invite anarchy because I could think raping women on the street is right but is that morally acceptable to the society.

Therefore, while there might not be any hard and fast rule about what is socially morally accepted standard. There are, however, general behavioural expectation of persons living within a given society which if one does not live up to he or she would be said to be immoral and may be subjected to scorn or disparagement. For instance, in some cultures in Nigeria the younger person must genuflect while greeting the elder. While in some other culture this is not done. But then it is generally accepted in the Nigerian society that the younger person must greet the elder with respect and decorum. Even within the medical profession seniority is recognised and junior practitioners are expected to behave in a particular way towards their seniors and failure to do so could be viewed as unethical conduct or insubordination which could attract professional discipline.

As Mandal (2004) rightly states the starting of preaching of morals start from the very basic unit of our society which the family. As in a Hindu family, young people touch the feet of the elder to wish them. There is no logic behind these moral but still these moral do prevail in our society. Again let us consider the issue of same sex marriage which has been liberalised in most western societies that religious leaders themselves are now openly practising it. To most African societies except to some extend South Africa this is an unacceptable moral standard behaviour in terms of sexual relationship and definition of marriage and what constitute a family unit. Thus, even in the face of a free society where people should have their own moral ideals there are still standards of behaviour nobody should live below. If one does live below such standards that are generally accepted by the majority no matter what level of individual freedom and moral one may claim to possess he would be said to be immoral.

Based on the above we can say that a socially morally accepted standard is that level of behaviour members of a given society expects its member not to live below and which is accepted by the majority as the ideal. Like the same sex marriage is accepted as not ideal in Nigeria by the majority hence the National Assembly has passed a legislation making it a criminal offence. But in the western the majority think it is acceptable hence their laws permit same sex marriage.

3.3 DIFFERENCE BETWEEN MORALITY AND LAW

The next issue we shall be considering in this unit is the difference between law and morality; and it is more challenging to make watertight compartmentalisation between law and moral because they are very co-extensive. As Mandal (2004) notes “law and morality have always been at loggerhead with each other”.

From the above you can see that although the two concepts are co-extensive they are not co-terminus which means there is some difference between the two of them. There are quite a number of differences between law and moral, and we shall be discussing a few of them.

One of the differences between law and morality is that law does not punish every omission except where there is a legal duty imposed which was not or neglected to be undertaken. While morality punish every act of omission whether a legal duty exist or not. What the above means is that the law will not be activated except someone is under a legal duty to do something and has failed, omitted or refused or neglected to carry out that duty. For example, there is no legal duty on a Community Health Practitioner to render health care services to any mental patient he sees on the road. And so, if he fails to render services to a person whose relation has mental illness on the street that other cannot complain of professional negligence and succeed in the law Court because there is no law stating that and no duty is imposed. But in the court of morality he would be judge as guilty because morally it is proper for him to have render services to a fellow man having a health challenge.

Another difference between law and morality is that law is a continuously evolving norm, while morality is constant or fix. What this simply means is that law changes very often as the society change from time to time based on demand of modernity. However, morality does not change easily with time it tends to remain constant as it has been observed in that particular society in the past. For example, the Osu cast system in Igboland has not changed despite the several laws and court judgments that have declared it as discriminatory especially section 42 of the 1999 Constitution.

One other difference between law and morality is that law can be legislated but it is impossible for morality to be legislated. What we are trying to say here is that you make a law and compel people to obey it through its enforcement. Conversely, you cannot pass morality into law. As Elegido (2006) illustrates “it is true that if a law clashes with many people behave that the law is impotent in influencing the moral ideas of people. This has been illustrated in Nigeria by the unsuccessful efforts to abolish the Osu cast system and to control the payment of bride price by means of law”.

Furthermore, law is coercive by nature while morality is persuasive as people are at liberty not to obey a particular moral injunction. According Mandal (2004) “the only difference between law and morality is that law is coercive and morality is not. Law is enforced by coercion and its constant application on a society leads to the internalisation of law in human soul. The point been made here is that one is under compulsion to obey the law and failure to do so could

lead to some consequences. But there is no compulsion in morality. Nevertheless, there are some unpublished consequences such as scorn, self belittling and public odium.

A further difference between law and morality is that morality can easily be enforced, but law is more difficult to enforce. What this simply means is that members of a given society can easily see the accepted standard of behaviour held by the society and abide by it without any use of force. But in law it is always enforced for people to see it. For instance, in Nigeria as well as in most African society men are seen or perceived as superior to women and this is held by all as they grow up without any force applied. Yet the law says there is equality of all sex and there should be no discrimination on the basis of sex. But it has been difficult to erase the mentality of men superiority over the years despite the law.

From the above discussion you can see that there is difference between law and morality.

3.4 SIMILARITIES BETWEEN MORALITY AND LAW

We shall now examine the similarities between law and morality. One of the similarities between law and morality is that they both prescribe and proscribe certain conducts in a given society. That is both law and morality stipulates certain conducts that are acceptable and allowed in a given society and those that are not allowed and acceptable. For example, it is legally and also morally wrong to kill another person or tell lies.

Another similarity between law and morality is that they supplement and reinforce each other. And what this means is that law helps morality to be sustained and maintained. While morality also helps to make people obey the law and maintain it. For instance, the principle of the duty of care for neighbour lay down in the case of *Stevenson v. Donoghue* is based both on law and morality because it is morally right to care for our neighbours and it also against the law to wilfully harm your neighbour.

Again law and morality operates within the same framework. As Elegido explains “law creates real obligation in the citizen only because it operates within the framework of morality. For example, morality exposes us to some basic norms which prescribes that we must do to foster the common good of the community and that in order to do that effectively we must obey certain rules established by custom or laid down by the authority.

Furthermore, both law and morality have some form of sanction. For instance, sanctions in law take the form of coercion while in morality the sanction takes the form of reprobation, repulsion and ostracism.

4.0 CONCLUSION

In this unit our focus was on the definition of morality and what is socially morally accepted standard. We equally discussed the differences and similarities between law and morality.

It is hoped that you should be able to now define morality and enumerate some difference and similarities between law and morality.

5.0 SUMMARY

In this unit our discussion was focused on the definition of morality which is referred to as a code of conduct in matter of right and wrong. We also enumerated the difference and similarities between law and morality.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly define the term morality in your own words

2. (a) Enumerate and explain three difference between law and morality in your own words

   (b) Enumerate and explain two similarities between law and morality in your own words.

7.0 REFERENCE/FURTHER READING

Elegido, J.M (2006): Jurisprudence. A Textbook for Nigerian Students: Spectrum Books Limited, Ibadan, Nigeria.

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UNIT 3: CLASSIFICATION AND FUNCTION OF LAW

1.0 INTRODUCTION

In this unit we shall be considering the various classification of law and the functions of law in a given society.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- State the various classifications of law
- Describe some classification of law
- State some functions of law.

3.0 MAIN CONTENT

3.1 CLASSIFICATIONS OF LAW

There are several classifications of law and this depends on the nature of the aspect of society the particular law is concerned, because as you know law deals with a variety of situation in a given society and can also be applied in different circumstances (Harris, 1997)

However, law can either be classified as Criminal or Civil law, Public or Private law, Domestic (also referred to as municipal law) and International law, Received English and Customary law, Statute and Case law (Ogbu, 2002). We shall now consider each of these classes of law briefly.

3.3.1 **CRIMINAL LAW.**

The first class of law we shall be discussing is criminal law which can also be called criminal litigation is that branch of law which deals with what is considered as an offence, how the violators of such offence are prosecuted and punished. Criminal proceedings are always at the instance of the state and not the victim of the offence because the act or omission is considered to be a breach of state laws. In criminal law the offence or the wrong must be defined and the punishment for breaching it also written or stated in document often referred to as the criminal code. In Nigeria in particular by virtue of section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria a person cannot be punished or proceeded against in criminal prosecution if the offence for which is being prosecuted is not defined or written in law and the

punishment stated. This was the position of the Court in the case of *Aoko v. Fagbemi* (1963) All NLR 400 where the accused who charged and convicted for adultery in Southern Nigerian had his conviction quashed on appeal because adultery is defined as a crime in any written law in South but it is an offence in the North.

Furthermore, a person cannot be given a punishment that is greater than what is prescribed for the offence he has committed and a law cannot be enacted to have a retrospective or retroactive effect to make an offence which was committed before the law made punishable. Simply put a person cannot be convicted or punished for an offence or omission which did not constitute a crime as at the time the accused committed the act or omission. This is based on section 36(8) of the 1999 Constitution. If considered within public health laws, it means that are person cannot be convicted for any public health offence if the offence for which he is being charge is not an offence as at the time he committed. Even where the offence is defined and the punishment is not stated the accused cannot be punished or convicted of that offence. See the case of *Attorney-General of the Federation v, Clement Isong* (1986) 1. Q.L.R.N p.75 Where the Supreme Court held that the accused cannot be convicted for unlawful possession of firearms because the law did not state punishment in the Firearms Act, 1966.

Equally, it will be important for you to know that Nigeria unlike most jurisdictions operate a dual criminal law system as different criminal law applies in the north and in the south. While, the north operates the Criminal Procedure Code with the penal code, the south operates the Criminal Procedure Act with the criminal code. Based on this duality principle some acts that constitute offence in the north do not constitute offence in the south vice versa.

3.3.2 **CIVIL LAW**

Civil law or civil proceeding or litigation deals with the process of seeking redress for a wrong committed against a person at the instance of the victim with the objective of obtaining a remedy mostly in form of compensation or to determine a right which is not of a criminal nature. According to Ogbu (2002) “all legal situations outside the ambits of criminal law are within the ambit of civil law. While Afolayan and Okorie (2007) argues that “civil procedure as a subject deals with law, rules, practice and procedure guiding and regulating the conduct of civil actions.” It is sometimes difficult to make a watertight compartmentalisation between civil law and criminal law because criminal proceeding can also lead to civil proceedings and civil proceeding leading to criminal proceeding. For example, defamation is some cases are both a civil wrong and a crime especially, where there is an imputation of crime. Although,

in the past the commencement of criminal proceedings has acted as a bar to civil proceeding over the same matter as was the case in *Smith v. Selwyn* (1914) 3 K.B. 98. However, this rule no longer applies in Nigeria as was stated by Niki Tobi (J.C.A as he then was) in the case of *Veritas Insurance Company Ltd v. City Trust Investment* (1993) 2 NWLR (pt.28) 349. Where he held that:

> "... It does not even seem to be sensible thing to stop a plaintiff from instituting an action merely because the criminal action in the same matter has not been prosecuted".

Basically civil law tries to regulate the private affairs of people and gives a person who has been wronged in the process of their private relationship an opportunity to bring an action to either stop the wrong if it is of a continuing nature, for example, trespass to land or owing of debt; or claim a remedy or compensation for injuries caused by the other party. Some ready example and often witness civil litigations include: action for breach of contract, tortuous act; breach of trust and recovery of property.

3.3.3 **PUBLIC LAW**

The next class of law we shall be discussing is public law which is that branch of law that deals with the regulation of public institutions such as the educational institutions, health institutions, utility institutions and their relationship with the members of the society and with each other. It is intend to ensure that public actors and actions are carried out judiciously and judicially. That is to say people must exercise the duty of the office in fairness and in firmness to ensure that their actions do not impinge negatively on members of the public or other organs of government. Some example of public law include: Constitutional law, Administrative law, Criminal law, International law, Human Rights law and Public health laws.

This branch of law provide avenue for individuals or even the government itself to hold public institutions accountable, monitor, regulate and supervise their activities. In order to ensure that they not only conform to the framework setting them up but also to ensure that the general public have satisfactory services.

3.3.4 **PRIVATE LAW**

Conversely, private law is that branch of law which regulate the private relationship between individuals and organisation which are not public in nature but provide services to the public. It would be necessary to give some example to make a clearly distinction here. For example, the telecommunication companies like MTN is a private organisation though it provides services to the

public what regulates its relationship with other organisation or the individual customer is not public law, but private law. But the Nigerian Communication Commission which regulates the telecommunication industry is a public organisation, and what regulates its relationship with individual is largely public law and to some extent private law especially, where issues of contract are involved.

Some examples of private law include: Commercial law, Property law, family law including Wills and Probate, Banking and Insurance laws, Intellectual and Industrial Property law, Law of Tort and Trust and Company law.

3.3.5 **MUNICIPAL LAW**

Municipal or domestic law are those laws made by a given country which have legal force only within its jurisdiction and applicable to its citizens wherever they go. They are laws which have no force once they leave the shores of the country in which they are legislated or made. For example, the 1999 Constitution of the Federal Republic of Nigeria only has application within Nigeria and has no application to her closest neighbours like Benin Republic or Ghana or Togo despite the fact that they all members of ECOWAS. However, a Nigerian law applies to a Nigerian citizen wherever he goes, therefore, if a Nigerian citizen commits an act which is known as an offence in Nigeria in a foreign country where such an act is not an offence. He would be said to have breach Nigerian laws and Nigeria can apply for his extradition if she already has an extradition treaty with that particular country.

Some example of domestic or municipal laws in addition to the constitution already mentioned include the Economic and Financial Crime Commission Act, National Drug Law Act, Trafficking in Children and Persons Act.

3.3.6 **INTERNATIONAL LAW**

International law is that branch of law or body of rules which regulates the relation of states and other entities recognised as possessing international personality as well as how states treat and recognises the rights of their citizens (Wallace, 2009). This definition was affirmed in the case of *Trendtex Trading Corporation v. Central Bank of Nigeria* (1977) 1 All ER 881, 901 & 2, where the English Judge stated that I know no better definition of international law than that it is the sum rules or usage which civilised states have agreed shall be binding upon them in their dealing with one another.

Basically international law is aimed at ensuring international peace and security; and to encourage members of the international community especially, nations to

seek peaceful means in the resolution of their dispute. Also, international law entails how states and individual who breach international norms can be brought to justice or compelled to stop further breach of international law. Some ways of enforcing international include: the use of military force against a delinquent state based on the authorisation of the United Nations Security Council like in the case of Iraq 1990 when military force was ordered to ensure Iraq pulled out of Kuwait for the illegal invasion of the country. Equally, disputes and perpetuators of international crimes could be brought before the International Court of Justice, or the International Criminal Court both at The Hague or other Ad-hoc International Criminal Tribunal like the one for Former Yugoslavia and Rwanda in 1993 and 1994 respectively.

It is necessary for you to also know that there is public and private international law. While public international seeks to regulate the relationship between states, however, in recent times its scope has been expanded to be concerned with individuals especially, with regards to the most serious crimes such as genocide, crime against humanity, war crimes, piracy and other crimes considered as crime by the international community as a whole (Dixon, 2007). Conversely, private international law regulates the relationship between multi and transnational corporations and individual citizens of different nations.

3.3.7 **RECEIVED ENGLISH LAW**

The next class of law we shall consider is the Received English law which refers to those laws which were introduced in the Nigerian legal system as a result of British colonial rule. They are largely English laws some of which are still operational in England, they have form part of our legal system and regulate certain relationship. These include the Statute of General Application, the Common Law doctrine and the principle of Equity which is seeks to ensure good conscience, fairness and natural justice. The aim of the principle of equity is to mitigate the hardship pose by Common law decision of the Common Law Courts in England which were based on customary English laws.

3.3.8 **CUSTOMARY LAWS**

Customary law are those laws which are regarded as indigenous to members of a given community based on their customs and tradition which regulate affairs of the members since time immemorial. For them to acquire the force of law they must have acquired long usage, recognised by the people and can be proven as consistently applied over a long period of time. However, with the advent of English law and enactment of modern laws most provisions of customary law which offend good conscience or are incompatible with public policy or inconsistent with natural justice or repugnant is declared null and void.

See the case of *Mojekwu v. Mojekwu* (1997) 7 NWLR (pt.512 at 283 Where the Court of Appeal held that the Nnewi custom which allows a deceased brother who died intestate without a male child to inherit his estate instead of the biological female children and the wife was repugnant and against natural justice.

However, some examples of customary include: the Sharia law; and Customary laws that are enforced by the various Sharia Courts in the North and Customary Courts in the South.

3.3.9 **STATUTE LAW**

The next branch of law we shall be examining is statute law. These are laws contained in a legislation which are enacted by the legislature at any level or the recognised law making body, because some bodies which are not legislative can make laws especially at the international level where there is no legislative body and among social groups or association which have constitution which are deemed as laws but not made by a legislative body. Statute is a major source of law because it defines and contains all the intent and provisions as well as the limitation of the law. Example of Statute laws include: the Constitution, Acts of the National Assembly, Laws of a State and Bye-laws of a Local Government under a democratic setting. Others include: Decrees and Edict of the Federal Military Government and State Governments during Military rule. Statute general take effect from the date they are signed into law and rarely have retrospective effect except the law-making body expressly states so in the law.

3.3.10 **CASE LAW**

The next class of law we shall be discussing is case law which is not very popular as most people do not regard it as a major class of law especially, in Nigeria. Case law are Judges made laws, although, ordinarily the duty of the judiciary is to interpret the law as made by the legislature. However, where there is a lacuna or what is regarded as a vacuum in the law made by the legislature and it is likely to cause hardship the judiciary while examining the legislation can make pronouncement which has the force law and becomes the law until the legislature makes another law remedying the lacuna.

For example, in the case of *A.G Abia State & 35 Ors v. Attorney-General of the Federation* (2001) where there was dispute as to the boundary of the littoral States the Supreme Court in that case determine the coastal boundary of the littoral states. Similarly, in the case of *Ameachi v. PDP* (2007) the Supreme Court again laid a new rule of law which states it is political parties that contest election and not individuals and whosoever that is valid candidate of party takes

office if the party wins the election. Also, that the Independent National Electoral Commission has no powers to disqualify a candidate except the political party or a Court of competent jurisdiction.

3.2 FUNCTIONS OF LAW

We shall now consider some of the functions of law. There are several functions law perform in a given society and the list in inexhaustive; however, we shall enumerate some that are considered very relevant in this course.

One of the primary functions of law is that is acts as the denominator of all social order. That is it is foundation of all social relationship and regulation, and anything or action that is inconsistent with the law is regarded as illegal or unlawful.

Another function of law is that it promotes human health and healthy environment. This is very important with regards this course because public health law is targeted at protecting and promoting human health and a healthy environment, but unfortunately very little attention is paid to this function of law. Hence the high morbidity and mortality rate in Nigeria. We need to realise that a threat to life is not as dangerous to a threat to the environment. This is because a threat to life will have no effect on the environment, but every threat to the environment has the capacity to impair our life or make it become meaningless. For example, if water is polluted with mercury it can lead to a lot of death, even air pollution cause death, but threaten one individual with a knife would not endanger many lives like air or water pollution. Can you therefore, see why public health law is important?

Also law is used to regulate private relationship and protect the family. This is because nobody can invade the privacy of another.

Furthermore, law is used to protect the basic freedom of individuals. For example, nobody can be detained unlawfully without committing any offence and in most case it has to be at instances of a court of competent jurisdiction. Also the law guarantees us the freedom speech, association, religion and movement.

One other function of law is that it regulates the major organs and institutions of government. For example, the relationship between the executive and the legislature on the one hand and between the judiciary is regulated or based on the law. Anything done between them that is not in conformity with the law is illegal and void ab initio.

Law also help keep individuals, communities, states and nations at peace. This is because the basic function of law is to ensure peaceful co-existence and security of all. Therefore any person that breaches the peace or threatens the security of other people is regarded as a criminal or is said to have breached law and is accordingly prosecuted and punished.

Equally, law is used as an instrument of promoting political, economic and social change. Like we said earlier the list of the functions of law is inexhaustive.

4.0 CONCLUSION

In this unit our focus was on the classes of law and the functions of law. It is believed you have learnt about the various classes of law and the functions of law. You will recall we classified law into ten categories which include: criminal, civil, private, public, municipal, international, customary, received English, statutory and case law. We also listed several functions of law.

It is hoped that you can now classify law and would be able to list some functions of law in a society.

5.0 SUMMARY

The focus of this unit was on the classification of law and the functions of law. We have classified law into various categories and also listed some functions of law.

6.0 TUTOR MARKED ASSIGNMENT

1. (a). List four classes of law you have learnt in this unit

   (b) Briefly, explain three of the classes of law you have listed in your own words.

2. List five functions of law

7.0 REFERENCE/FURTHER READING

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UNIT 4: SOURCES OF LAW

1.0 INTRODUCTION

In this unit we shall be discussing the definition of sources of law and the main sources of law in Nigeria. This is because the sources of law vary from jurisdiction to jurisdiction that is from one country legal system to another country's legal system.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Define what is meant by sources of law
- Mention at least four sources of law in Nigeria
- Describe some of the sources of law in Nigeria in his/her own words

3.0 MAIN CONTENT

3.1 DEFINITION OF SOURCES OF LAW

The definition of sources of law is as contentious as the definition of law itself because source of law connote different thing to different legal scholars, practitioners, activists, jurist and social as well as legal anthropologists. First, the source of law could denote the origin of law that is information relating to the existence of law. In a second sense it could mean where you can find the law which include books, law reports and legislation including writings of legal scholar. In a third sense it could mean where law derives their validity or legality from as a rule of law (Cross, 1961). That is what makes the law have a binding force and makes it to be regarded as rule that must be obeyed a failure of which attracts sanction or unpleasant consequences.

Although, the three senses make good for a discussion of the sources of law, however, for the purpose of this unit and this course we shall concern ourselves with the third meaning of the source law. That is the main area from which a law can acquire its validity in Nigeria.

3.2 MAIN SOURCES OF LAW IN NIGERIA

There are several sources of law in Nigeria as you will see from the discussion below. Some of them include: Received English laws including those English enactment extended to Nigeria from Britain because Nigeria was her former colony and the Common law doctrine and principles of equity. The others

include: Nigerian legislations, Judicial Precedent or case law, Customary Law, Law reform and legal writings. We shall now consider each of these sources of law briefly.

3.2.1 **ENGLISH LAW**

One of the main sources of laws in Nigeria is English laws. As mentioned earlier above by virtue of Nigeria been a former colony of Britain the laws enacted in England were made applicable to Nigeria at that time and this became a major source of law in Nigeria. For example, the Nigerian law of Evidence is largely the same with England even in some cases the High Court rules of England still apply today in Nigeria where the current High Court Rules operating in Nigeria do not make provision for that particular procedure of Court. For instance, in the case of *Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR (pt.498 at 124) the Supreme Court of Nigeria held that from Independence that is 1960 to date all English laws and other legislation domesticated in Nigeria which have not been expressly repealed by an Act of Parliament or declared null and void by a Court of competent jurisdiction remains in force in Nigeria and all courts and tribunal are to give effect to their provision. This shows that English law still remain a source of law in Nigeria especially, those laws that have not been repealed or declared a nullity by our courts.

Equally, apart from the enacted English law the doctrine of Common law and principle of equity still form part of the Nigerian legal system and therefore, sources of law in Nigeria. However, you need to know that while the Common law doctrine and principle of equity still applies in Nigeria, the Statute of General Application which are laws existing in England before 1900 no longer applies in Nigeria from January, 1900. See the case of *Aro v. Lagos Island Local Government Council* (2001) 32 WRN 72 where Onnoghen (JCA as he then was) stated that 1900 is the cut off date for application of the Statute of General Application.

Common law rules have divergent meaning but generally speaking it is rules based on custom generally commonly practiced by the people of England at that time and decisions of the common law court judges and not necessarily based on legislation. Some of them imposed hardship on the citizens especially, the poor hence the principle of equity was developed by the Chancery Courts to mitigate the hardship pose by the Common law courts decisions. Basically, the principle of equity seeks to ensure natural justice, equality, fairness and good conscience in the interpretation and application of the law.

3.2.2 **NIGERIAN LEGISLATION**

The next source of law we shall be examining is the Nigerian legislation ordinarily this is supposed to be listed as the first source of law in Nigeria, but some will argue that customary law is the first source of law in Nigeria because they existed even before English law was received which lead to Nigerian legislation especially, after Independence. However, that discussion would serve no purpose in this unit and course; therefore, we shall abandon it and concentrate on Nigerian legislation as a source of law.

Precisely speaking what is meant by Nigerian legislation as a source of law refers to all those laws enacted by law making bodies in Nigeria especially, since Independence in 1960 to date which provision have binding force. These include: the various Constitutions Nigeria has had since Independence, Ordinances during the colonial rule, Act of the National Assembly, Decrees made by the Federal Military Government, Laws of the State Houses of Assembly, Edict of State Military Governor and Bye-laws of the Local Governments. It is important for you to know that during Military Government there is no formal legislative body as there is no absolute separation of power at the both the federal and state level between the legislature and the executive. Although, the Supreme Military Council or Provisional Ruling Council have been regarded as legislative bodies at the federal level they are strictly not legislative body because they were large made up of the executive. While at the state level nobody as such existed so it is whatever the Military Governor chooses as the law that is enacted and called an Edict. This is why some critics have referred to military rule as an aberration of democracy, rule of law and the doctrine of separation of power.

3.2.3 **CASE LAW AND JUDICIAL PRECEDENT**

Another source of law in Nigeria is case law and judicial precedent. They are also referred to as judges made law. Ordinarily, it is not the duty of the judiciary to make laws and so some have argued that case law should not be regarded as a source of law. However, those arguments are lacking force in contemporary society especially, where there is an active judiciary which can give an expansive interpretation to a piece of legislation when it considers the legislation inadequate to address present day challenges of society. Some legislation were made without anticipating the level of development in present day society, for example, the Evidence Act did not envisage cyber crime or video technology and it will absurd or miscarriage of justice if the law has not being amended and the judiciary continue to hold that evidence obtain from such sources are inadmissible because the Evidence Act did not mention them. It is in such situation that the judiciary is compel to make a judgment to cure

this apparent lacuna and in the process makes a law which must be followed by other courts especially, lower courts and the court itself in subsequent proceeding of similar nature.

Basically, judicial precedent and case law requires that where a Court of superior jurisdiction especially, the Supreme Court in the case of Nigeria has made judgment on a particular point of law all the Courts in Nigeria including the Supreme Court itself should follow and apply that decision in subsequent cases of similar facts until the Court overrule itself. There is no doubt some difference exist between judicial precedent and case law. Because the former command the lower courts to follow a decision of the superior court, while the latter deals with making a decision to fill a vacuum in law which is also to be followed by the lower courts. We have given some examples in Unit 2 which include the case of *A.G Abia State & 35 Ors v. Attorney-General of the Federation* (2001) where there was dispute as to the boundary of the littoral States the Supreme Court in that case determine the coastal boundary of the littoral states. Similarly, in the case of *Ameachi v. PDP* (2007) the Supreme Court again laid a new rule of law which states it is political parties that contest election and not individuals and whosoever that is valid candidate of party takes office if the party wins the election. Also, that the Independent National Electoral Commission has no powers to disqualify a candidate except the political party or a Court of competent jurisdiction.

3.3.4 **CUSTOMARY LAW**

Customary law are those laws which are regarded as indigenous to members of a given community based on their customs and tradition which regulate affairs of the members since time immemorial. For them to acquire the force of law they must have acquired long usage, recognised by the people and can be proven as consistently applied over a long period of time. However, with the advent of English law and enactment of modern laws most provision of customary law which offend good conscience or incompatible with public policy or inconsistent with natural justice or repugnant is declared null and void. See the case of *Mojekwu v. Mojekwu* (1997) 7 NWLR (pt.512 at 283 Where the Court of Appeal held that the Nnewi custom which allows a deceased brother who died intestate without a male child to inherit his estate instead of the biological female children and the wife was repugnant and against natural justice.

However, some examples of customary include: the Sharia law; and Customary laws that are enforced by the various Sharia Courts in the North and Customary Courts in the South.

3.2.5 **OTHER SOURCES OF LAW**

There are other sources of law which are not very popular and no longer often relied upon again as source of law but they are worthy of mention. Although, it is highly debatable whether Law Reform is not still a veritable source of law because law reform is the process of recodifying existing law to keep the law abreast with changing circumstance, to reflect present day legislative forms and also proposes amendments (Elegido, 2006). For example, all the laws enacted during the military regime before 1999 have been recodified by the Law Reform Commission to make them Acts of the National Assembly and they cited as binding authorities in court. This makes it doubtful whether it should be disregarded

The other source of law in Nigerian which is no longer referred to as a source of law by both the courts and even legal scholars are opinion of writers which in the past formed a major source of law in both international and domestic jurisprudence.

Equally, international law is a source of law in Nigeria to the extent that they have been domesticated by an Act of the National Assembly because Nigeria operates the dualist system of international law implementation. Basically, there are two ways of implementing an international law such as treaties, conventions, charters, covenants and declarations of international and regional bodies. These include the monist and the dualist system. The monist system which is common with civil law countries such as Netherlands, Germany presupposes that there is s single system of law so when the Head of Government of the country signs any international law it has immediate and direct application as a municipal or domestic law and does not require an Act of parliament for it to assume the force of law within domestic jurisdiction (Enabulele, 2009).

Conversely, the dualist system which is common to Common law countries especially all members of the Commonwealth Countries of which Nigeria is one presupposes that there are separate system of law and an international law when signed by the Head of Government has no legal force in domestic jurisdiction until it has domesticated by an Act of parliament especially by virtue of section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria. Thus, if Nigeria signs an international law until National Assembly enacts a similar domesticating it, it will not have force in Nigeria. This was the situation in the case of *the Registered Trustees of the National Association of Community Health Practitioners of Nigeria & Ors v. the Medical & Health Workers Union of Nigeria* (2008) 2 NWLR (pt.1072) 575, 623 where the Supreme Court held that the provision of the International Labour Organisation Convention is not

applicable in Nigeria because it has not been domesticated by the National Assembly.

4.0 **CONCLUSION**

In this unit our focus was on the definition of the sources of law and the sources of law in Nigeria. It is believed you have learnt about the various definitions of the sources of law and the various sources of law in Nigeria. You will recall we defined sources of law in three ways and discussed four major sources and other sources of law in Nigeria.

It is hoped that you can now define the sources of law and would be able to list some sources of law in Nigeria.

5.0 **SUMMARY**

The focus of this unit was on the definition of the sources of law and the sources of law in Nigeria. We have defined what we mean by source of law and listed and briefly discussed several sources of law in Nigeria.

6.0 **TUTOR MARKED ASSIGNMENT**

1. Define sources of law in your own words.

2. (a) List four sources of law in Nigeria.

   (b). Explain three of the sources you have listed in your own words.

7.0 **R EFERENCE/FURTHER READING**

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UNIT 5: LAW MAKING PROCESS

1.0 INTRODUCTION

In this unit we shall be considering the law making process in Nigeria and the types of laws made during different types of administration. Nigeria unlike most other countries has witnessed two systems of government since Independence. These include democratic governance and military government which unfortunately has lasted longer in Nigerian history.

2.0 OBJECTIVE

At the end of studying this unit the learner should be able to:

- Define what is meant by law making process
- Describe the law making process in a Military administration
- List some examples of military laws
- Describe the law making process in a democracy
- List some examples of laws during a democratic government

3.0 MAIN CONTENT

3.4 LAW MAKING PROCESS IN MILITARY REGIME

Before considering the law making process in a military regime it would be important to define what is law making? Law making or law making process is the process by which a law is made by a legislative body or a body empowered by law to make laws. What we are simply trying to say is that is law making is how law is processed for it to be regarded as a law which has a binding force. For a law to be said to be binding it must be made by a body empowered to make law otherwise it will be declared null and void ab initio. For example, in the case of *A.G Lagos State v. A.G. Federation* where there was a dispute as to whether the Lagos State Government acting through the Lagos State House of Assembly can create new Local Government without approval by the National Assembly. The Supreme Court in that case stated that the Lagos State cannot effectively create Local Governments with the approval of the National Assembly.

Ordinarily, law making is the function of legislative body duly elected for the purposes of law making and which is also referred to as parliament, for example, in Nigeria the legally recognised bodies to make laws are the National Assembly which consist of the Senate and the House of Representatives, the 36 States Houses of Assembly, the Legislative Arms of the 774 Local Government

and Area Councils. Thus in total currently in Nigeria there are 812 bodies that can make laws at different levels. See section 4 of the 1999 Constitution. However, because Nigeria has been so unfortunate to have being forcefully ruled by military they too have arrogated to themselves the power to make laws during their tenure of office. And because the military has ruled Nigeria for 26 years out of the 51 years of her Independence the military appears to have made more laws and it is on this note that it is important we examine the process of law making during military rule.

The Military ordinarily do not have powers to make laws, but whenever there is a military takeover of government it always create a body that would make laws. For example, during the first military coup of 1966 Decree No. 1 1966 was enacted and it suspended major provisions of the 1963 Constitution which recognised the Federal and Regional Parliament, dissolved the Council of Ministers and ousted the jurisdiction of the courts to question the validity otherwise of Decree or Edict that would be made by the Federal Military Government or the State Military Governor. It created the Supreme Military Council (often referred to as SMC) by virtue of section 8 of Decree 1 of 1966 and vested it with the legislative powers of the country to make laws for the federation, while the State Military Governors were to make laws which are referred to Edicts for the state.

In 1967 Decrees Nos 16 and 20 were promulgated to include the State Military Governors in the Supreme Military Council and also empower the Head of State to include any person he might deem fit into the Council from time to time (Oluyede, 2001). While we can assume to some extent that there was legislative body at the federal level in form of the Supreme Military Council which is largely a rubber stamp of the Head of State, because it has no powers to reject any law the Head of State want to make. The same cannot be said of the State where only one man decide the law and promulgate it as an Edict. This is why most scholars of law argue that military government are aberration because the rights of the citizens to participate in the debate that would lead to the passage of law is completely trampled upon and suffocated. Nobody can protest the illegality of their law and succeeded. Although, in the case of *Adamolekum v. The Council of University of Ibadan* (1968) NMLR 253 the Supreme Court initially acknowledge the ouster powers of Decree No 1 1966 in the subsequent case of *Lakanmi v. A.G. Western State* it reversed itself and ruled that its jurisdiction cannot be ousted, however, this led to the promulgation of Decree No. 28 of 1970 which appears to be the death kernel passed on the judiciary during the Military.

From the above you have seen that the process of law making during military administration is by fiat, the laws are not debated, the public is not involved in

the process and nobody can question the validity of the laws made by them. In fact you can go to bed by 5.30am and by the time you wake up by 7.00am news a new law has be made. Sometimes they also make their laws to take retrospective effect like Decree No 4 of 1984.

3.5 TYPES OF LAWS IN MILITARY REGIMES

Basically there are only two types of law during a military regime. This is because the third level or tier of government which is the Local Government is almost always non-existent during military rule and whoever that is appointed as the administrator has no powers to make laws. Although, during the kangaroo transition programmes of General Babaginda and Abacha between 1989 and 1998 the Local Government legislative arms existed, it is doubtful if they were engaged in any real business of bye-law making. The major laws during military regimes are Decrees which is a Federal Government law which have binding force through the country and also superior to the Constitution based on the way the Decree bringing the military to power is couched. And the Edict which is state government law which only have application within the state in which they were made. However, in order to check the powers of the State Military Governors with regards law making the Federal Military Government under section 3(4) prohibited the States Governors from making laws on any item that falls within the exclusive legislative list and obtain consent before making laws on matters within the concurrent legislative list of the suspended 1963 Constitution (Oluyede, 2001).

3.6 LAW MAKING PROCESS IN DEMOCRACY

We shall now discuss the law making process in democracy. Unlike military administration, the law making process and bodies are always clearly mentioned and provided for in the Constitution in this case of Nigeria the 1999 Constitution. It is important to remind you that even in the previous Constitutions during the colonial period and after Independence especially the 1960, 1963, 1979 and 1989 Constitution the law making bodies at the various level of government were well stated.

As earlier mentioned above under the 1999 Constitution the law making powers of government is divided between the three tiers of government. That is the Federal Government, the State Government and the Local Government Councils. The National Assembly has exclusive powers to make laws on matters contained in the Exclusive Legislative list, while both the National Assembly and the State Houses of Assembly have powers to make laws on matters contained in the Concurrent legislative list. The State Houses of Assembly have exclusive responsibility to make laws on matters contained in

the Residual legislative list which are matters not included in either the exclusive or the concurrent legislative list; while the Local Government Legislative Arms have powers to make byelaws. See Second Schedule Part I & II, 1999 CFRN as amended. Nevertheless, where there is conflict between a law made by a State House of Assembly and that made by the National Assembly, the law of the National Assembly prevails over that of the state. See S.4 (5) 1999 CFRN.

In addition, the 1999 Constitution provides for a bi-camera legislature at the federal level that is the Senate and the House of Representatives which constitutes the National Assembly. For any law made by the National Assembly to be valid, it must be passed by both chambers and the bill forwarded to the President for his assent. See S. 47 and S.58. However, if for any reason the President withholds his assent to a bill, after thirty days the National Assembly can override the President's assent by passing it into law by a two third majority. See S.58 (3) – (5). Similar procedure obtains between a State House of Assembly and the Governor; and between the Local Government Legislative Arm and the Chairman. The only difference is that at the state and local government level there is a single legislative chamber. See S.4 (6), S.90 & S.100 (1) – (5). However, the power of legislative veto appears to be seldom used in Nigeria. Equally, the National Assembly also have power to domesticate treaties that is any International law signed by the Federal Government especially, the President for it to become a binding law in Nigeria by virtue of s.12(1) of the 1999 Constitution. However, it appears the State Houses of Assembly also have powers to make treaties by virtue of s.12 (3) of the Constitution. This provision is not only inconsistent but a precursor to legal conflict and succession.

As Nwapi (2011) rightly notes apart from being unclear, section 12(2) is contradictory, for example if the subject matter of the treaty falls within the Residual legislative list. Is it been suggested that the legislative powers of the states will be interfered with because a treaty obligation of the federal government is to be implemented?

Furthermore, it will be important for you to know that before a law is passed by the either the National Assembly or a State House of Assembly or a Local Government Legislative Arm it has to pass through three readings on the floor of the particular legislative body. And subjected to the particular House Committee in the area which the law is related, the Committee will organise a public hearing where members of the public who have views either against or in support of the law would make presentation which are further debated at the Committee level. A Report of the public hearing and the Committee recommendations are presented on the floor of the House at plenary and debated

by the Committee of the Whole before the law is finally passed and forwarded to either the President or Governor or Local Government Council Chairman for assent. In the case of the National Assembly in case there is any difference between the version of the law passed by the Senate and the House of Representatives a conference committee has to be constituted comprising of members of both Chambers to harmonise the difference before it forwarded to the President for assent.

From the above discussion you can see that there is a great difference between the law making process during military administration and civilian administration. You can also observe that during a democracy the citizens participate very actively in the law making process and it goes through several stages. But during military administration the public is never involved and no procedure is followed all that is need is for the Head of State or State Governor to call the Attorney General to draft a law even in his bedroom and it becomes a law. A good example would be the Decree annulling the June 12 election won by Abiola.

3.7 TYPES OF LAWS IN A DEMOCRATIC GOVERNMENT

We shall be concluding our discussion in this unit a brief examination of the various types of laws that are made during democracy. There are basically three types of laws that can be found during a democratic government in Nigeria. These are Acts of the National Assembly, Laws of the State House of Assembly and the Bye-Laws of a Local Government Council.

Acts of the National Assembly are the laws made by the National Assembly (the Senate and the House of Representatives) and they have national effect if they border on matters within the exclusive and concurrent legislative list. This is because matters on the exclusive are within the exclusive competence of the National Assembly to legislate on. While though both the National Assembly and the State Houses of Assembly can legislate on matters on the concurrent legislative list since in the case of any conflict between a law made by the two bodies that of the National Assembly prevails it then follows that the National Assembly has powers to legislate across the country on both the exclusive and concurrent legislative list.

Laws are legislative pronouncements of a State House of Assembly and they have only binding force within the State in which they are made. They cannot be extended to even the closest State. For example, the Zamfara State Sharia Law of 2000 has no legal effect in Sokoto State because the Zamfara State House of Assembly cannot make a law that would be binding on Sokoto State. The Law must be within the remits of the residual list or concurrent legislative

list if the National Assembly is yet to legislate on that item in the concurrent list.

While Bye-Law are laws made by a Local Government Legislative Arm. They only have legally binding force within the Local Government Area in which it was made and cannot be applied in another Local Government Area.

4.0 CONCLUSION

In this unit our focus was on the law making process in Nigeria, the various law making bodies and the types of law they make. It is believed you have learnt about the definition of law making process, the various law making processes in Nigeria, the law making bodies and the types of laws made by the various law making bodies.

It is hoped that you can now define law making process, describe the various law making processes in Nigeria, mention the law making bodies in Nigeria and list the various types of laws made in Nigeria.

5.0 SUMMARY

The focus of this unit was on the definition of the law making process, the various law making process and bodies, and the various types of laws made in Nigeria. We defined what we mean by law making process, describe the law making process during military and a democracy, and listed the types of law made in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1. Describe the law making process during military regime in your own words.

2. (a) Describe the law making process in a democracy

   (b). List two law making bodies in a democracy and briefly explain the types of laws they make.

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UNIT 6: SOURCES OF PUBLIC HEALTH LAWS

1.0 INTRODUCTION

In this unit we shall be examining the history of public health and public health laws. We shall also discuss the definition of public health laws and the sources of public health laws.

2.0 OBJECTIVES

At the end of studying this unit the learner would be able to:

- Briefly describe the history of public health
- Describe the history of public health law
- Define what we mean by public health laws
- List and describe some sources of public health laws
- Appreciate some of the relationship between different sources of public health laws

3.0 MAIN CONTENT

3.1 HISTORY OF PUBLIC HEALTH AND PUBLIC HEALTH LAWS

Before going to define public health laws it is important you understand the history of public health and public health laws. Also, you need to know that there is a difference between public health and public health laws because they could be easily confused. This difference you will come to appreciate as we consider the history of public health and public health laws. We shall in this discussion be examining the history of public health using example of the United States and Nigeria. The two countries have public health history, system and laws that are structured in the same pattern and in addition it necessary to have an idea of how public health has developed in other countries. Although, the history of public health date back to several years in human, for example, as far back as 2500-1500 BC, the Mohenjo-daro and Harrappa in Northern India had organized community health action (Egwu, 1996). Middle Kingdom Egypt had public toilet facilities between 2300-1800 BC; Cretan Knossos had central baths, running water and sewers; and Ancient Rome had integrated public health system. Invariably, in Ancient, Medieval and Early Modern eras, public health practice was in place (McGrew, 1985).

However, some scholars like Aja (2001) have argued that public health history dates back to the very beginning of creation and thus it is a misrepresentation of fact when the history of public health is consider giving attention only to recent development. According to him the history of public health can be said to be as old as the Bible. Yet, it is often taught at different tertiary levels, at different times, places and by different authorities without due reference to this significant historical source. From my personal experience as a public health student in a secular higher institution, the teaching of this very important subject was based purely on "rational speculation, a scientific study of the [recent] past, or simply [an] experience of the passage of time…." Historical perspectives focused mainly on classical, traditional conventions, modern or community health statutes/laws, and contemporary or primary health care declarations.

While, it might not be necessary for the purpose of this unit and course not to join issues with Aja, suffice it to say that there is the need to distinguish medicine and healing from public health. While the former two deals with how people who were sick are assisted to get well, the former deals with steps taken to prevent illness, promote health and rehabilitate the sick as well as determine disease pattern, their causes and how to manage and prevent. It is doubtful if any such approach was available from creation.

As earlier stated we shall now begin with the history of public health in America. However, it would be important to at this juncture point out that there seems to be similarity in the history of public in all countries of the world especially, these two we have set out to discuss. Although, some have argued this might not be the actually period of commencement of public health in America, however, the widely held view among public health scholars is that it started with the increase of epidemic diseases such as Cholera in the 19th Century, Tuberculosis in the 20th Century including Yellow fever which was claiming lives of innocent citizens, especially those living in poor sanitary conditions. As Charles Rosenberg rightly points out “in the history of public health in the United States, there is no date more important than 1866, no event more significant than the organisation of the Metropolitan Board of Health as that was the first time an American community had successfully organised itself to conquer an epidemic”.

From the above you can see that it was the need to combat epidemic diseases that were rampage America at that time that led to the introduction of public health and the establishment of Board to deal with the emerging public health diseases which were affecting large number of the population. In order to ensure the effectiveness of the Board in dealing with the issues of disease prevention and control, as well as promotion of health public health laws were created to empower the Board to deal with all issues relating to public health. The role of

public health laws in public health promotion is very crucial and as Wing, Mariner, Annas and Strouse (2007) points out "legislative and administrative law can be extremely effective tools in the promotion of public health".

However, the Board was set and authorised to work with the police in the promotion of public health and safety, and were latter required to enforce and execute the sanitary rules and regulation. Staff of the board then included physician, health inspectors, lawyers, engineers and the police. Their duty was to ensure proper erection of buildings, evacuation of refuse, cleanliness of premises through inspection, ensure proper drainages, removal all public nuisances, serve notices and orders to abate nuisances and appear to answer allegation of violation of public health laws, undertake general and gratuitous vaccination, isolate those having diseases such as small-pox as well as take steps to prevent the occurrence of diseases and control diseases which will threaten public health and safety. It was upon this foundation that modern America public health system and laws were built.

In Nigeria the history of public is also traceable to the outbreak of diseases such as Cholera, Yellow fever, Yaws, Chicken pox and Small-pox in the mid 20th century. Although medical service started in Nigeria with the establishment in 1860s when the Sacred Heart Hospital was established by Roman Catholic missionaries in Abeokuta public health was not introduced until later. Throughout the ensuing colonial period, the religious missions played a major role in the supply of modern health care facilities in Nigeria (Ibet-Iragunima, 2006). This was followed by the colonial health system which was also largely hospital or curative it was not until the middle of the 19th century that Dr. Williams a Briton carried out the first series of vaccination in Nigeria (Kale, 2006). The increase in epidemic diseases like the once listed above led to establishment of the medical auxiliary schools in Zaria, Jos, Maidugrui and Ibadan to train Rural Health Attendants and Health Inspectors to undertake public health services just similar to those render in America during the period of their epidemic. This also coincided with enactment of relevant public health laws to ensure both environmental sanitation and disease control.

In 1978, global history of public health changed gear at Alma-Ata, Kazakh Republic, former USSR, when primary health care (PHC) was universally adopted as the strategy for achieving Health for All (defined as a level of health that guarantees socially and economically productive lives) (Aja, 2001). Primary Health Care was defined as:

> *Essential health care based on practical, scientifically sound and socially acceptable methods and*

> *technology made universally accessible to individuals and families in the community through their full participation and at a cost the community and country can afford to maintain at every stage of their development, in the spirit of self-reliance and self-determination.*

The key components of PHC when it was launched included: community mobilisation and involvement; health education and promotion; community mental health; care of the aged and the handicap; oral health care; control of communicable and non-communicable diseases; provision of essential drugs, water and sanitation; treatment of minor health and injuries; provision of good food supply and nutrition; maternal and child health care including family planning and immunisation and child survival. According to Abubakar (2007) with the adoption of the PHC concept which was christened Basic Health Service Scheme the training of a new care of health workers who would be able to deliver the goals of PHC became necessary. This led to the training of Community Health Practitioners and the establishment of Schools of Health Technology. Similarly, medical schools were restructured to train Community Physician as Medical Officers of Health to render public health service in the rural areas with the Local Governments as the operational base (Abosede, 2003).

From the discussion so far you can see that the history of public health and public health laws in Nigeria is similar to that of the United States and this seems to be situation in most countries of the world.

3.2 DEFINITION OF PUBLIC HEALTH AND PUBLIC HEALTH LAWS

We shall now briefly consider the definition of public health and public health laws. Just like most social and legal concept the definition of public health is very slippery and as Frenk (1992) states “the concept of public health is charged with ambiguous meanings”. According to Frenk public health has five different connotations. First, it equates with governmental action, that is, the public sector. Secondly, and more broadly it embraces the community as a whole-the public – and not the government (meaning the citizenry). Third, public health is directed towards non-personal health services, but services affecting the environment or the community. Fourth, it entails preventive services which are directed at a particular group of people such as children and women or disease control such as HIV/AIDS and Malaria control or polio eradication. Finally, the term public health problem is sometimes used to refer to illness that are

particularly dangerous such as the epidemic associated with tuberculosis or HIV/AIDS.

Acheson (1988) defined public health as "the science and art of preventing disease, prolonging life and promoting health through the organised efforts of society. From the above discussion public health can be defined as that branch of medicine which deals with the science and art of preventing and controlling diseases, prolonging live, promoting health and rehabilitating the sick through the combined effort of the government, community and individuals. The key point you need to know about the function of public health is that it is aimed at:

- Promotion of health, including tackling health inequalities
- Quality and clinical standards that is clinical governance
- Protection of public health and the management of risk (Holland and Stewart, 1998).

Public health also includes environmental health and laws because in the prevention of diseases a healthy environment that is pollutant free is essential. It also entails provision of adequate nutrition and housings. The remit of public health is quite broad because it cuts across several fields including health, education, agriculture, environment, land and housing, water, industry and works. However, quite often public health has been confused and mixed up with medical practice, especially clinical practice and this tend to affects its effectiveness in the disease control and prevention. The basic function of public is to determine disease pattern among the population, their causes and ways of preventing and recording deaths births, changes in population and other social behaviour patterns, assessing health needs and evaluating services to ensure better health of the society as a whole and not individual personal health care. However, the profession of public health especially doctors started in England in 1948 (Hunter, 2003) which is similar to the time the training of Rural Health Superintendents and Sanitary Inspectors started in Nigeria.

Public health laws on the other hand which include environmental health law is that branch of law which is concerned with the regulation of the conduct of public and private institutions and individuals to ensure the maintenance of a wholesome environment, prevention of disease and promotion of health to ensure a healthy individual, community and nation. It is aimed at ensuring the complete physical, mental, social and spiritual well-being of the individual and the community at large through the collective efforts of all by obeying relevant laws and standards prescribed by law.

3.3 SOURCES OF PUBLIC HEALTH LAW

We shall now consider the sources of public health laws. There are several sources of public health laws because public health cut across several fields of human endeavour. They include; the Constitution, Federal, States and Local Government environmental protection laws, law of torts dealing with nuisance, trespass and negligence, criminal law, town and country planning laws, labour laws, land law, consumer protection laws, drug laws, human rights laws and international laws (Bell and McGillivray, 2008). We shall examine each of these sources briefly to see how they are sources of public health laws.

First the 1999 Constitution is a source of public health laws because in section 20 it provides that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. Since water, air and the land because food is derived from land and the forest have direct bearing on the public health of the citizens, it then follows that the constitution is a source of public health. Although, this provision is non-justiciable, however, by the section 24 of the Act domesticating the African Charter on Human and Peoples' Rights it is actionable if anybody pollutes the water, air or land or threatens the wild life. Also section 33 guarantees right to life which can be interpreted to include right to clean environment because an unhealthy environment can lead to death.

Another source of environmental or public health laws is Federal Government, States and Local Government legislation dealing with the environment such environmental protection laws, sanitation laws and industrial laws. They are sources of public health laws because they prescribe pollution levels that are allowed, defines environmental offence and processes of prosecution as well as punishment, refuse collection and disposal procedures among other. And these no doubt have direct consequences on the health of the citizens.

The other source of public health laws is town and country planning laws. Town planning and country planning laws stipulate how and where buildings should be erected to ensure they are suitable for human habitation, avoid overcrowding, adequate ventilation, proper drainages, preservation of green areas and general maintenance of clean towns and country. Since housing is a key determinant of health status and good drainages can reduce the incidence of mosquitoes breeding and by extension malaria, then it is a source of public health laws. This is because wrong erection of building, poor housing conditions and non-maintenance of drainages are regarded as public health offences.

Equally, the law of torts dealing with nuisance, trespass and negligence are sources of public health laws because nuisance can cause public health

problems. And nuisance is actionable both as a private and public wrong. While the Attorney General is responsible of commencing action against public nuisance, private individuals can also commence action in case of nuisance, trespass and negligence which result in health hazards or threaten health.

One other major source of public health laws is drugs law because drugs laws also regulate foods and other substances, especially narcotic drugs which are of public health interest. Hence the National Agency for Food and Drugs Administration and Control (NAFDAC) was set up to ensure public health and has been prosecuting those who contravene the provision of its laws with regards food and drugs manufacture, distribution, sale and consumption.

Human rights are also sources of public health laws because human rights guarantee the right to life, health and healthy environment. Therefore, if any action threatens the life of an individual or the society at large it is action. For example, the oil pollution in the Niger Delta is both a breach of human rights and environmental laws.

The last source of public health laws we shall be discussing is international law. International law is a major source of public and environmental law because it provides a lot of laws and policies that are aimed at protecting the environment and by extension public health. For example, the S.24 of the Africa Charter, the 1972 Stockholm Declaration and the 1992 Rio Declaration which is also called Agenda 21 these declarations provide quite a number of principles and policies. Like the polluter pay principles, precautionary principle and the sustainable development principle among others which help to ensure public health.

4.0 CONCLUSION

In this unit our focus was on the history of public health and public health laws, the definition of public health and public health laws and the sources of public health laws in Nigeria. It is believed you have learnt about the history of public health and public health laws, the definition of public health and public health law sand the various sources of public health laws in Nigeria. You will recall we gave the history of public health and public health laws in Nigeria and the United States of America, we defined public health and public health laws and enumerate several sources of public health law s in Nigeria.

It is hoped that you can now give the history of public health and public health laws, define public health and public health laws and mentions some sources of public health laws in Nigeria.

5.0 SUMMARY

The focus of this unit was on the history of public health and public health laws, their definitions and the sources of public health laws in Nigeria. We have described the history of public health and public health laws, defined what we mean by public health and public health laws and listed and briefly discussed several sources of public health laws in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly describe the history of public health in Nigeria.

2. (a) Define the term public health and public health laws in your own words

   (b). List and briefly discuss four sources of public health laws in Nigeria.

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UNIT 7: TYPES OF PUBLIC HEALTH LAWS AND PRINCIPLES

1.0 INTRODUCTION

In the is unit we shall be considering some types of public health laws and principles which guide the relationship between the individual, organisations and the government and between the various levels of government with regards to provision of public health services and environmental protection.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- List and describe some public health and environmental laws
- List and describe some environmental law principles

3.0 MAIN CONTENT

3.1 TYPES OF PUBLIC HEALTH LAWS AND PRINCIPLES

Public health or environmental health laws as we have discussed in unit six are laws made to regulate public health services and ensure environmental protection a breach of which attracts sanction or punishment. In this unit we shall now try to discuss some types of public health laws and environmental law principles. There are several types of public health and environmental laws and principle and they intend to regulate different aspects of public health and the environment in order to ensure a healthy society. They cover issues such as refuse collection and disposal, notification of epidemic and quarantine services, air pollution, water pollution, noise pollution, building erection, sales of food, disposal of corpse and other carcases, land pollution, industrial waste disposal, toxic waste disposal, drug testing and immunisation or vaccination, environmental impact assessment, petroleum exploration and exploitation, the polluter pay principle, the precautionary principle and the principle of sustainable development. The list is endless but for the purpose of this course and unit we shall examine the laws covering these aspects of public health and environmental laws.

First types of public health law we shall be discussing is the solid waste and refuse disposal law which regulates the collection, treatment and disposal of all solid and hazardous refuse and waste from households, industries and other sources. It also include maintenance of the aesthetic beauty of dwelling places, the environment through provision of green areas, pest and vector control, safe

water supply, maintenance of drainage, good refuse bins and gutters. This is provide under section 15 of the Federal of Environmental Protection Agency Decree No. 58 of 1988 and 59 of 1992 which amended the principal Decree now Act of the National Assembly. The National Guidelines and Standards for Environmental Pollution control in Nigeria, 1991 and the Pollution Abatement in Industries and Facilities Generating Waste of 1991. And the various State Environmental Protection Agency laws especially the State Environmental Sanitation laws.

Another type of public health law is disease notification and quarantine service law. This is law prescribes that government at levels including the international community should notify the general public of the occurrence of certain diseases which are referred to as the International notifiable diseases. The World Health Organization *International Health Regulations 1969* requires the reporting of some diseases to the organization in order to help with its global surveillance and advisory role. The current (1969) regulations are rather limited with a focus on reporting of three main diseases: cholera, yellow fever and plague. The revised *International Health Regulations 2005* (which to entered into force in June 2007) has broaden the scope to include other emerging diseases such as Avian Influenza, SARS, Ebola virus, Mad cow disease among others and is no longer limited to the notification of specific diseases. Whilst it does identify a number of specific diseases, it also defines a limited set of criteria to assist in deciding whether an event is notifiable to WHO.

Similarly, persons suffering from such disease are expected to be isolated, while those who are suspected to have been exposed to the disease and are likely to suffer it are quarantine to ensure they are not in position to spread the disease to other members of the public (Wings et al, 2007). Although, the two terms are sometimes used interchangeable, they mean different things and process. In the case of isolation it entails keeping a patient known to have a contagious disease separate from other people. While quarantine means steps that restricts the movement of a well person who may have been exposed to a contagious disease and may present the risk of transmitting it to other people. It may involve sealing off a ship, house or an areas thought to harbour the disease (Wings et al, 2007). It is one of the rare instances when a person's freedom of movement or liberty may be derogated. In fact in some countries like Kenya you must possess a valid yellow fever vaccination card in order to gain entry. However, the law also requires the various government to take immediate measures to combat the spread of such diseases and where unable should seek assistance.

The next type of public and environmental law we shall be examining is the air pollution law which prohibit the emission into the atmosphere chemical

substances that are injurious to human health and limit the emission of carbon dioxide and green house gases. These substances do not only have harmful effect on human health but also deplete the ozone layer which has led to acid rains in the United Kingdom, global warming, rise in level of sea water, deforestation and desertification which is put at 100,000km^2 and 48km each year (Bell and McGillivray, 2008). Air pollution is regulated by the Factories Act. Cap. 126 LFN, 1990, the Federal Environmental Protection Agency Act Cap 131 LFN 1990, 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1992 Framework Convention on Climate Change among others.

One other type of public health law is water pollution law which prohibit the dumping into water any hazardous waste that is capable of causing harm to human and marine life. Water pollution is one of the most common sources of pollution because industries, especially petroleum exploring areas like the Nigerian Niger Delta area often discharge their waste into water or inadvertently cause pollution. Water pollutant, especially mercury can be very harmful to human when consumed at the secondary stage from sea foods. The first major incidence of water pollution resulting from mercury poison was the Minimata Bay pollution disaster in Japan in the year 1959. This resulted in death of domestic animals like cats, fishes and humans based on the level of pollution and the danger pose by the mercury fishing and other marine life would resume there until the next 1000 years. This show how dangerous mercury could be when discharged into water. Water pollution is regulated by several laws including the Water Workers Act, 1915, the Mineral Act, 1917, Public Health Act, 1917, the Petroleum Act, 1969, Sea Fisheries Act, Cap 401 LFN 1990, the River Basin Development Authority Act, Cap 396 LFN 1990, Oil in Navigational Water Act, Cap 339 LFN, 1990, Exclusive Economic Zone Act, Cap 16 LFN 1990, the Law of the Sea Convention, 1982 and the Federal Environmental Protection Agency Act among others.

We shall now consider the law relating to drugs trial and vaccination. This is a public health law which requires that the consent of volunteer must be obtained and the implication of the drug and vaccine trial be made known to them before the drug or vaccine trial is conducted. A breach of this law could lead to serious civil litigation that would result in payment of damages. An example, which is handy here, is the case of meningitis vaccine trial by Pfizer in Kano which resulted in some death and has become a subject of protracted litigation between the victims and Pfizer on the one hand and the Kano State Government and Pfizer on the other hand. Usually drugs and vaccines though mostly tried on animals are also sometimes tried on humans provided proper procedure for the trial has been followed.

Noise pollution law is also another type of public health law. Although, in its early stage it was targeted at factories to ensure that the noise they generate does not cause hearing problems to their staff. However, this has change noise pollution law is now wider and covers generation of noise from industries, other commercial outfits, households, sporting areas, recreational facilities, generating sets, vehicles and even construction sites. It is regulated by the Factory Decree of 1987, Federal Environmental Protection Agency Decree of 1992 and the National Environmental Protection (Pollution Abatement Industries and Facilities Generating Waste Regulation of 1991 especially section 2 of the regulation is of particular relevance in this case. It empowers both government agency involved environmental regulation, individual and communities to monitor and report any noise level that has exceed 30% decibel. The law also require industries to have and install pollution control monitoring and control unit, and where possible out source these services to ensure compliance.

Another very important public health law is the law that regulates the manufacture, production, distribution and sale of drugs, food and food products. It would be necessary to briefly differentiate between food and food product. Foods are substances that are already in state of consumption, for example, yogurt, beans cake, bread and margarines. While food products are semi finished products which need to be further processed before they can be consumed, for instance, cow milk for the production of yogurt, flour for bread, beans for beans cake among others. The law requires that these products must be wholesome and safe for human consumption from the point of production to the point of retail and consumption. Thus, ordinarily it is an offence to expose food and food products that human beings would consume on the street, but unfortunately the law enforcement process is so weak that food are exposed with flies perching on them even in some cases Environmental Health Officers who are suppose to enforce the law, buy and eat such product without complain.

Also drugs must be manufactured to ensure compliance with set standards. The laws regulating food and drugs in Nigeria include the NAFDAC Decree No 15 of 1993 which expanded the 1974 Food and Drugs Decree No 35 and the Standard Organisation of Nigeria (SON) Act, 1971 amended 1984 . It is the duty of the agencies set up by these laws to monitor food, food product and drugs manufacturing, distribution and sale. Hence in recent past NAFDAC has ban the use of potassium bromate in the production of bread and withdraw from circulation several fake and counterfeit drugs.

However, because of space we shall not be discussing the other public laws listed, but will begin the consideration of some environmental or public health law principles. The first principle we shall consider is the polluter pay principle

which is says that the polluter who is responsible for the pollution should meet the costs of its consequences or the remedying of the effect of the pollution (Bell and McGillivray, 2008). What this principle simply means is that whoever that causes the pollution of either the air or water or land should pay for the cost of removing the pollutant from the environment. Unfortunately, everybody is a polluter and so we all pay for the cost of removing the pollutant indirect, this is charged by producers as part of the cost of goods and services they provide. However, the cost of major pollutions such as oil spill or discharge of hazardous waste into water or emission of harmful gas into the air which exceed permissible limit is always borne by the polluter the consumer is not involved.

The next principle we shall be discussing is the precautionary principle which states that since science cannot predict precisely and absolutely how, when, or why adverse impacts will occur, or what their effect may be on human or the ecosystem. The absence of such proof should not prevent or lead to the postponement of any cost effective measure that will prevent environmental degradation (Bell and McGillivray, 2008). This is principle is about prevention is better than cure or what some scholars will refer to as is better being 'safe rather than sorry'. Basically, it encourages stakeholders not to postpone any measure that could save the environment even when there is no proof or evidence that this is the likely consequences of a particular environmental action or decision.

The other principle is the sustainable development principle which is based on the concept that development should be carried in such a way that it meets the needs of the present generation without compromising the ability of the future generation to meet their own needs. This principle is the basis of most international, regional and national laws on environmental protection. The concept is predicated on the assumption that there is an intergenerational relationship and each generation must behave in manner not to compromise the survival of the next the generation.

There are yet other principles of environmental law which include: the substitution principle which is an emerging principle it basically seeks to stipulate that dangerous or harmful procedure or substances including production, consumption and recreational system should be replaced with less dangerous processes. This principle is associated with the Best Available Technologies Not Entailing Excessive Costs (BATNEEC) principle. The other is the public participation principle which seeks to encourage wide consultation and adequate involvement of the public and dissemination of information before environmental related decisions are taken and the likely effect of such actions should be made public. The next principle which you might want to know is the

integration principle which seeks to encourage the integration of environmental friendly policy in areas of the society (Bell and McGillivray, 2008).

From the above discussion you can see that there are several types of public health laws and environmental law principles which regulate peoples conduct regarding the environment and public health issues.

4.0 CONCLUSION

In this unit our focus was on the various types of public health laws and public health principles. It is believed you have learnt about some public health laws and environmental health principles

It is hoped that you can now mention and describe some types of public health law and environmental law principles in Nigeria.

5.0 SUMMARY

In this unit our focus was on the various types of public health laws and public health principles. We have mentioned and described several public health laws and environmental law principles in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1. List four types of public health law you have learnt

2. Briefly describe three of the types of laws you have listed in your own words.

3. (a) What do you understand by the principle of polluter pay?

   (b). List two other environmental principles you have learnt in this unit.

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UNIT 8: PUBLIC HEALTH LAW OFFENCES

1.0 INTRODUCTION

In this unit we shall be discussing public health offices and defences available to an offender or accused. However, before we examine the two main issues we shall define what we mean by the term offence.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Define an offence
- List and describe some public health offence
- Mention and explain some defences available to public health law offender.

3.0 MAIN CONTENT

3.1 DEFINITION OF OFFENCE

The term offence and crime are often used interchangeably, especially in Nigeria where the criminal code did not clearly define offence. However, according to Okonkwo and Nash (2003) “an offence is an act or omission which is rendered punishable by some legislative enactment”. Basically what they are trying to say is that when a person or group of persons fail to undertake an act which is an omission or undertake an act which is wrong the omission or wrongful act attracts punishment based on the law the person or group of persons would be said to have committed an offence.

We can also define an offence as any attempt or act or omission which is wrong in the eyes of law for which there is a prescribed punishment or sanction. What we are trying to say here is that if one attempt to carry out a wrongful act or carry out wrongful or omit to carry out a rightful act that has a punishment or sanction attached to it, the person would be said to have committed an offence. We added sanction because some offence may not require punishment. However, for a person to be said to be guilty of an offence there are two essential elements that must be established or proven by the prosecutor. First, the physical element of the offence must be established or proven which is often referred to as the *actus reus* (guilty or wrong act) and the mental element or intention which is referred to as the *mense rea* (guilty mind) these must be established and both must meet before a crime can be said to have been committed and for a conviction can be successful (Okonkwo and Nash, 2003).

What the above simply means is that one cannot be said to have committed an offence if his physical action and intention do not meet and cannot be proven. For instance, let take dumping of refuse on the street. For a person to be guilty of dumping refuse on the street, it has to be established that he intended to dump the refuse on the street and he actually did dump the refuse on the street. But if for example, he was just walking on the street and something fell of his bag unknown to him. He cannot be said to have committed an offence because his intention was not to dump the refuse on the street although the refuse has been dumped. This is necessary so that we know when to say somebody has breached public health laws or committed public health offence. Equally, it will be important for you to know that there are basically three types of offence: felony which is defined by the law creating it and punishable with death or imprisonment of not less than three years; misdemeanours which are offences punishable with a prison term of not less than six months and not up to three years; while simple offences are those that are neither felony nor misdemeanour. Most public health offences are simple and misdemeanours.

3.2 TYPES OF PUBLIC HEALTH OFFENCES

Just as there are several public health and environmental laws so there are public health offences but for the purpose of this unit and course we shall examine a few which we consider very important and then provide a list of some public health offences listed in the Lagos State Environmental Sanitation Edict now Law of 1998. Some common public health offence includes but not limited to: nuisance, trespass, negligence, poor housing, overcrowding, sale and distribution of unwholesome food among other which you will find in the list that would be provided later in this unit based on the Lagos State Law.

3.2.1 **NUISANCES**

One of the commonest and possible the oldest know public health offence is nuisance. Nuisance can be defined as the presence of any matter whether solid, liquid or gas that is capable of affecting the enjoyment of a healthy environment and can cause injury or threat to public health. Nuisance include; poor or lack of sanitary conveniences in a home or other public places, accumulation of rubbish and other decaying or decomposing materials (corpse and carcases or foodstuffs), improper disposal of industrial waste, presence of rodents and their holes, overcrowding, poor ventilation, structural defects to a building and noise. Noise that amounts to a nuisance can either be continuous or intermittent, but in either case it must affect the comfort or quality of life of a reasonable person. It is the statutory duty of the Local Government authority using Environmental

Health and Other Health Officers to inspect and remove all nuisances (Ormandy and Burridge, 1988).

Furthermore, nuisance could be public or private nuisance. Public nuisance is that which affect or that is capable of affecting the general public which is actionable at the instance of the Attorney General of the State. According to The Free Dictionary by Farlex, (2011) Private nuisance affects an individual more particularly and is actionable in tort by that individual. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual Trespass or physical invasion to the land. In the case of *Reads v. Ltons & Co. Limited* the English Court defined private nuisance as any unlawful interference with a person use or enjoyment of their land or some rights over, or in connection with it. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community. Conversely, public nuisance was defined in case of *Attorney General v, P.Y.A Quarris* as an act which materially affects the reasonable comfort and conveniences of a life of a class of Her Majesty subjects (*people*) who come within the sphere or neighbourhood of its operation (*or existence*). We shall consider the remedies available to victim(s) of nuisances when considering the enforcement of public health laws. Public nuisances appears wider in scope as it covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. This makes nuisance both a civil and criminal wrong.

3.2.2 **TRESPASS**

Trespass like nuisance constitute a wrong both as civil and criminal wrong. Trespassing is the act of illegally intruding on another person’s property that you do not have permission to be on. Initially trespass was any wrongful conduct directly causing injury or loss; in modern law trespass is an unauthorized entry upon land (The Free Dictionary by Farlex, 2011). It has also extended to non-personal entry on the land of another. For example, if a tree or a crop in ones compound extends to the air space or land or some liquid escape from one compound to that of other it is trespass. Trespass can also include mere resting on the fence or gate of another without his consent, even government agents could be liable for trespass if they gain entry into any compound without first obtaining consent to enter.

Furthermore, trespass could either be direct or indirect. It is direct where the trespasser is actually on the land and it is indirect when it he is not actually on the land but his act of negligence has caused an object to interfere with land of

another just as in the example given above of the trees, crops and liquid escaping. However, to succeed in trespass it must be proven that there was direct entry or contact with the land, there was intention to enter or negligence and there is a link. In terms of public health somebody will be said to be guilty of trespass if trees in his compound protrude into the compound of another or liquid or other wastes escape from his compound into the compound of another thereby affect the enjoyment of their land.

3.2.3 **NEGLIGENCE**

Negligence is another public health offence. It is very similar to the two earlier discussed concepts, especially nuisance because it is actionable both in tort (civil) and in crime (criminal) law. However, there is not much distinction between negligence in civil and criminal proceeding, a distinction only arises when the negligence is gross as it relates to offences that may require the imposition of a sentence of life imprisonment (Okonkwo and Nash, 2003). Negligence can be defined as any failure of the accused to exercise reasonable care that has resulted in the injury of another or has caused or capable of causing threat to the health and safety of another. Negligence can also be defined as any conduct that falls below the standards of behaviour established by law for the protection of others against unreasonable risk of harm. A person would be said to have acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances (The Free Dictionary by Farlex, 2011).

However, for proceeding in negligence to be successful, the plaintiff in the case of civil proceedings or the prosecution in the case of criminal proceedings must establish some essential elements which are sometimes referred to as the ingredients of the offence. They include: the fact that a duty of care was owed by the defendant to the victim; there was or has been a breached of this duty of care; that damage has resulted from the breach of the duty of care; and that the damage was foreseeable at the least by a reasonable man. See the case of *Lochcelly Iron & Coal Co. V. Michelin.*

It will be important for you to know that in some countries because of the close similarity and inseparable nature of negligence and nuisance as every act of negligence lead to nuisance and every nuisance is as a result of negligent act. The law of negligence and nuisance has been amalgamated, for example, in the United Kingdom they were amalgamated in 2005 (Buckely, 2011).

3.2.4 **POOR HOUSING**

The next public health offence we shall be considering is poor housing which includes poor erection of a house, defects on the building, poor ventilation and overcrowding. Although some are clearly different public health offence, we have decided to discuss them under this broad heading because of space and the requirement of the course.

A poor house is that which does not meet the basic physiological and psychological requirement for human life and comfort has no protection against infectious or contagious disease and accidents (Ormandy and Burridge, 1988). A good house must meet these requirements. According to Ormandy and Burridge, (1988) some of the physiological requirements include: protection against excessive noise, adequate space for exercise and play for children, provision for heating and cooling, adequate daylight illumination and avoidance of undue daylight, provision for admission of direct sunlight. Some of the psychological requirements include: provision of privacy for individuals and normal family life, provision of opportunity for normal community life, good aesthetic beauty of the house and surrounding, easy to carry out cleaning without much physical and mental fatigue and conform to the prevailing social standard within the community. Protection requirements include: adequate supply of safe and wholesome water and sanitary facilities, toilets must be made to minimise the danger of transmitting diseases, protection against pollution, sufficient sleeping space to minimise risk of the disease spreading, proper preservation of food and foodstuffs to avoid contact with vectors and pest, fire escape routes, protection against road traffic and home accidents, electric shock, burns, and gas poisoning.

Ordinarily, a room of 10 x 12 feet which is a standard room is supposed to be occupied by four persons. That is man and the wife and two children. Therefore, any occupation beyond this is regarded as overcrowding. Although defect is what is often used when describing house that is not suitable for human habitation, however, it advisable to use specific words to describe the nature of defect or inadequacy in the building, for instance, cracked walls, leaking roof, sagging ceilings, rotten woods, missing zinc or roofs, likely to be dangerous (Ormandy and Burridge, 1988). It is the duty of the Local Government Authority to ensure that buildings are safe for human habitation through regular inspection. Although, in recent past there has been a running battle between Environmental Health Officers and Town Planners as to who has the responsibility of inspecting houses.

3.2.5 **SALE AND DISTRIBUTION OF UNWHOLESOME FOOD**

The last public health offence we shall discus for the purpose of space as earlier mentioned is the distribution and sale of unwholesome. It is a public health offence to distribute and sell food that is not good for human consumption. For example, meat containing tapeworm, fish killed using chemicals or food containing other contaminants. This include sale of grains treated with chemical as this can result in public health diseases and fatality as was the case during the beans poison in 2002 where bean meant for planting treated with chemical were sold for consumption resulting in a lot of deaths, especially in the northern part.

Also, it include proper display of foods, for example, meat, buns, meat-pie, moi-moi and other already made foods (fast food) must be displayed in a showcase and not exposed to dust or flies which unfortunately is the case. Most food vendors do not display their food complying with the law. It is the duty of health officers to ensure that food for public consumption is wholesome and properly displayed.

Some other very common public health offences include obstructing a health offence from performing their duties and assaulting them during the performance of their duties. It is an offence for any person(s) to prevent a public health officer or any person having relevant authority from either serving a notice or an order or enter a premises for the purposes of inspection after obtaining relevant consent or authority to do so.

Equally, it is a public health offence to disobey or ignore a valid notice to abate any nuisances. Once a notice of abatement has been served on the appropriate person whether it is a prohibition or statutory abatement notice the occupiers of the premises or the person(s) responsible for causing the nuisance must abate the nuisance otherwise they would be guilty of a public health offence (Wolf, White and Stanley, 2002). You still need to know that both the prohibition and statutory abatement notices can be served together depending on the prevailing circumstances. For example, where there is evidence of the likelihood that the nuisance would reoccur or has been reoccurring. See the case of *Peaty v. Field* (1971) 1 W.L.R 387

3.2.6 **LIST OF OFFENCES UNDER THE LAGOS STATE ENVIRONMENTAL SANITATION EDICT 1998**

Below is a table showing some public health offence and their penalty under the Lagos State Environmental Sanitation Edict, 1998.

S/NO	TYPE OF OFFENCE	MINIMUM FINE	MAXIMUM FINE
1.	Failure to clean sidewalk	N1,000.00	N3,500.00
2.	Failure to clean 18" from curb into street.	N1,000.00	N3,500.00
3.	Littering/throwing out	N2, 000.00	N5,000.00
4.	Sweep out	N1,000.00	N3,500.00
5.	Improper use of litter (dust) bin	N1, 000.00	N2, 000.00
6.	Failure to use dust bin	N1, 000.00	N2, 000.00
7.	Failure to cover dust bin	N1, 000.00	N2, 000.00
8.	Improper placement of dust bin	N1, 000.00	N2, 000.00
9.	Loose rubbish	N1, 000.00	N2, 000.00
10.	Exposure of materials	N2, 000.00	N20, 000.00
11.	Failure to separate waste	N2, 000.00	N20, 000.00
12.	Sidewalk obstruction	N10, 000.00	N20, 000.00
13.	Street obstruction	N15, 000.00	N30, 000.00
14.	Commercial waste disposal	N1, 000.00	N2, 000.00
15.	Improper disposal of refuse	N1, 000.00	N2, 000.00
16.	Illegal dumping of refuse	N40, 000.00	N75, 000.00
17.	Posting of bills	N5,000.00	N10,000.00
18.	Removal of City Advertisement	N7, 000.00	N12, 000.00
19.	Erection of structure on road set back	N30, 000.00	N60, 000.00
20.	Failure to clean drainages	N5, 000.00	N10, 000.00
21.	Sewage disposal	N5, 000.00	N10, 000.00
22.	Failure to cover waste trucks	N20, 000.00	N30, 000.00
23.	Waste burning	N5, 000.00	N10, 000.00
24.	Storage of trade waste	N50, 000.00	N55, 000.00
25.	Silt deposit along road side	N25, 000.00	N30, 000.00
26.	Direct dealing with unregistered private refuse contractors	N5, 000.00	N10, 000.00
27.	Unregistered private refuse contractor	N10, 000.00	N50, 000.00
28.	Cutting road by corporate bodies without approval	N10, 000.00	N100, 000.00

3.3 DEFENCE TO PUBLIC HEALTH OFFENCES

The next issue we shall be discussing is defences available to an offender of public health laws or a person accused of breaching public health or environmental laws. A defence is a claim by an accused of the existence of certain facts that exonerate him from criminal liability (Okonkwo and Nash, 2003). What this means is that the person alleged to have committed an offence can point to the fact that based on certain prevailing circumstances he is not guilty of the offence. Some the defences available to a public offender include but limited to the following:

First, lack of notice or notices. For a public health offender to be successfully prosecuted he must have been given a notice to abate the nuisance or stop the breach of the offence. If the prosecuting authority fails to give notice to abate then the offender cannot be guilty of the alleged offence.

The second defence an offender may raise is inadequate or improper notice. The law requires that the relevant agency of government enforcing public health or environmental law make reasonable effort to serve an offender with a notice of finding or the existence of a nuisance or the likely breach or breaching of public health law (Wing et al, 2007). Also the notice must be adequate and must be signed by the proper officer entitled by law to sign it or on his behalf by a proper person entitled to do that on his behalf. See the case of *Plymouth Corporation v. Hurrell* (1968) 1 Q.B. 455. If the notice is not adequate and not properly signed by the designated officer and in the prescribed mode the notice would be said to invalid and the offender cannot be guilty of failing to comply with a notice. See the case of *Graddage v. Harigey London Borough Council* (1975) 1 W.L.R 241

Equally, the notice must be authentic, if the notice served is not an authentic notice, for example, not being served in the proper format and on the proper person. Where the notice is not in the proper format and served on the proper person the notice would be invalid and the subsequent prosecution declared a nullity. See the case of Harris v. Hickman (1904) 1 K.B. 563. Because often enforcement officials and agencies issue informal notices and sometimes serve notices on the wrong people. For example, you cannot serve notice on a tenant it ought to be served on the landlord or his attorney or proper representative if the nuisance relates to structural defects. Thus, if the notice is not in the prescribed form and served on a tenant it cannot pass for a valid.

Another defence an offender can raise is existence of a staying order. A person served with a notice is allowed by law to appeal for the stay of the notice while he takes step to abate the nuisance or preparing to be heard. While this situation

is in existence no prosecution can take place. If prosecution commences while the order of stay has been made it would be a nullity and the offender cannot be convicted (Wing et al, 2007).

Also an offender can raise the defence of accident. That is the offence complained of is due to accident. Accident is a defence for most criminal offences under section 24 of Criminal Code (Okonkwo and Nash, 2003). It simply means that the accused or any reasonable man could never have anticipated the consequence or that it happened not through the wilful act of the accused it is immaterial whether accidental event resulted from an unlawful act. See the case of *R v. Barimah* (1945) 11 W.A.C.A. 49.

Another defence that an offender can raise is that the pollution or the discharge was made as an emergency in order to avoid danger or risk to life and health (Bell and McGillivray, 2008). See the case of Express Ltd (t/an Express Dairies Distribution) v. Environmental Agency (2003) Env. L.R 29 where the driver who had a tyre blowout and had an accident which led to spilling of milk was not held liable for breach of public health laws. However, the defendant or the person who did the emergence pollution or discharge must report immediately to environmental protection agency otherwise he would be avail of this defence.

Similar, the offender can raise the defence of contributory negligence in that the act of the plaintiff contributed to the factors that led to pollution. He could also raise the defence of statutory authority meaning that he had authority to pollute, however, the pollution must not exceed the limit permitted for him otherwise this defence will fail where it is established the pollution been complained of has exceeded the limit permitted.

From the above discussion you can see that there are several public health offences and a person accused of committing a public health or environmental health offence has some defence he can raise in order not to be convicted.

4.0 CONCLUSION

In this unit our focus was on the definition of offence and public health offence, the various types of public health offences and the defences available to a person accused of a public health offence. It is believed you have learnt about the definition of offence and public health offences, you have also learnt about the various types of public health offences and the possible defence an offender can raise in his defence.

It is hoped that you can now define offence and public health offences in your won word. List and describe some types of public health offence and defences available to public health offender.

5.0 SUMMARY

In this unit our focus was on the definition of offence and public health offences, the various types of public health offence and the defence an offender can avail himself. We have defined offence and public health offence, mentioned and described several public health offences and the defence to an offence of public health.

6.0 TUTOR MARKED ASSIGNMENT

1. List four types of public health offences you have learnt

2. Briefly describe three of the offences you have listed in your own words.

3. (a) What do you understand by the term defence?

   (b). List two defences available to public health law offender.

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UNIT 9: RIGHTS OF AN OFFENDER (ACCUSED)

1.0 INTRODUCTION

In this unit we shall be discussing the definition of rights, we shall also consider the definition of human rights and some types of human rights. We will equally define an offender and the rights of an offender.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Define rights
- Define human rights
- List some different types of human rights
- List and describe some environmental rights
- Define an offender or an accused
- List and explain some rights of an accused

3.0 MAIN CONTENT

3.1 DEFINITION OF RIGHTS

A right can be defined an entitlement which is endowed on someone and which is not subject to the discretion of another. According to Scott (2009) “Rights are advantageous positions conferred on some possessor by law, morals, rules, or other norms”. What this simply means is that a right is what a person is entitled to because the law or morality has conferred it on him. It is not subject to the discretion of any person or group person and so they cannot decide on when to give to the possessor or the person who is entitle to it. It is different from privilege which is at the instance or discretion of another. A person’s privilege can be withdrawn without reference to him and the law, but a person’s right cannot be withdrawn except the law so provides.

Some rights are conferred based on the person’s status as Scott (2009) rightly points out “one always possesses any specific right by virtue of possessing some status. Thus, rights are also classified by status. Civil rights are those one possesses as a citizen; human rights are possessed by virtue of being human. Presumably women’s rights, children’s rights, patients’ rights, and the rights of blacks as such are analogous”. From the above you can see that certain people are entitle to certain rights while others are not, for example, women are entitled to maternity leave as of right but men are not. Also, children are entitled to

parental care, but are adults are not, law makers are entitled to legislative privileges, but non-law makers are not, so your status sometimes determines the rights you are entitled to. Equally, adults are entitled to vote, drive cars and smoke, but children are not entitle to vote or drive cars or smoke until they are eighteen years old.

3.2 DEFINITION OF HUMAN RIGHTS

The next definition we shall be considering is the definition of human rights. According to Kaczorowska (2010) human rights are body of rules guaranteeing certain rights recognised internationally as inherent in all human beings by virtue of their humanity. They are universal, inalienable, indivisible, interdependent, and apply equally to all human beings irrespective of race, sex, religion, nationality and colour. In the case of *Odogu v, Attorney General of the Federation* (1999) 6 NWLR (pt.450) 508 the Supreme Court of Nigeria stated that a fundamental right (*human rights*) is a right guaranteed in the Constitution to every person by virtue of being a human being. While Akwara et al (2010) argue that "it is man's existence within society that accords him the status of human being, which ultimately entitles him to some rights as a consequence of his humanity.

The point you need to note is that human rights are right entitled to every human being because he or she is a human being and they are universal meaning they are the same everywhere and every time, they inalienable meaning they cannot be taken away and they are independent meaning the rights are related and complementary to each other. It does not matter whether you are a black man or white man, a woman or a man a child or an adult a Nigerian or a non-Nigerian.

Although, human rights are traceable to the American and French revolution of 1775 and 1789 respectively, however, the modern concept of human rights is post-World War II event. In fact it was in a bid to find solutions to continued threat to human life, peace and international security and avoid the atrocities of the first and second world wars that led to the establishment of United Nation which Charter was adopted in 1945 to replace the League of Nation established in 1919. The United Nations (UN) subsequently established the International Law Commission in 1947 to codify International Customary laws which are common practice among civilised nation into laws that would be adopted to guide the relationship between nations and regulate some nations treat its

citizens. The led to the codification of the first human rights document called the Universal Declaration of Human Rights (UDHR) which was adopted in December, 1948. The document was intended to take after the America Bill of Rights and was to be called International Bill of Rights but because of disagreement and dissenting views it was made a declaration which ordinarily has no legal binding force. However, state practices and the twin Covenants adopted after it in 1966 that is the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) has conferred a binding force on it (Kaczorowska, 2010).

The UDHR which is the locus classic of human rights in Article 1 provides as follows: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Article 2 “everyone is entitled to all rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty”. The above has confirmed our earlier definition of human rights and what they stand for.

3.3 TYPES OF HUMAN RIGHTS

Before discussing the various types of human rights it would be important that you know that just like the theories of law there are several theories of human rights. According to Dembour (2010) there are four schools of thought about human rights. The first is the natural school of rights which argue that human rights are inherent in human being and given by God. The second is the deliberative school which argue that human rights are not given by God but are agreed upon by members of the society and whatever they agree as human rights are the rights people would be entitled. The third is the protest school of rights whose scholars argue human rights are neither given nor agreed upon rather they are fought by the oppressed and to assuage the oppression from the rulers and that one victory does not mean the end of injustice. While the last is the discourse school which argue that rights are neither given, agreed nor fought for rather they exist because people talk about them.

Bentham on his part argues that human rights are complete ‘Nonsense’, ‘Mischievous nonsense’. ‘Nonsense on stilt's and there is nothing like human

rights. For example, he argues that human rights talk about right to equality. To him there is nothing like right to equality because there is always a class, for example, the tenant cannot be equal to the landlord, the servant equal to the master, the child equal to father, the employee equal to employers. So why talk about right to equality when human beings are never equal and can never be treated equally, that is nonsense, tall nonsense on silt to talk about human rights, rather we should talk about how the law is made to ensure the utility of the majority. However, we shall stop the discussion of theories of rights here since that is not the aim focus of this unit and session.

Some scholars Vasak (1979) argued that there are three broad types of human rights. These include: the right to liberty which are those rights contained in the ICCPR and often referred to as fundamental human rights in most national Constitutions including the 1999 Constitution of the Federal Republic of Nigeria. And these rights seek to protect the individual against the arbitrariness and tyranny of the state. They are also called the first generation rights because they associated with the American and French revolution of the 18^{th} century which was the first time the demand for these rights were made and granted.

Second types of rights according to Vasak are the equality rights which are found in the ICESCR which are aimed at ensuring the economic and social equality of all human beings. They are largely economic, social and cultural rights; associated with the communist movement of the 19^{th} century which attempted to obliterate the exploitative capitalist system to enthrone welfarism and linked with the Mexican and Russian revolution. They are listed as fundamental objectives and directive principles of state policy. They are aspirational rights and non-justiciable in most national constitution including Nigeria and are also referred to as the second generation rights.

The third types of human rights according to Vasak are the solidarity or group or collective rights which are aimed at protect the group as a whole and not individual. They also seek to involve all stakeholders in the society to ensure their achievement. They were proposed by the third world countries to ensure even development, self-determination, reduce the gross economic inequality between the developed and the less developed nation especially, freedom from colonial and oppressive western policies. They are contained in the Vienna Declaration and Programme of Action 1993. They are post World War I and II rights.

However, some scholars have argued that it is diversionary to divided human rights into generations because human rights are indivisible, inalienable, interrelated and interdependent, cumulative and overlapping as we need solidarity and economic rights to defend our civil and political rights. While

others argue that human rights should be divided because some rights are most important and easily realisable compared to others, for example, the civil and political rights can be easily guaranteed by all countries no matter their economic status. But the economic, social and cultural rights cannot be guaranteed by all countries. For example, most countries cannot provide housing for all, education for all, health for all and food for all. Therefore, if the economic, social and cultural rights are made as fundamental like the civil and political rights countries would be brought to their knee because of litigations arising from failure to provide these rights. Based on this the economic, social and cultural rights should be made aspirational so that each country can fulfil them according to their economic status and pace of development.

The fundamental human rights in the 1999 Constitution which if breached can lead to a legal action for their enforcement that are generally listed in Chapter IV of the constitution include:

Section 33 Right to life which seeks to protect against unlawful taking of any citizens life except as prescribed by law and in fulfilment of a court order as a punishment for some specific offences like murder.

Section 34 Right to dignity of human person which seeks to prohibit torture or inhuman or degrading treatment or slavery or servitude or forced labour.

Section 35 Right to personal liberty which seeks to prohibit unlawful detention of any person even if found to have committed an offence without the lawful orders of court of competent jurisdiction. Although, the Police and other Security agencies have powers to arrest and detain someone they are expected to take the person within 24 or 48 hours before a court otherwise would be breaching the fundamental rights of the person to liberty and a habeas corpus proceeding could be commenced to enforce the citizen's rights.

Section 36 Right to fair hearing which seeks to ensure that any person alleged to have committed any offence should be given a fair trial. This is one of the rights of an environmental health or public health law offender we shall be considering in detail later in this unit. This right is one of the widest rights in the constitution.

Section 37 Right to private and family which seek to protect the privacy of the individual including his correspondence and home against unlawful interference and entry.

Section 38 Right to freedom thought, conscience and religion which seeks to allow people hold different opinion and belief as well as freedom of worship.

Section 39 Right to freedom of expression and the press which seeks to allow people publicly air their view and prohibit the proscription of the media. However, the freedom of expression is qualified by libel and other defamatory statements.

Section 40 Right to freedom of peaceful assembly and association which seeks to allow people meet freely and discuss their common problems, form trade unions and political parties.

Section 41 Right to freedom of movement which seek to allow free movement of people within the country; and to also move out of the country within the rem it's of the law.

Section 42 Right to freedom from discrimination which seek to prohibit all forms of discrimination against a person.

Section 43 Right to acquire and own immoveable property anywhere in Nigeria.

Section 44 Right to adequate compensation in case of compulsory acquisition of property which seek to ensure that any person whose property has been taken by government or any other body is paid adequate compensation.
Section 45 Restrictions on and derogation from fundamental rights which is not a right per se but seeks to state circumstances under which some rights could be limited.

Section 46 Special jurisdiction of High Court and legal aid this also is not a right per se but state where a person who feel his right is been or about to be violated should go to seek redress and assistance.

The above are the fundamental rights of a Nigeria citizen which if breached can be enforced through the fundamental human rights enforcement procedure.

3.4 ENVIRONMENTAL RIGHTS

The next issue we shall be examining in this unit is Environmental rights of an individual which simply refers to some permanent entitlement of an individual normally protected by objective rules by virtue of being one of the inhabitants of the environment (Bell and McGillivray, 2008). These rights could be divided into basic and general environmental rights. The general rights include: right to pollute or trade in pollution credits which is right to generate an acceptable of amount of waste or refuse; right to be heard at an inquiry which entail the right to be given fair trial and to make complaint against polluters or violators of environmental health laws; right to bring judicial review action which means

ability to ask for a reversal of a government environmental decision that is capable of causing environmental harm or threat; right of access to environmental information; right to healthy environment; right to clean air; right to clean water and right to participate in environmental decision-making.

While the basic rights include: private rights which is based on the principle of tort to action for breach of a person's environmental right such as action against nuisances, prevention of trespass or unreasonable interference with one's enjoyment of land. The second is public law right which is a procedural right that entails the right to participate in environmental decision-making, access to information, the right to be heard at an inquiry and the right to bring a judicial review action or undertake private prosecution at the instance of the State Attorney General. The third is substantive legal right which are the general basic human rights which we have considered above which are found in extant human rights legislation like the right to life, property and privacy and right to respect for one's home.

3.5 DEFINITION OF AN OFFENDER (AN ACCUSED)

We shall now briefly define an accused or an offender before discussing some rights he is entitled even though he may have violated public health laws. An accused person or an offender is person who is said to have committed an offence punishable by law either by undertaking a wrongful act or omitting to take the proper act. In the case of public health he is person who has committed a public health offence which is punishable by law. He is regarded as a wrongdoer. However, the fact that somebody has committed an offence does not deprive him of the protection of the law, therefore, an offender or accused in public health laws is entitled to some rights and this is what we shall be examining in the next section.

3.5.1 RIGHTS OF AN OFFENDER

One of the rights of an accused in public health laws which is similar to rights of any other person accused of criminal offence is right to personal liberty. The accused is entitled to his personal liberty he cannot be unlawfully detained by public health laws enforcement authorities without the orders of a court of competent jurisdiction.

Another right of offender is right to freedom from torture, inhuman and degrading treatment. A person accused of committing public health offence must not be subjected to torture either by the police or any law enforcement

agents involved in the enforcement of public health laws it would amount to breach of his fundamental human rights.

Equally, a public health offender is entitled to right to privacy and family life. The fact that somebody is breaching a public health law does not empower enforcement agents to unlawfully enter his compound or house. They must obtain a warrant to enter or issue relevant notice. If they forcefully enter without the relevant order of court they would be said to have violated the offender's right to privacy which is actionable.

Again a public health offender has a right to fair hearing and trial. This is very important because if he is not given fair hearing and trial whatever punishment imposed could be upturned on appeal. In fact the trial would be void ab initio. Fair trial entails a lot of issues. First, he must be told the offence he has committed and the offence must be proven by the prosecution, if this is not done and is he tried, the punishment given would be quashed on appeal. See s.36 (6) (a) of the 1999 Constitution and the case of *Nwachukwu v. The State* (1986) 4 S.C. p.378.

Secondly, the offender must be tried in the public except in the case of juvenile who is to be tried in juvenile court. See s.36 (4) 1999 Constitution. Thirdly, the offender must be give adequate time and facilities to prepare his defence including the right to a defence counsel. See s. 36(6) (c) and (d) 1999 Constitution and the case of *Udo v. The State* (1988) 3 N.W.L.R (pt. 82) p.316 Also see *Awolowo & Ors v. Minister of Interior Affairs & Ors* (1962) L.L.R 177 Equally, the offender must be given the opportunity to cross-examine witnesses, call witness and a right to an interpreter if he does not understand the language of the tribunal or the court. See s. 36(6) (d) and (e) 1999 Constitution and the cases of Tulu v. Bauchi Native Authority (1965) N.M.L.R p.343, also *Idirisu v. The State* (1967) 1 All N.L.R p. 32 and the case of *Ajayi v. Zaria Native Authority* (1964) N.N.L.R 61.

From the above discussion you can see that there are several types of rights. Also human rights are entitlements and not privileges. Again, there are some special environmental rights to which individuals are entitled and finally public law offender has certain rights which must be guaranteed.

4.0 CONCLUSION

In this unit our focus was on the definition of rights and human rights, the various types of human rights, the definition of an offender and the rights of an offender. It is believed you have learnt about the definition of rights and human

rights, the various types of human rights, the definition of an offender and the rights of an offender.

It is hoped that you can now define rights and human rights, mention some types of human rights, define an offender and list some of the rights of an offender.

5.0 SUMMARY

In this unit our focus was on the definition of rights, human rights, the various types of human rights, the definition of an offender and the rights of an offender. We have defined rights and human rights we also enumerated some types of human rights, defined an offender and briefly discussed some rights of an offender.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the term human rights in your own words.

2. List and briefly describe four types of fundamental human rights in the Nigeria 1999 Constitution in your own words.

3. (a) What do you understand by the term an offender?

   (b). List three rights of an offender you have learnt in this unit.

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UNIT 10: PROCESS OF ENFORCING PUBLIC HEALTH LAWS

1.0 INTRODUCTION

In this unit we shall be discussing the processes of enforcing public health law. We shall consider the definition of enforcement, list and briefly discuss the various processes in involved or that could be followed to enforce the breach of public health laws.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Define law enforcement
- List some processes involved in public health laws enforcement
- Briefly discuss the processes involved in public health laws enforcement.

3.0 MAIN CONTENT

3.1 DEFINITION OF ENFORCEMENT

Before going to define public health laws enforcement or law enforcement as they mean the same thing both in ordinary criminal procedure and environmental or public health law circle. It is important to say that the method of public health laws enforcement in Nigeria is one of the weakest. And it is more tailored towards domestic offenders instead of industrial and commercial offenders whose activities actually pose more threat to life and physical damage to the environment. Most companies in Nigeria do not have noise monitors or do not even provide respirators to workers working in very hazardous environment. It is also doubtful whether there is any pollution level set for the various types of industries and where certain industry should be sited. In fact the Environmental Sanitation Authorities themselves do not often comply with these standards, for example, we see road sweepers sweeping road without respirators or face mask, refuse truck most times carry refuse across the city without covering them.

However, let us define enforcement since that is the focus of this session. Enforcement is the process of bringing any person who has committed an offence to attend or answer the charge against him/her before a competent authority or tribunal or court for the purpose of determining his/her innocence or guilt and to give appropriate sanction. According to Webster's Online Dictionary enforcement are federal or state or local legal actions to obtain

compliance with environmental laws, rules, regulations, or agreements and/or obtain penalties or criminal sanctions for violations. Enforcement procedures may vary, depending on the requirements of different environmental laws and related implementing regulations. The point you need to note from the above definitions is that once we mention enforcement of public health laws we talking about the various ways public health rules or regulation are complied with and the sanctions that could be imposed on an offender if found to have breached a public health offence.

It would also necessary to point out that the process of enforcing public health laws is slight different from normal criminal enforcement procedure. While in normal criminal procedure it entails all those steps that may be required to compel the accused attendance of the police station or the court and which in most cases begin with either an arrest or a summons (Osamor, 2004). In public health law the procedure does not begin with arrest or summons, on the contrary it begins with an inspection, notice, then a summons and followed by arrest where necessary. We shall now consider some of these processes in the next session.

3.2 PUBLIC HEALTH LAWS ENFORCEMENT PROCESS

3.2.1 **INSPECTION**

The first process in the enforcement of public health laws is inspection. It is the statutory duty of the Local Government Authority and other Environmental Protection Agencies to carry out regular inspection of premises, streets and industries as well as measure the level of either air or water pollution from time to time so as to determine what action they should take in the performance of their functions under the relevant law establishing them (Ormandy and Burridge, 1988). Although, from time to time may appear imprecise and vague, however, it not an excuse not to carry out regular inspection which is to be determined by the nature or level of prevalence or likelihood of the presence of nuisances. It is would amount to an abandonment of duty if the Local Government Council or the relevant environmental protection agency fails to carry out inspection of their local government area from time to time. See the case of *Mead v. Haringey London Borough Council* (1979) 1 W.L.R. 637

The main purpose of inspection is to detect the presence of statutory nuisances and to take steps to remove them, ascertain repairs, areas of improvement, slum that require clearing, drainages and gutters that require cleaning, over grown weeds, refuse dump sites, and general housing conditions to ensure they are safe and fit for human habitation. However, before an inspection is undertake adequate notice has to be given to the occupiers of the resident or the industry

or locality within which the inspection is to be carried. This is to both serve the requirement of the law and to avoid action for trespass. And at the end of the inspection there must be a report stating the major findings which must be available to Chief Health Officer of the Local Government who is acting on behalf of the Council to take a decision on the nest steps.

An ideal inspection report must contain the following: the address of the premises or area, the name(s) of the inspector in case of more than one person but the head of the team must be the person writing and signing the inspection report, the date of inspection, the name of the tenant(s) or occupant, the name of the landlord if different from the occupant, the date of commencement of the present tenancy if it is rented premises, the rent, the rates, number of persons staying in the household, the official number of persons permitted for this type of household, a general description of the premises or the area, detail report about the conditions of the house like bathroom, kitchen, toilet, living room, heating and cooling systems, bedroom, roof, the floor, ventilation, conditions of the wall, the paints. This is followed by comments noting the state of things and at the end the name and signature of the inspector or head of inspection.

There could be a re-inspection report which is usually done if a notice of abatement has been issued and at the end of the period given the inspector goes back to assess the conditions. In this case the report would not be as detail as the first. But it must still contain the address, name of inspector, date of inspection, name of tenant and landlord. Then the body of the report is preferably divided in a tabular form with the left side headed Details of inspection (dated 4th November, 2011) and the right side headed Details of re-inspection (dated 4th December, 2011). The entries on the left side would indicate the state of affairs as at the last inspection, while the right side is just to state whether still present or no longer present. It is the report of the inspection that set the stage for the next line of action which is almost always the issuance of an abatement notice.

3.2.2 **ABATEMENT NOTICE**

The next step in the enforcement of public health laws is the service of an "Abatement Notice". Once the inspector has submitted his report and the local government are satisfied that there is existence of statutory nuisance then an abatement notice must be served on the persons occupying the premises or living within the vicinity asking them to remove the nuisance (Ormandy and Burridge, 1988). An Abatement notice can be defined as a notice issued under the authority of the Local Government Council by a person so authorised to do so informing an occupant of a inspected premises or area of the existence of some nuisance which needs to be removed, stating details of the nuisance and the steps required to remove them, and the time within which to remove the said

nuisance. It is important that the abatement notice contain the necessary details otherwise it would be invalid. See the case of *Whatling v. Rees* (1914) 48 L.J.K.B 1122

Also the notice must be served on the appropriate person and depending on the nature of the nuisance to be abated, but it is usually on the person whose act, omission or default or sufferance has led to the existence of the nuisance. However, where such a person cannot be found then the notice is to be served on the occupier(s) or the owner. In case of nuisances arising from structural defects the notice is ordinarily to be served on the owner of the premises or his lawful attorney or agent. That is any person authorised to and/or you collects the rent of the premises. It is also important you know that an statutory abatement notice can only served while the nuisances is still in existence, however, where it has already occurred and it is likely to occur or has occurred repeatedly in the past then a prohibition notice would be the best notice to be served. Also there is no right of appeal against an abatement or prohibition notice(s).

However, there are several forms an abatement notice may take. It may either be repair notice or improvement notice or slum clearance notice. Whatever may be the form of notice it must be given 24 hours before a Health Inspector can exercise the right of entry. It is necessary to issue the proper notice and have the proper authorisation before a Health Inspector exercises the right of entry. Otherwise, if he is prevented from entering the premises the occupants would not be guilty of obstruction, rather he may be guilty of unlawful entry and trespass (Ormandy and Burridge, 1988). See the case of *Stroud v. Bradbury (*1952) 2 All E.R 76

3.2.3 **COURT PROCEEDINGS**

The next process in the enforcement of public health laws is court proceeding which are always commenced at the Magistrates Court. The court could be a permanent or mobile court. A mobile court is often used during special sanitation days or occasion that requires the immediate trial and conviction of several offenders. The court session is always not held in the regular to court sitting place time. Conversely, the permanent court holds or sits at its regular place and time to hear the allegation of breach of public health laws brought against any person.

In most cases the actions in the Magistrates courts is occasioned by the failure to obey and abatement notice or fully comply with the content of the abatement notice or where there is recurrence or the likelihood of recurrence of the nuisance after it has been abated or that the nuisance is not completely abated

by the offender. However, while the proceedings for the enforcement of an abatement notice still subsist the Local Government Council or the relevant enforcement agency could still take other measures to ensure the abatement and prevention of the recurrence of the conditions that have led to the existence of the nuisance (Ormandy and Burridge, 1988). Also see the case of *Nottingham City D.C v. Newton* (1974) 1 W.L.R 923

Similarly, the Local Government Health Authority or other enforcement agencies may commence proceedings at the Magistrate Court where a prohibition notice has been served or not complied following the recurrence of a statutory nuisance. Usually all public health offences proceedings at the Magistrates Court are criminal in nature whether for non-compliance with notice or obstruction of officers on duty or refusal or neglect to completely abate a nuisance or contravention of other environmental offence. They are commenced by way of laying and information before the Magistrate who examine the facts so disclose in the information sheet and if satisfied that there is a prima facie case against the accused a summons would be issued against which will be served on him to appear to answer the charge on a particular day, place and time.

A summons is usually a written order by a magistrate or any judicial officer so authorised by law notifying an individual that he has been charged with an offence and requiring him to appear in court or a police station at a particular date and time (being not less than 48 hours after the service of such summons) to answer to the charge or allegation against him (Osamor, 2004). In the case of public health offences the summons is always requiring the person to appear before the court. Summons is usually issued for misdemeanours and breach of other Local Government Bye-laws and it is equivalent of an arrest warrant. A breach of summons or disobedience of summons is a criminal offence as it is regarded as contempt of court and the trial is summary. However, you need to know that in the case of mobile court a summons is not need because it is summary trial because the offender was caught committing the offence and so the proceedings take place immediately.

Furthermore, in public health offence proceedings the prosecution is the Local Government Authority represented by the Health Officer especially the inspector and the chief health officer and not the police or a lawyer who has obtained a fiat of the State Attorney General in other criminal offences or proceedings. The charge is read out to the accused and his plea taken and then the Local Government Authority health officer(s) would open the case against the accused by stating the facts of the offence and the particular section of the environmental health or public health law that the accused has breached (Ormandy and Burridge, 1988). The defendant would then have the right to

cross examine witnesses if any was called by the prosecution and state his own case. The prosecution just like in regular criminal proceeding have no right of final address but may ask questions to clarify facts and argue on the point of law.

Although, there are order public health laws enforcement procedures such as injunction obtained from the High Court to prevent a polluter from continuing the action of pollution or takeover a premises or prevent people from entry a particular building or premises or area because of the existence of nuisance which is of high public health threat. Or an order to allow the Local Government take over a property for the purpose of abating nuisance or action for the recovery of expenses incurred for abating a nuisance. These would be discussed because of the nature of this course which is primarily introductory.

From the above discussion you can see that there is difference between the public health laws enforcement procedures and the ordinary criminal law enforcement process. Also you can see that there are several processes involved in the enforcement of public health laws.

4.0 CONCLUSION

In this unit our focus was on the definition of enforcement and the various processes of enforcing public health laws. We have defined enforcement and mentioned as well as briefly discussed some of the processes of enforcing environmental health or public health laws.

It is hoped you have learnt the definition of enforcement and would be able to define enforcement, list and discuss some processes of enforcing public health laws.

5.0 SUMMARY

In this unit we focused on the definition of enforcement and the processes of enforcing public health laws. We defined the term enforcement and also mentioned and discussed some processes of enforcing environmental laws.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the term law enforcement in your own words.

2. (a) List three processes of enforcing public health laws you have learnt in this unit.

(b) Briefly discuss two of the processes.

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UNIT 11: PUBLIC HEALTH LAWS ENFORCEMENT BODIES

1.0 INTRODUCTION

In this unit we shall be discussing the various public health laws or environmental laws enforcement bodies at the various levels of government.

2.0 OBJECTIVES

At the end of studying this unit the learner should be able to:

- Mention the various public health laws enforcement agencies in the Nigeria.
- List some environmental health laws enforcement bodies at the federal level
- List some environmental health laws enforcement bodies at the state level
- List some of the environmental health enforcement bodies at the local government level
- Briefly describe the roles of some public health laws enforcement bodies
- List and discuss some of the remedies available to a victim of environmental harm.

3.0 MAIN CONTENT

3.1 PUBLIC HEALTH LAWS ENFORCEMENT BODIES AT FEDERAL LEVEL

The first set of public health laws enforcement bodies we shall be considering are those at the federal level. There are several government bodies which are involved either directly or indirectly in the enforcement of environmental laws. These include: the Federal Environmental Protection Agency, the National Environmental Standards and Regulations Enforcement Agency, the National Agency for Food and Drugs Administration and Control, the Standard Organisation of Nigeria, the National Agency for Oil Spill Detection and Control, the Federal Ministry of Environment, the various Federal Courts (Federal High Court, Court of Appeal and the Supreme Court). We shall now briefly examine the role of these bodies in environmental health laws enforcement.

The Federal Environmental Protection Agency (FEPA) is set up initially by Decree 58 of 1988 and amended by the Decree No 59 of 1992. Its functions include the following:

a. Protect the biodiversity conservation and sustainable development of Nigeria natural resources";

b. prepare a comprehensive national policy for the protection of the environment and conservation of natural resources, including procedure for environmental impact assessment for all development projects;

c. prepare, in accordance with the National policy on the Environment, periodic master plans for the development of environmental sciences and technology and advice the Federal Military Government on the financial requirements for the implementation of such plans;

d. the Federal Military Government on the national environmental policies and priorities, the conservation of natural resources and sustainable development, and scientific and technological activities affecting the environment, and natural resources;

e. the President, Commander-in-Chief of the Armed Forces on the utilisation of the l per cent Ecological Fund for the protection of the environment;

f. promote co-operation in environmental science and conservation technology with similar bodies in other countries and with international bodies connected with the protection of the environment and the conservation of natural resources;

g. co-operate with Federal and State Ministries, Local Governments, statutory bodies and research agencies on matters and facilities relating to the protection of the environment and the conservation of natural resources ; and

h. carry out such other activities as are necessary or expedient for full discharge of the functions of the Agency under this Decree."

Among other functions that the agency is empowered to perform under the Act. However, FEPA was merged with the Federal Ministry of Environment in 1999 by the Obasanjo administration.

The next body we shall be considering is the National Environmental Standards and Regulations Enforcement Agency (NESREA) was established because in the wisdom of Government, FEPA and other relevant Departments in other Ministries were merged to form the Federal Ministry of Environment in 1999, but without an appropriate enabling law on enforcement issues. This situation, however, created a vacuum in the effective enforcement of environmental laws, standards and regulations in the country. To address this situation, the National Environmental Standards and Regulations Enforcement Agency (NESREA) were established as a parastatal of the Federal Ministry of Environment, Housing and Urban Development. The NESREA Act was accented to by Mr. President on 30th July, 2007. By the NESREA Act, the FEPA Act Cap F 10 LFN 2004 has been repealed.

NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Some functions of the Agency, amongst others include to:

- enforce compliance with laws, guidelines, policies and standards on environmental matters;
- coordinate and liaise with, stakeholders, within and outside Nigeria on matters of environmental standards, regulations and enforcement;
- enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
- enforce compliance with policies, standards, , legislation and guidelines on water quality, Environmental Health and Sanitation, including pollution abatement;
- enforce compliance with guidelines, and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
- enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
- enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste, other than in the oil and gas sector;

- enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
- ensure that environmental projects funded by donor organizations and external support agencies adhere to regulations in environmental safety and protection;
- enforce environmental control measures through registration, licensing and permitting Systems other than in the oil and gas sector;
- conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions; and
- carry out such activities as are necessary or expedient for the performance of its functions.

NESREA has several powers including: prohibit processes and use of equipment or technology that undermine environmental quality; conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator; subject to the provision of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulation; the powers to issue environmental regulation and in exercise of this powers since its inception in 2007. The agency has issued eleven regulations which include:

1. National Environmental (Pollution Abatement in Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009

2. National Environmental (Sanitation and Wastes Control) Regulations, 2009

3. National Environmental (Pollution Abatement in Chemicals, Pharmaceuticals, Soaps and Detergent Manufacturing Industries) Regulations, 2009

4. National Environmental (Pollution Abatement in Food, Beverages and Tobacco Sector) Regulations, 2009

5. National Environmental (Pollution Abatement in Textiles, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009

6. The National Environmental (Wetlands, River Banks and Lake Shores Protection) Regulations, 2009

7. The National Environmental (Watershed, Hilly, Mountainous and Catchment Areas) Regulations, 2009

8. National Environmental (Ozone Layer Protection) Regulations, 2009

9. National Environmental (Noise Standards and Control) Regulations, 2009

10. National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009

11. National Environmental (Permitting and Licensing Systems) Regulations, 2009.

The next federal enforcement agency we shall be examining is the National Agency for Food and Drugs Administration and Control (NAFDAC). NAFDAC was established by Decree No. 15 of 1993 as amended is a Parastatal of the Federal Ministry of Health, with the mandate to regulate and control quality standards for Foods, Drugs, Cosmetics, Medical Devices, Chemicals, Detergents and packaged water imported, manufactured locally and distributed in Nigeria. Although, NAFDAC is not strictly an environmental law enforcement agency, but it enforces public health laws relating to food and drugs hence it is listed as an enforcement agency. The mandate of NAFDAC in accordance with the enabling laws, NAFDAC is authorised to:

• Regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of regulated products.

• Conduct appropriate tests and ensure compliance with standard specifications.

• Undertake appropriate investigation of the production premises and raw materials of regulated products.

• Compile standard specifications, regulations, and guidelines for the production, importation, exportation, sale and distribution of regulated products.

• Control the exportation and issue quality certification of regulated products intended for export.

• Establish and maintain relevant laboratories for the performance of its functions.

• Ensure that the use of narcotic drugs and psychotropic substances are limited to medical and scientific use only.

• Undertake the registration of food, drugs, medical devices, bottled water and chemicals.

• Undertake inspection of imported regulated products.

• Pronounce on the quality and safety of regulated products after appropriate analysis

The other federal body involved in environmental laws enforcement is the Standards Organisation of Nigeria (SON). The Standard Organisation of Nigeria (SON) is the sole statutory body that is vested with the responsibility of standardising and regulating the quality of all products in Nigeria. It was established by the General Yakubu Gowon military regime through Act 56 in 1971, it was called the Nigerian Standards Organisation (NSO). The Act establishing the body was amended in 1976 by the military regime of General Olusegun Obasanjo, in 1984 by the short-lived regime of Major General Muhammadu Buhari and in 1990 by the regime of General Ibrahim Babangida. In 1990, the amendment of the Act conferred partial autonomy on the SON from the Ministry of Industry. It now has full autonomy. Just like NAFDAC SON is not a direct environmental law enforcement agency, but it regulates the standard of products. The statutory functions of the SON are as follows:

1. To investigate the quality of facilities, materials and products in Nigeria, and establish a quality assurance system, including certification of factories, products and laboratories

2. To ensure reference standards for calibration and verification of measures and measuring instruments
3. To compile an inventory of products requiring standardisation

4. To foster interest in the recommendation and maintenance of acceptable standards by industry and the general public

5. To develop methods for testing materials, supplies and equipment, including items purchased for use by State and Federal departments and private establishments

6. To register and regulate standard marks and specifications

7. To undertake preparation and distribution of standard samples

8. To establish and maintain laboratories or other institutions, as may be necessary for the performance of its functions

9. To advise State and Federal departments of Government on specific problems relating to standards

10. To sponsor appropriate national and international conferences

11. To undertake research as may be necessary for the performance of its functions

12. To use research facilities, whether public or private, according to terms and conditions agreed upon between the Organisation and the institutions concerned.

The other federal agencies involved in environmental health laws enforcement are the Courts whose primary duties is to determine whether a public health law has been breached and mete out relevant punishment. They also determine issues relating to environmental pollution, civil matters dealing with compensation, damages and nuisance.

3.2 PUBLIC HEALTH LAWS ENFORCEMENT BODIES AT STATE LEVEL

We shall not be discussing the state enforcement bodies in details because most of their functions are similar to those of the federal bodies and again because the enforcement bodies vary from state to state. However, some of the environmental health laws enforcement bodies at the state level include: the State Environmental Protection Agency, the State Environmental Sanitation Authority, the Housing and Property Development Authority, the State Capital Development Authority and the Courts (Magistrates and State High Courts)

3.3 PUBLIC HEALTH LAW ENFORCEMENT BODIES AT THE LOCAL GOVERNMENT LEVEL.

The Local Governments do not have independent bodies like the federal and state level which are involved in environmental health enforcement. However, the Environmental Health Unit of the Local Government Primary Health Care Department has the responsibility of enforcing environmental health laws at the local government level. Also some of the federal and state level bodies have local government branch offices which complement the role of the Environmental Health Unit. Some the powers of the Environmental Health Officers or Health Inspectors as they are referred to in some jurisdiction include but not limited to the following:

1. inspect premises and the community on a regular basis
2. determine the existence of pollution
3. determine the existence of nuisance
4. inspect industries to determine level of compliance with environmental health standard
5. serve abatement and other notices to ensure the prompt removal of statutory and other nuisances
6. determine whether any environmental health law is being or has been breached.
7. Prosecute offenders
8. Write report of inspection
9. Inspect meats and other food products meant for human consumption among other functions.

3.4 ENVIRONMENTAL HEALTH REMEDIES

We shall now consider some of the remedies available to a victim of environmental pollution or harm. There are several remedies available to a victim of environmental harm or threat that is any person who has or is likely to suffer environmental harm or threat. These include; injunction, compensation, damages, action for loss of profit, abatement and sensibility claim. We shall now examine each of these remedies briefly.

3.4.1 INJUNCTION

One of the remedies available to a person who has suffered or is likely to suffer or is continuously suffering from environmental harm or threat is to apply for an injunction against the polluter to prevent from continuing the acts that is leading to the environmental harm or pollution or threat. It is an order of the Court usually a High Court restraining the defendant from taking particular act

complained of by the plaintiff in the suit. However, to succeed in an action for injunction in environmental law the plaintiff must have a strong case against the defendant (Wolf et al, 2002). For example, in the case of *Hasley v. Esso Petroleum Co. Ltd* (1961) W.LR 683 the plaintiff was able to successfully obtain an injunction restraining the defendant from causing noise pollution which was being generated from his boilers and vehicles. Similarly, in the case of *Allison v. Merton, Sutton and Wandsworth AHA* (1973) CLY 2450 the plaintiff obtained an injunction restraining the noise from the defendants' hospital boilers which were interfering with the plaintiff sleep and were causing him depression.

3.4.2 COMPENSATION

Another remedy available to a victim of environmental pollution or harm is an action for compensation for damages suffered as result of the defendant's action which led to the pollution. Usually compensation actions are more appropriate if negligence is established it has not been successfully applied in case of nuisance and trespass. Compensation is usually for damages to property and chattels and not personal injury suffered (Wolf et al, 2002).

3.4.3 **DAMAGES**

Equally a victim of environmental pollution or harm or threat can action for damages suffered. Damages may be exemplary or specific or general. Exemplary damages has very limited success in environmental health actions, however, where the plaintiff can prove that the defendant undertook the act because he calculated he could make profit that would outweigh the cost of damages he is to pay then exemplary damages would be awarded. This is because there is some sense of wilfulness in the act of the defendant. General damages may also be awarded for destruction of property and personal injuries where there was negligence, but not for economic loss. See the case of *Murphy v. Brentwood DC* (1990)

3.4.4 **LOSS OF PROFIT**

Also a victim of environmental pollution or harm can action for loss of profit and it is availed the plaintiff once damage has been proved in a nuisance action. It is not for any other damages but purely for economic loss (Wolf et al, 2002). See the case of Blackburn v. ABC Ltd (1998) Env. L.R 469 where the plaintiff claim for profit suffered as a result damage to a renovated house was rejected as it does not constitute economic loss.

3.4.5 **SENSIBILITY CLAIM**

This is a remedy available to person who has suffered very severe and persistent nuisance as result of environmental pollution which has resulted in some permanent loss. If the plaintiff cannot prove serious, severe and permanent loss of amenity then the damage to be awarded might not be too high. See the case of *Bone v. Seal* (1975) 1 All E.R 787 where the damage of £6,000 awarded to the plaintiff for exposure to odour from a piggery was reduced to £1,000 by the Court of Appeal because the plaintiff could not proof serious and permanent loss of amenity.

3.4.6 **ABATEMENT**

Furthermore, a victim of environmental pollution could action for abatement of the nuisance caused by the action of the defendant. This is an action in which the plaintiff is seeking an order of court to compel the defendant to remove the nuisance he caused. This is very common in cases of public nuisance where the relevant environmental laws enforcement agencies have refused or neglected to take steps to abate the nuisance.

From the above discussion you can see that there are several bodies responsible for the enforcement of public health and environmental health laws. Some have direct enforcers others are indirect enforcer because it not their primary duties to enforce environmental health laws. Also you can see the various remedies available to a victim of public health or environmental harm or threat or pollution.

4.0 **CONCLUSION**

In this unit our focus was on the bodies responsible for the enforcement of public health or environmental health laws at the various level of government in Nigeria and the remedies available to a victim of environmental pollution or harm or threat. We have listed some of the bodies responsible for environmental health laws enforcement at both the federal, state and local governments and have also briefly discusses some of their function. We also listed and discussed some of the remedies available to a victim of environmental pollution or harm.

It is hoped you would now be able to list some environmental health laws enforcement bodies at the various level of government and discuss their functions. Also you can now list and discuss some remedies that are available to a victim of environmental pollution.

5.0 SUMMARY

In this unit we focused on the various bodies responsible directly and indirectly for the enforcement of environmental health law and also the remedies that are available to a victim of environmental pollution. We listed several bodies responsible for enforcement of environmental health laws at the federal, state and local government and also discuss some of their function. We equally listed and discuss the remedies available to the victims of environmental threat and harm.

6.0 **TUTOR MARKED ASSIGNMENT**

1. List two environmental health laws enforcement bodies at the federal level and enumerate four of their functions

2. (a) List four remedies available to victim of environmental pollution.

   (b) Briefly discuss three of remedies you have listed in your own words

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