NIGERIAN LEGAL METHOD II

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WEEK 1: Introduction To Sources Of Law : Primary Sources

Â Â Â Â Â Â Â Â Â Â MEANING OF SOURCES OF LAW

Â Â Sources of law can be defined as the places to which a legal practitioner or a judge turn to in order to answer a legal problem. They are spring boards from which law emanates. They are divided into primary and secondary sources.

Â Â Â Â Â Â Â PRIMARY SOURCES

Primary sources of law are those sources whose provisions are binding on all courts throughout their jurisdictions. They include:

â€¢ English law

â€¢ Case law

â€¢ Delegated legislation

â€¢ Nigerian legislations

â€¢ Customary laws.

â€¢ International laws.

1. English Law: Nigeria, as we all know, was colonized by Britain. Hence, it is trite that some elements of British law will have a major influence on our legal system. The English law is made up of rules of common law, doctrines of equity and Statutes of General Application. The use of British law is supported by various authorities:

â€¢ Interpretation Act S 45(1) : This act says that the common law of England, the doctrines of equity and statutes of general application that were in force on 1st January 1900, will be in force.

â€¢ Supreme court ordinance 1914 S(14): Subject to the terms of this or any other ordinance, the rules of common law, doctrines of equity and SOGA In force on January 1st 1900 shall be in force in the jurisdiction of this court.

Â Â Â WHAT IS A STATUTE OF GENERAL APPLICATION??

Â According to the interpretation act and the supreme court ordinance, statutes of general applications are those that are in force in England on 1st January 1900. Unfortunately, this definition is not adequate. Further expatiations on the meaning of SOGA are to be found in case laws:

â€¢ Dede vs African Association ltd: Here, the court held that although the the supreme court ordinance identified that SOGA are applied in England, nevertheless, it should be taken to mean statutes applicable throughout the United Kingdom.

Attorney general vs John Holt and co ltd: Here, Osborne CJ. Held that SOGA are statutes that are applied by all civil and criminal courts and binds all citizens. He called this a rough but not infallible test for the authenticity of a SOGA.

â€¢Lawal vs Younan: Here, the court decided that the fatal accident act of 1846 and the fatal accident act of 1864 are statutes of general application since they concern all citizens.

Young vs Abina: Here, the west African court of appeal declared the land transfer act 1897 a statute of general application. This is because it applied to all persons Â who died after 1st January 1898. What could be of more general application than that, and it was in force on 1st January 1900.

It is worthy to note that Nigeria having got independence in 1960, the received English law is only of persuasive authority in view of the fact that Nigeria is now a sovereign state and as such, Nigerian law is supreme. Nigeria shall not be governed by any other person except in accordance with the provisions of the constitution see S 1(2) CFRN 1999 as amended. The foregoing is the provision of the law with respect to other laws see Nigeria vs Ifegwu 2003 5 (S.C.N.J) 217@ 249. 15 NWLR pt 842 113 @.

It is also worthy to note that English laws that are binding are those that are domesticated. This is pursuant to the preceding paragraph which highlights Nigeriaâ€™s independence. Â The supreme court had reminded the court below not to resort to English law where there is Â local law on any issue before the court. See Okoko vs the state 1967 NMLR 189. see also. Also, the supreme court per Mohammed Bello CJN(as he then was) in Idehen vs idehen reiterated that the Wills act of 1837 which was a statute of general application was replaced by the Wills law of western Nigeria in 1959.

Alli vs Okulaja (1971) 1 (U.I.L.R) 72. Y: In this case, the plaintiff sued the defendant for damages as a result of injuries caused by the defendantâ€™s negligence. The defendant moved a motion that proceedings should be stayed until the plaintiff is examined by their doctor. The plaintiff refused. The defendant relied on the English court of appeal case of Edmeads vs Thames Board mills ltd where the judge allowed the defendant to examine the plaintiff. Beckley J, however ruled that a decision of the court of appeal in England is not binding on a Nigerian court. It is at best persuasive.

Examples include :

â€¢ Infant Relief act, 1874.

â€¢ Statutes of Frauds 1677

â€¢ Sale of Goods act 1893

2. Nigerian legislations: These are laws made by the national assembly. According to S4(2) CFRN 1999 â€œThe national assembly shall have powers to make laws for the peace, order and good government of the federationâ€. This provision highlights that it is the national assembly that makes legislations in Nigeria

Â They consist of acts, decrees, edicts, laws nd ordinances .

Acts are laws made by the central legislature during a democracy.

Â Ordinances are laws made by the central legislature before 1st Oct, 1954 when federalism was introduced.

Decrees are federal laws in a military regime. Edicts Â are state laws in a military regime. Laws are state laws in a democracy. See A.G.F vs Guardian newspaper ltd and ors (1999) 5 S.C.N.J 324: In this case, there was a purported decree in a federal gazette that the respondent has been proscribed. The respondent, therefore, questioned the validity of the decree. The court decided that pursuant to S3(1) of decree No. 107 of 1993, all that a decree needs in order for it to be valid is the signature of the Head of state, Commander in chief of the armed forces.

All federal legislations till 31 January 1990 in Nigeria are consolidated in the laws of the federation of Nigeria 1990. (L.F.N 1990). It was revised in 2002 and now published as L.F.N 2004.

3. Delegated legislations: These are legislations that are not made by the body of legislators, but derive their power pursuant to enabling statutes by the legislators. Enabling statutes are those that Â give a body the authority to make delegated legislations. It is not possible for the legislature to monitor all areas of public life.

Â Hence, it is necessary to delegate some law making powers to technocrats in various fields so that the laws can be practical. If any delegated legislature exceeds powers conferred on it,it is utra vires. Delegatus non protest delegare, This maxim means that the person to whom power is delegated cannot delegate same without the permission, whether direct or implicit of the person that delegated the power to him.

Â 4. Case laws: This is one of the things that the Nigerian legal system inherited from the common law. Case law means that judicial precedents are applied. Judicial precedent is the concept that a decision made by a higher court on a particular issue is binding on all judges of the lower courts. The Latin maxim for this is stare decisis. The maxim means, let the decision stand. Case law is relevant because it helps to create certainty in the judgment of a case and it prevents decisions of judges from being influenced by their personal bias and idiosyncracies. See the case of Global transport vs free enterprises Nigeria limited (2001) 2 SCNJ 224@243: In this case, the supreme court declares that the doctrine of precedents or what is normally referred to as stare decisis lays down a golden rule that decisions of higher courts in the land are binding on lower courts. And decisions of courts of co-ordinate jurisdiction are for all intents and purposes binding between these courts except if the previous decision was made per incuriam.

Â for further elucidation.See

Alhajji Karimu Addisa vs Emmanuel Oyinwola and ors (2000) 6 SCNJ 290@295: In this case, it was said that a precedent canâ€™t be applied when the facts of law in the previous case is â€œdistinguishableâ€ from the facts of law in the present case. That is if the law has changed.

The court lists a number of situations in which the supreme court can depart from its previous judgment. Where the decision are:

â€¢ vehicles of injustice

â€¢ given per incuriam

â€¢clearly erroneous in law

â€¢ impeding the proper development of the law.

â€¢ having results which are unjust, undesirable and contrary to public policy.

â€¢ Inconsistent with the provisions of the constitution

â€¢ capable of fettering the exercise of judicial discretion by a court.

5. Customary laws: In the case of Joseph Ohai vs Samuel Akpoemonye, 1999 1 SCNJ 73 @ 77,the court defines customary law as â€œany system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject of its swayâ€. Â Customary laws are sources of law which originate from the culture of Nigerians. It is usually divided into ethnic law and Islamic law. Ethnic laws are those customary laws that are practised predominantly in the southern part of the country. Islamic law is practised predominantly in the north. However, before a customary law can be applied by a Nigerian court, it must pass the three tests which are:

â€¢ It must not be repugnant to natural justice, equity and good conscience.

â€¢ It must not be contrary to public policy.

â€¢ It must not be incompatible with any law whether directly or by implication during the time it is in force. There are various judicial authorities which expatiate on the three tests:

â€¢ Esugbayi Eleko vs Officer administering the govt of Nigeria : Here, Lord Atkin said a Barbarous law should be rejected if it was repugnant to natural justice, equity and good conscience. He said that however, the fact that a law doesnâ€™t correspond with English society doesnâ€™t make it repugnant.

â€¢ Dawodu vs Danmole : The privy council overruled the decision of Jibowu, J, on an issue of inheritance. According to the customary law, inheritance was per stirpes instead of per capita. It stated inter-Alia that principles of natural justice, equity and good conscience in a polygamous society should not be equated with principles in a monogamous society.

â€¢ Guri vs Hadejia native authority: The court declared as Â repugnant to natural justice a law that states that a suspected highway robber has no right to defend himself.

â€¢ Cole vs Akinleye: Here, the court declared that a customary law that gives children born out of wed-lock equal rights with legitimate children under the marriage ordinance as void on the ground that it is contrary to public policy.

â€¢ Alhahji Ila akamawa vs Hassan Bello: Islamic law is not the same as customary law as it does not belong to any tribe. It is a complete system of universal law, more certain, permanent and universal than English common law.

See S 14(1) evidence act: S.14(1) said that applicable customs are those that have been judicially recognized and those that can be proved to exist by evidence. 14(2) said that a custom is judicially recognized if it has been applied by a court of superior or co â€“ ordinate jurisdiction.14(3) provides that if it is not judicially recognized, it can be proved to exist by proving that persons in the class of area concerned accept the custom as binding. The sub â€“ section also says that it must not be repugnant to natural justice, equity and good conscience or contrary to public policy.

Â on a general note, for a custom to have the force of law:

â€¢ It must be well established and notorious

â€¢ It must not be repugnant

â€¢ It must be reasonable.

â€¢ It must be legally valid and not contrary to statute

â€¢ It must have been in existence from time immemorial or antiquity and it must not be contrary to the memory of the present man.

â€¢ It must be certain.

â€¢ It must be obligatory.

â€¢ There must be continuance that is, it must have been uninterrupted.

â€¢ There must be peaceable enjoyment.

â€¢ It must not be a secret custom.

6. International laws: It is trite that no man is an island. Also, no nation is an island on its own. Different nations have to relate with one another. This is in order to prevent anarchy among the comity of nations. There are various agreements which nations enter into in order to regulate their conducts. They are numerously identified as treaties, conventions, charters, covenants etc.

In the Nigerian legal system, international treaties and agreements are not binding unless they are ratified by the national assembly and passed into law S 12 CFRN 1999 as amended.. Â In Sani Abacha vs Fawehinmi, the supreme court declared that the African charter on human and peopleâ€™s right, 1981, is binding on Nigerian courts. There are two theories in relation to international law, the first is that a treaty is binding when an ambassador or representative of the country signs it. The second theory is that a treaty is not binding except if domesticated by the respective legislature.

Â Â Â Â Â Â SECONDARY SOURCES

These are like indirect sources of law. Some of them are like references to primary sources, others are opinions of important scholars. They are largely persuasive in nature and are not binding. They are starting points for research into primary sources.

1. Law Report: This source is very important in any legal system. For example in Nigeria where judicial precedent is very important, they come in handy. They are compilation of cases, hence lawyers and judges can easily access them for their work.

The oldest law reports are the year books(1282-1537). They are regarded as comprehensive but have been criticized because they were taken by students and practitioners for academic Â purposes. The first form of law report in Nigeria was the Nigeria law reports (NLR) which emerged in 1881 but is now extinct. Nikki Tobi laments that the problem of law reports in Nigeria is their lack of sustainability .

There are numerous law reports, examples are:

â€¢ Nigeria weekly law reports (started in 1985, by late Gani Fawehinmi).

â€¢ Supreme court of Nigeria judgments (SCNJ)

â€¢ All Nigeria law report (ALNR)

â€¢Federation weekly law report.

â€¢ Law report of the courts of Nigeria (LRCN)

2. Text books and treatise: These are textbooks or articles written by learned scholars on different subjects. They are usually used when there are no Â direct authorities for a case.

Examples include : Coke, Bracton and Blackstone. Recently we have: A.V Dicey, Cheshire, Fiffoot, Hood Phillips, Wade etc.

In Nigeria, we have : professor Sagay, Kodinliye, T.O .Elias, Nikki Tobi. Etc. The relevance of a textbook or article depends on the scholar that wrote it and the area of law concerned. See Oyelowo vs Oyelowo in the case, a textbook by Nwabueze was depended upon to decide the case. It should be noted that a provision of a textbook if contrary to previous judicial authority it will not be used.

3. Periodicals Journals, Legal digest: These are produced in various forms in Nigeria. Some are academic, some professional, others a mixture of both. Law journals are published by various law faculties and private publishers.

Legal digest like digest of supreme court cases. Digests are usually abridged summaries of proceedings in court. They contain the facts, arguments, issues and decision of cases. Some dictionaries include Blackâ€™s law dictionary, Jowitts dictionary of English law etc.

4. Casebook: This is an abridged form of what transpires in a case from the perspective of the author. It is the summary of the case with the comment of the author added.

5. Legal dictionaries: The court uses some of these dictionaries to interprete some terms. The adoption by the court makes it a precedent. Hence, if a case comes up later, the definition will be used. Dictionaries are used in the absence Â of statutory definitions.

6. Newspapers: Newspapers are ordinarily newspapers are regarded as private document therefore they are not admissible in court. S.109 of the evidence act lists out private documents. S.109(b) states that a private document in public archive will be regarded as public document. Hence, they can be used in court.

ADVANTAGES OF LEGISLATION Â Â OVER JUDICIAL PRECEDENT.

Legislation is undoubtedly the most important of all sources of law. The fact still remains when compared and contrasted with judicial precedent as it is superior in quality. The superiority of legislation is as follows:

1. It has abrogative power. That is, any defect in an existing law Â may be corrected by creating a new one. As a result a bad law is replaced by a good law. This is in contrast to judicial precedent in which decisions of higher courts are binding in lower courts even if they are defective. They are only amended when the superior court looks into it.

2. Legislation takes the dimension of express declaration. That is, the law is spelt out clearly before the commission of an offence/act to which the particular law applies. Â I.E, the law operates prospectively.

This makes legislation to conform with the principle of natural justice. That is, a citizen should know what the law is before its violation or an act should be prohibited Â by the state before it can be violated.

A sovereign state can make a prospective as well as a retrospective law. But it is not always the case in a country with a written constitution like Nigeria where F.H rights are guaranteed . See S 36(8) and (12), CFRN 1999 as amended. See Aoko vs Fagbemi and ors.

3. Efficiency as a result of division Â of labour. Law making is the sole and primary function of the legislature see S 4(1) (6) CFRN As Amended respectively. While judicial lawmaking, is combination of legislative and judicial function. In effect, the law may not be as efficient, clear and comprehensive as efficient law-making.

4. Legislation is anticipatory in nature. It anticipates all conceivable situations hereby legislate provision to deal with the situation. While judicial precedent deals with the facts of a particular case.

5. Legislation is general, clear precise and easily accessible.

6. Legislation gives effect to all other sources and renders them inconsistent when they are in conflict with its provision thereby making the provision of those other sources null and void to the extent of its inconsistency. S 1(3) and S 4(5) CFRN 1999 as amended in case of conflict between federal and state law. On the whole, legislation is its own legal source and that is why the principle of interpretation of statutes is an important way by which the word/meaning of statutes may be deduced.

DISCUSS THE USE OF SOURCE MATERIAL WITH PARTICULAR EMPHASIS ON THE USE OF A LIBRARY TO A LAW STUDENT, LAWYER AND JUDGES.

Â Â Â Â Â WHAT IS RESEARCH

Research means to conduct a search, simpliciter. It is likened to a voyage of discovery if what is not lost. It is when a person in the legal field looks for source materials to assist them in work, be it for academic work, to back up argument or to decide cases.

Â Â Â Â Â Â WHAT IS A LIBRARY

A library is a building or an electronic collection of relevant information. A library pa

There are three main division of the law library, these are :

1. Information desk:

2. Catalogue Box

3. Reference section

Â Â Â WAYS OF IDENTIFYING Â Â MATERIALS IN THE LIBRARY.

There are three major ways of identifying materials in the library. The most important ones are through:

1. The name of the book

2. The author

3. The subject matter.

Note that indexing is a key to the holdings or section in a particular library normally arranged according to the access point. It may be arranged according to authors or alphabetically.

Â Classification is the arrangement of books according to the same specific or broad subject areas . It is the arrangement of books on the same subject matter. There are two major classification systems:

1. Library of congress classification: This classification system grouped the entire body of knowledge into 21 classes and uses capital letter to denote the main classes. Another capital letter is added after the first capital letter to indicate sub â€“ divisions of the classes. Arabic numerals are then added to take care of the minute subject areas. This system is most suitable for large libraries mostly especially academic libraries.

2. Dewey decimal classification: This classification system grouped all body of knowledge into ten main classes using Arabic numerals only. The notation of the scheme is said to be pure because it uses Arabic numerals only.

Note that on every book there is something written on it called the class mark or call mark(ordinarily, this is the I.D number). When the mark starts with a letter, the library of congress classification is used. E.g, K1351. When the mark begins with a number, Dewey Decimal is used. It is pertinent to note that the commonest type of classification used in Nigeria is the library of congress classification.

Â Note also, that when the letter that starts the classification is â€œKâ€ it is a book on law. When it is â€œLâ€, it is on education.

Â Â Â ONLINE PUBLIC ACCESS CATALOGUE (O.P.A.C)

This is an electronic way of searching for books.

Â Â Â Â Â Â Â Â Â Â Â CITATION

Citation is a descriptive information about a legal document that enables a researcher or an interested person to locate a document in the library.

â€¢ Discuss judicial opinion

â€¢ Discuss in extensu the use off authorities in legal argument and legal writing

â€¢ Elucidate on methods and approaches in legal writing.o

â€¢ Enumerate and discuss clearly the essential features of a good legal writing.

â€¢ What do you understand by analysis of social and legal issues.

â€¢ Expatiate on division of topics into chapter, sections and subsections.

As far as case analysis is concerned, there are certain steps to take in analyzing the case:

1. Look at the facts of the case

2. Look at the legal issues involved: These are questions which are couched for the honorable court to answer. It should be noted that academic questions will not be answered by the court. Â An academic question is one which does not relate to the matter at hand. It does not ensure any right or benefit on the successful party. Nwabuede vs GNG. NWLR (2010) pt 1216. Â It is a question which is not relevant to the case at hand. In Jolasun vs Bamgboye NWLR (2010) pt 1225, the court struck out an issue. It said that it was an issue which required an academic answer and the court or any

other court will not answer it.

3. Objectives/reliefs/prayers: In the case of Ekpeyong vs Issong, the court said that it is not a father Christmas, meaning that something which is not asked for will not be given. This underscores the importance of prayers.

Â Â Â Â IDENTIFICATION OF OF ISSUES RULES AND PRINCIPLES

Obiter: Â S.223 Evidence act, which allows the court to raise a question suo motu. The section provides that a judge will be entitled to ask any question in order to determine the fact and the counsels are not entitled to oppose him or to cross examine the witness to clarify dat question. Also there are some questions which the witness is entitled to not reply in Â Â S 162 to 176 of the act. Also, unreasonable questions which have been provided for under Â S 201 â€“ 202 canâ€™t be asked.

Â Normally, the court will not help the counsels to prosecute their case.

PRINCIPLE: A principle can be defined as a fundamental truth or doctrine which cannot be denounced except by a clearer truth. Â Principles are judicial precedents laid down. Principles are gotten from previous decided cases. For example in the case of Donoghue vs Stevenson, the neighborhood principle was laid down by lord Atkin.

Â RULE: Â A rule is defined as a command or decision given by a courtâ€¦. Some of these rules could be obiter dictum or ratio decidendi. Obiter dictums are given by the way. They are explanations that do not strike to the root of the matter. For example Justice Nikki Tobi is fond of giving Obiter dictums because he was a former lecturer, hence he always likes clarifying contentious law principles.

ISSUES: The essence of going to court is to ask the court a particular question. This question is the issue. For example if two people are disputing over a piece of land the case is given to the court to settle. The questions that are asked are what are regarded as the issue. After a great display of advocacy skills the judge proceeds to answer the question. It should be noted that nowadays we canâ€™t spring surprises. All the witness and evidence that would be used must have been submitted to the judge before the trial.

Â Â Â Â Â Â Â Â Â Â I.R.A.C

Note: Does the court answer academic questions, find authority.

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Â Â AUTHORITATIVE ELEMENTS

Â Â As a matter of fact all decisions of courts must be based on existing law which is applicable to the facts of the case as presented by the litigants before the court. In deciding matters by tye court, it has a duty to determine the applicable rule of law before it interpreted and Â applies the rule of law to the particular fact to arrive at a just conclusion(right decision). When this is done, the court is perceived to have uses that rule if law as an authority for its judgment or its decision.

Â Â The following are laws which the court may use as an authority for deciding cases:

â€¢ ENACTED LAWS: IT IS DIVIDED INTO:

1. Constitutions(decree and edict in a military regime) and charters(domesticated). S.12(1) CFRN 1999 as amended.

2. Statutes and ordinances: These are the various laws enacted by the legislature and codified provided they are still in force. They also include court rules. Supreme court civil procedure rules, court of appeal civil procedure rules. Substantive law deals with our rights and obligations. Procedural laws are the laws that provide the steps to getting the rights. Procedural laws are made by the judges. However, the power to do this is provided for in the constitution. It provides a skeletal provision. For example S.236 & S.248. The former gives the chief judge the authority to make procedural rules for the supreme court while the latter gives the president of the court of appeal the power to make procedural rules for the court of appeal.

3. Administrative regulations enacted by the various administrative agencies of the federal, state or military government.

â€¢ CASE LAWS: IT INCLUDES:

1.Opinion involving enacted law: Looking at Obasanjo vs Atiku the court interpreted a section of the constitution which borders on whether the president has the power to remove the vice.

Also, the court interprets Islamic personal law. See Alhaji Illa Akamawa vs Hassan Bello. The court held that Islamic law is not a customary law but a universal law binding on all Muslims over the world.

2. Opinion involving equity: All those opinions which the court gives on equitable maxims are binding.(find case)

3. Opinion involving common law: The opinion of the court Â on rules of common law are also relevant. In Francis vs Ibitoye 1936 13 NLR 11 the court further elucidated on the common law doctrine quid quid plantatur solo solo ceedit.

Â Â Four ways of using authority

â€¢ Exhaustive

â€¢ Demonstrative

â€¢ Incomplete or confusing

â€¢ Conclusive

Â How To Develope Skill For Case Analysis

â€¢ Be ready to meet the unknown when reading judicial opinion

â€¢ Be in possession of a legal dictionary and know how to use it.

â€¢ Research the judicial system that write the opinion. Whether civil or common law. For example, in tye common law jurisdiction, a contract without consideration is not binding in the civil law jurisdiction, it is binding.

â€¢ Research encyclopedia or law review articles to have a general understanding.

â€¢ Be ready to read poorly written opinion.

â€¢ Read opinion in sequence. It might also mean, read an old opinion before a new one.

â€¢ Be ready to accept the fact that there is more than one interpretation of an opinion.

â€¢ Be ready to read, read and re-read the opinion to be analyzed for a proper understanding of the opinion.