

# SOURCES OF NIGERIAN LAW

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Sources of Nigerian law denote where Nigerian law came from. The major question is that where did we get the present laws that we now call our own? Did they fall from heaven? Where did we get them from? We generally have six sources of Nigerian law they include:

**1. The Received English law:** This consists of the common law, doctrines of equity and statutes of general application which were applicable in Britain by 1st January 1900. These were laws that we used when we were colonised by Britain. The laws applicable in Britain were also applicable in Nigeria.

**2. Nigerian Legislation:** This is the most important of the sources of Nigerian law. This is because it is Nigerian legislation that gives life to other sources of law. It is the pillar upon which the Nigerian legal system rests. It consists of the exclusive list, concurrent list and a residual list.

**3. Case Laws:** Summarily, these are laws that are developed by the courts and become binding according to the principle of stare decisis/judicial precedent.

**4. Customary law:** These are the laws of the indigenous peoples of Nigeria prior to the advent of the colonialists. However, they are only applicable in civil circumstances. The Customary Criminal law has been abolished by various statutes like the **Penal Code** and **Criminal Code**.

**5. Delegated Legislation:** This is legislation made by other bodies that are not the legislature. However, before this can be valid, the power to make these laws has to be vested in such person/body by the legislature.

Due to the constraint of time and space, I shall only be examining Received English Law, Nigerian Legislation and Case Laws. To get an in-depth explanation of these sources of law, see the [primary sources of Nigerian Law](#).

## THE RECEIVED ENGLISH LAW

These are laws that were in operation in England and due to the reception of English law, they become applicable in Nigeria. The reception of English law deals with the way the received English law was accepted into the Nigerian legal system. The major reception act in Nigeria is the Interpretation Act. The Interpretation Act receives English law in S.32(1) which provides that the rules of common law, the doctrines of equity and statutes of general application which are within the competence of the federal legislature in existence before 1900 shall be in force in Nigeria.

However, S.32(2) provides that their application is limited subject to Nigerian jurisdiction or when there is a Nigerian federal law or court decision available. This was seen in the case of *Labinjoh vs Abake* where the application of the Infant Relief Act was rejected because there was already a local legislation that covered that area. S.32(3) allows for the alteration of the imperial laws in order to make it applicable to the Nigerian situation. For example, where England is used, it would be replaced with Nigeria, when the British currency is used it would be replaced with the Nigerian currency and so on.

## NIGERIAN LEGISLATION

This is the most important source of Nigerian law. It is usually made by the legislature which consists of the House of Representatives and the Senate. They are referred to as the National Assembly by S.4(1) of [the Constitution](#). Legislation is classified into statute or subsidiary legislation. Statutes are laws that originate from any chamber of the National Assembly.

Subsidiary legislation are those that emanate from a body that is not the legislature. They can also be called delegated legislation. These bodies are usually empowered to make law by an enabling statute of the National Assembly. Subsidiary legislation can be called rules, legislation, by-laws, instruments, orders etc. Also, a subsidiary legislation must not exceed the limit of the power delegated to it by the enabling statute. Thus, subsidiary legislation is inferior to statutes. This means that a statute can repeal or amend the power of a subsidiary legislation.

## FORMS OF LEGISLATION

Legislation can be in form of ordinances, acts, laws, decrees or edicts. Ordinances are laws made by the federal legislature before 1st October 1954. Acts are laws made by the National Assembly which is made up of the House of Reps and the Senate. Laws are legislation made by a State House of Assembly. Decrees are laws made by the federal military government while edicts are legislation made by state military governments.

It should be noted that for any legislation to be valid, it should originate from the appropriate authority. During the civilian regime, it is the National Assembly or State House of Assembly. In the military regime, it is the Federal Military Government and State Military Government.

## DIVISION OF LEGISLATIVE POWER.

These are divisions of legislation during a civilian regime. They are divided into:

⚡ **Exclusive List:** These are laws which can be made only by the federal legislature. ⚡ S4.(2) & (3) CFRN 1999(as amended). It is located in pt 1 2nd schedule.

⚡ **Concurrent list:** These contain items that are within the legislative competence of the State House of Assembly and federal legislature. S.4(4)(a) & S.4(7)(b) CFRN 1999 as amended

⚡ **Residual list:** These are items that are left solely for the states to legislate upon. It should be noted that there is not an item designated ⚡Residual List⚡™ in the [constitution](#). However, it is implied from the constitutional provisions. This is due to the fact that S.4(7) CFRN 1999 provides that the State House of Assembly can legislate on matters that are not contained in the exclusive list and but they can legislate on matters in the concurrent list. Thus, by implication they can also legislate on matters that are not in any of the lists.

## THE SUPERIORITY OF NIGERIAN LEGISLATION TO OTHER SOURCES

Nigerian legislation is the most important source of law⚡ because it is through Nigerian legislation that other sources of law are validated into the ⚡ Nigerian jurisdiction. This can be seen in S.32 interpretation acts LFN 2004 which has to make sure that the Received English Law is accepted as law in Nigeria. Also, S.27(1) of the High court of Lagos law validates customary law.

Also, Legislation takes life from other sources of law. For example, it abolished some customary laws that dealt with slavery, witchcraft, trial by ordeal etc. For example S.207 to 211 of the Criminal Code abolishes witchcraft and trial by ordeal

It can also modify other sources . ⚡ It can also abolish customary law indirectly. For example, S.3 of the Legitimacy Act modifies the Yoruba law of acknowledgement. It says that a child is not legitimate until the mother is married, however, the Yoruba customary law says that as long as the child is acknowledged by the father, he is not a bastard. Also, in the case of Labinjoh vs Abake, it was declared that an indigenous law indirectly nullified the Infant Relief Act which is not a Nigerian legislation but a statute of general application.

## CASE LAW/JUDICIAL PRECEDENT

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

It⚡™s not all the aspects of a judgement that are relevant in determining the principle decided in a court. It is the *ratio decidendi* that is relevant in determining the issue in court. However, the other parts of the judgement are not entirely ⚡ useless. The other parts of the judgement are referred to as obiter dictum. Although an *obiter dictum* is not really a present judgement, in a later case, it can be adopted as a *ratio decidendi*.⚡

With all these, can it then be contended that judges make law? Yes, by all means, however, their law is not legislation because it wasn⚡™t passed by the National Assembly. Also ,judicial precedents can either be binding or persuasive. Decisions made by courts of higher jurisdiction are binding on courts of lower jurisdiction. However, decisions by courts of co-ordinate jurisdiction are persuasive in most instances except in some instances at the⚡ [Court of Appeal](#).

## FORMS OF JUDICIAL PRECEDENT

Judicial precedents may be:

⚡ **Original precedent:** This is when the decision given by the judge is a new decision in which there are no previous similar cases. An example is the case of Carlill vs Carbolic smoke ball co where an original precedent as related to offer was established.

⚡ **Derivative precedent:** This is where the case at hand simply extends the existing rule analogically to cover a new situation.

⚡ **Declaratory Precedent:** This means the law simply declares the existing rules. What it does is to re-echo the existing rule to what is on ground. It helps to give weight to the precedent and invests it with greater authority than it would have possessed if it stands alone. It also serves as a guide when it is not possible to get to the original judgement. Declaratory precedent is very important because it is through declaratory precedent that some decisions are weeded out. For example, if there are two conflicting original decisions, it is the one that is re-echoed by declaratory precedent that would stand the test of time. The other decision would be weeded out of the judicial system because it would be weaker.

In conclusion, it should be noted that without the [hierarchy of courts](#) and an efficient law reporting system, the principle of *stare decisis* will be impracticable.

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