Primary Sources of Nigerian Law: Everything you need to Know

Posted on April 17, 2017August 21, 2017 Written By Olanrewaju Olamide Posted in Nigerian Legal Method

To the average Nigerian on the street, the Constitution is the law. Whatsoever is in the Constitution is the law of the land that everybody must obey. If you are just starting out as a law student, your opinion would most likely be more informed than the ordinary man on the streets. You might think that the law is just statutes enacted by the legislature.

Both positions are correct but are not the full picture; we derive our laws from about a dozen sources. The constitution and legislation are among the primary sources of Nigerian law, but they make up a small portion of the numerous sources of Nigerian law.

The aim of this post is to clear the air on the primary sources of Nigerian Law. By the time you are done reading this post, you would be well grounded in the knowledge of the primary sources of Nigerian law.

What are the Primary Sources of Nigerian Law?

To define the primary sources of law, I could easily go into a long ramble and bring up some quotes for you to cram. But I feel that would be a bit counter-productive. Instead, you can simply define primary sources of law as those sources of law that are binding on the courts.

I am going to talk about six primary sources of law, although there might be more.

This post is going to be quite long and detailed, so to save you some stress, you can click on the primary source of Nigerian law you want to learn about. If you are not in much of a hurry, you can sit back and read the whole post.

1. The Received English law
2. Case law
3. LegislationÂ
4. Customary laws.
5. International laws.

The Received English Law as a Primary Source of Nigerian Law

Nigeria, as we all know, was colonised by Britain. So, it is right to expect the influence of British law on our legal system. These little influences that have taken root in Nigeria are called the received English Law.

The received English law is made up of the rules of Common Law, Doctrines of Equity and Statutes of General Application. These are the aspects of English Law that the colonialists imported to Nigeria.

The first statute that did the work of importing the received English Law into Nigeria was the Supreme Court Ordinance of 1914. It provided in S. 14 that

> Subject to the terms of this or any other ordinance, the rules of common law, doctrines of equity and Statutes of General Application in force on January 1st 1900 shall be in force in the jurisdiction of this court.

This provision means just what it says: that common law, equity, and statutes of general application would apply in the law courts.

Although there is no longer anything called the Supreme Court Ordinance, this provision is still present in current legislation. One current law with aÂ similar provision is **S. 32 of the Interpretation Act**.

What are the rules of Common Law and Equity?

You should already have an idea of what common law and equity is all about. The common law is the default legal

system of England that originated from laws made by judges. Equity, on the other hand, came about as a means to lighten the strict application of common law.

So, the rules of common law and doctrines of equity are those laws that lawyers trace to either the common law or equity.

What is a Statute of General Application?

The phrase â€œstatutes of general applicationâ€ sounds quite complicated when you take a cursory glance at it. Fortunately, it has a very straightforward meaning. It essentially means statutes that applied to everybody. For a statute of general application to apply in Nigeria, it had to have been in operation on 1st January 1900.

The courts have decided on the meaning of this phrase in quite some landmark judgements.

In the case of ***Dede vs. African Association Ltd***, the court held that although the Supreme Court Ordinance identified that Statutes of General Application applied in England, nevertheless, it should be taken to mean statutes applicable not just in England but throughout the United Kingdom.

In the case of ***Attorney General vs. John Holt and Co Ltd***, Osborne CJ held that Statutes of General Application are statutes that are applied by all civil and criminal courts and bind all citizens. He called this a rough but not infallible test for the authenticity of a statute of general application.

In the case of ***Lawal vs. Younan***, the court decided that the Fatal Accident Act of 1846 and the Fatal Accident Act of 1864 are statutes of general application since they applied to all citizens.

Finally, in the case of ***Young vs. Abina***, the West African court of appeal declared the Land Transfer Act 1897 a statute of general application. The Court did this because it applied to all persons who died after 1st January 1898 and it was in force on 1st January 1900.

From what I have discussed, you should know why the received English Law is a primary source of Nigerian law. As a primary source of Nigerian law, the received English law is binding on the courts.

However, **S. 32 (2)** of the Interpretation Act provides that the received English law would only apply in Nigeria subject to the local jurisdiction. What this means is that if a Nigerian law has already covered the area affected by the English law, the English law would no longer apply.Â For instance, the Supreme Court in the case of ***Idehen vs. Idehen***Â refused to apply the Wills Act of 1837 (a statute of general application) since there was a local law in place; the Wills Law of Western Nigeria.

In essence, received English law would only qualify as a primary source of Nigerian law when there are no local laws that contradict it.

Case Law as a Primary Source of Nigerian Law

When you think of the law, one of the first things to come to your mind is lawyers and judges in their wig and gown. As a lawyer in Nigeria, you would have been called â€œthe lawâ€ by other people. ThisÂ nickname is an allusion to the importance of lawyers and judges in the legal system. Lawyers and Judges contribute their fair share to the development of Nigerian law through case law, which is also a primary source of Nigerian law.

To the uninitiated, case law might sound a bit ambiguous. But to speak simply, case law is simply law derived from cases that the court decides. In essence, they are the judgements of the court. You should note that Judicial precedent needs to validate a case law before it can be called a primary source of Nigerian law.

What is Judicial Precedent?

Judicial precedent is a doctrine that pervades the common law legal system. With judicial precedent, the judgement of a higher court would be binding on a lower court. Also, the judgement of courts with equal jurisdiction would be binding except in some special circumstances.Â An example of this special circumstance is when **the coordinate court gives its decision per incuriam**.

For you to know how judicial precedent works, it would be best if you understand the **hierarchy of courts**.Â But to give you a broad overview, any decision of the Supreme Court that has not been upturned by the Supreme Court is binding on all courts in the country.

How is Case Law a Primary Source of Nigerian Law?

It is a general proposition that judges do not have the power to legislate. So, if judges cannot legislate, how is case law a primary source of Nigerian Law?

The reason why case law is a primary source of Nigerian law is that the law is what the judge says it is. Legislation can have conflicting interpretations in the law courts. In fact, legislations have different interpretations in the law court. If they donâ€™t, what then are lawyers haggling about in court? The only interpretation that becomes applied is the interpretation that the court accepts.

There are also instances where legislation is not clear. In these instances, the court uses the **rules of interpretation** to clarify the provision of the legislation.

In essence, case law is a very important primary source of Nigerian law. The other primary sources of Nigerian law can only operate through case law. Whatever interpretation any lawyer might spring up, the law is what the court says it is.

Legislation as a Primary Source of Nigerian Law

I believe that most of the people reading this post did Government while in Senior Secondary school. As a result, you would have an idea of what legislation is. To use a simple definition, we can say that legislation is the law made by the legislature. ThisÂ definition is very simple and is quite easy to remember and comprehend.

But this is Law we are talking about here, and lawyers donâ€™t necessarily deal with simple and straightforward definitions. So, I would need to quote the Blackâ€™s Law dictionary for a â€œlegalâ€ definition of legislation. The 9th Edition of the Blackâ€™s Law Dictionary defines legislation as:

> 1. The process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process. â€“ Also termed *lawmaking; statute-making.*
>
> 2. The law so enacted.
>
> 3. The whole body of enacted laws.

These definitions provided by the Blackâ€™s Law Dictionary give a legal definition of legislation that would hold up in court, and your exam script. If you can commit it to memory, good luck, if you canâ€™t you would still get an idea of what legislation is all about.

The definition talks about â€œa branch of government constituted to perform this processâ€. In Nigeria, this branch of government is the National Assembly. You can find constitutional backing for this in **Section 4 (1) of the Constitution**. If you donâ€™t have a Constitution beside you, this is what the section says:

> The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

Legislation is an important primary source of Nigerian law. It is easily the most important primary source of Nigerian law. The reason for this is because all the other **primary sources of law get their validity from legislation**. For instance, the received English law has to get backing from different legislations like the Interpretation Act, the Evidence Act and so on.

The Types of Legislation

There are numerous kinds of legislation. Classifying legislation depends on the constituted arm of government that enacted it. Legislation made by a State House of Assembly is quite different from Legislation made by the National Assembly. Also, Legislation made during a military government is different from legislation made during a civilian regime.

Using this classification, the major types of legislation are Ordinances, Acts, Laws, Decrees, Edicts, and Bye-Laws.

Ordinances are laws the central executive council made during the colonial period. Laws were called ordinances till Nigeria started practising federalism in 1954.

Acts are simply legislation by the National Assembly. The National Assembly consists of the House of Representative and the Senate. Before a Bill can become an Act of the National Assembly, it has to pass through the procedures in **Section 58 of the Constitution**.

The procedure is that a bill can originate in any of the two houses of the National Assembly. When it passes in one house, it will move to the second house of the National Assembly. If it also passes in the other house, the next step is for the President to assent to the bill. If the President refuses to assent to the bill, it can still become law if both houses pass the bill by a two-third majority.

I am sure that you would have come across various Acts of the National Assembly. Some of them include the Interpretation Act, Companies and Allied Matters Act, Evidence Act, and so on.

Laws are the legislations the State House of Assembly makes during a democracy. For a bill to become a Law of the State House of Assembly, it needs to follow the procedures in **Section 100 of the Constitution**.Â The first step is that the State House of Assembly passes the bill. After this, the House of Assembly presents the bill to the Governor for assent. If he doesnâ€™t assent, the House of Assembly can still pass it with a two-third majority vote.

Decrees are legislations the central government makes during a military regime. In the case of ***Attorney General of the Federation vs. Guardian Newspapers (1999) 5 S.C.N.J 324*****,** the court stated that the most important thing needed for a military decree to be valid is the signature of the head of state. Â In military governments, **Decrees occupy the top hierarchy of the laws of the country**. They even have a higher hierarchy than the Constitution.

Edicts are laws that the regional/state government makes during a military regime. They also just require the signature of the military governor to be valid. In military governments, the **Constitution is higher in the hierarchyÂ of laws** than the edict of a state government. So, if an Edict conflicts with the operating constitution, the edict would be null and void. The reason for this is that the amended constitution in a military government is also a decree by the central military government.

Bye-Laws are legislations by the local governmentâ€™s legislative authority. They are called bye-laws in military and civilian regimes.

What about Delegated legislation?

Now that I have shown you the kinds of legislation, you might be wondering where delegated legislation fits in all this. This is important if you consider the fact that it has the word â€œlegislationâ€ attached to it. Delegated legislation is actuallyÂ a legislation. What sets it apart from the other kinds of legislation is that it is not the normal constitutional body for legislation that creates it.

Rather, delegated legislation occurs when the body responsible for legislation gives another body the authority to legislate on its behalf. This body responsible for legislation isnâ€™t the necessary the National Assembly or State House of Assembly. It could be a military government through its Decree. The key point is that the legislature gives a non-legislative body the power to legislate.

The reason for this is that the legislature cannot make law on all areas of pubic life. There are some areas that are quite technical. In these instances, the legislature empowers another body to make laws covering that area. Lawyers call the law that the Legislature uses to empower the other body an enabling statute. You should note that the body enabled to make delegated legislation cannot exceed its mandate. If it does, the court will declare its action *ultra vires* and invalid. Examples of enabling statute include the Â Legal Practitioners Act, University Â College Hospital Act, and Town Planners (Registration, etc.) Act.

An example of delegated legislation are the rules that guide the operation of courts. The Constitution gives the head of each court the authority to make rules concerning the practice and procedure of the court. For example, **Section 248 of the Constitution** gives the President of the Court of Appeal the power to make rules for his court. The same thing applies to all the other courts that the Constitution establishes.

Citing examples from the Constitution might seem a bit tricky. You might be under the impression that the Constitution is not a legislation since the National Assembly didnâ€™t create it. This is a misconception that I would dispel this in the next section.

Is the Constitution a Legislation?

As a law student/lawyer, you know that the Constitution is the supreme law of the land. The Constitution states this clearly in **Section 1 (3)** that any law that conflicts with it would be null and void to the extent of its inconsistency. This seems to put the Constitution on a higher pedestal compared to ordinary legislation. So, you might think that the Constitution is not a legislation itself.

However, the Constitution is very much a Legislation. The National Assembly might not have created it, but it is every inch a legislation. The reason for this is because the constitution is a decree by the military government. To be specific, the 1999 Constitution is Decree no 24 of 1999. And we already know that a Decree is also a legislation.

Also, the whenever the present National Assembly amends the present constitution, they pass the alteration as an Act of the National Assembly. They can do this by following the procedures inÂ **Section 9 of the Constitution.Â** This makes the constitution a legislation like any other legislation.

So, the present Constitution is, in and of itself, also a Legislation. That the constitution is a legislation makes Legislation a very important primary source of Nigerian law.

Customary Law as a Primary Source of Nigerian Law

When an ordinary person thinks of the Nigerian law, the first picture that comes to mind is lawyers and judges in their wig and gowns. To most people, Nigerian law is a replica of the English law of the colonialist. Fortunately, this is not the full picture.

The local laws that were operative in Nigeria before the advent of the British are still in operation in Nigeria, and they shape our laws. However, not all customary law is applicable in Nigeria. Before native law can be applicable in Nigeria, it has to pass the validity tests. When it passes this test, it becomes a primary source of Nigerian Law.

What is Customary Law?

Customary law is a general term that includes all laws that were in operation in Nigeria before the colonial rule. In the pre-colonial period, there were numerous autonomous entities in Nigeria. The Sokoto Caliphate, which comprised most parts of northern Nigeria, used Islamic law. In other parts of Nigeria, the native laws of the indigenous peoples operated as the law of the land.

When the British colonized the territory known as Nigeria, in typical colonial fashion, they classified all indigenous laws as customary law and subjected them to English law.

This is what informed the definition of customary law in the case of ***Joseph Ohai vs. Samuel Akpoemonye 1999 1 SCNJ 73 @ 77*** 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 sway.â€ (*italics mine*)

From this definition, the courts would recognise all laws that are neither common law nor enacted by the legislature as customary law.

The Validity Test

Nigerian customary law has its fair share of laws that we would out rightly consider abhorrent. A very popular instance is the killing of twins that Mary Slessor stopped in pre-colonial Calabar. There are also numerous other gory instances like human sacrifice.

It was due to instances like this that the colonialists created the validity tests. Before the court can apply a custom in Nigerian jurisdiction, it has to pass these validity tests.

The validity tests have remained in Nigerian legislation since the colonial times. In the present dispensation, you can find them in the High Court Laws of the various states and the FCT. According to S. 44 of the High Court Law of Oyo State (1978), Customary Law would be applicable in the court if it is not:

- Repugnant to natural justice, equity and good conscience.
- Contrary to public policy
- Incompatible directly or by implication with any law for the time being in force.

The **Evidence Act 2011** also provides in **S. 18 (3)** that a custom would not be applicable as a law if it is contrary to public policy or is repugnant to natural justice, equity and good conscience.

Natural Justice, Equity, and Good Conscience

It can be quite tricky to try getting an exact meaning of natural justice, equity and good conscience. The concept of natural justice and equity varies from society to society. Some societies view respect for elders as immutable while some pay a passing reference to it.

Regardless of this confusion, we can get a bearing on the meaning of this term by looking at the various decisions of the court.

In the case of ***Dawodu vs. Danmole***, the custom in question bordered on the Yoruba law of inheritance. Under this custom, if a man dies intestate with multiple wives, his property was divided according to the number of wives he left behind.

As a result, all the children of one wife inherited the property allocated to the wifeâ€™s branch of the family. For instance, if Tofunmi has two children and Tayo has six children, the property of Tayoâ€™s children would be the equal to Tofunmiâ€™s childrenâ€™s share. The Yoruba called this the *idi igi* system of inheritance.

The trial court ruled that this custom was repugnant to natural justice. This was because it negated the common law doctrine of equality of inheritance among the children. At the appeal, the appellate court allowed the appeal. They stated that it would be erroneous to import doctrines of natural justice that applied in a monogamous society to a polygamous one like Nigeria.

An instance of a case where the courts did not apply a custom because it was not compatible with natural justice is the case of ***Guri vs. Hadejia Native Authority***. In this case, the custom in question was one that didnâ€™t allow a suspected Highway robber to defend himself in court. The court did not apply this custom because it was contrary to the principle of fair hearing.

A Custom has to be Compatible with Public Policy.

A custom will not apply on the grounds of public policy if it undermines the already established laws. In the case of ***Cole vs. Akinleye***, the custom in question was one concerning the legitimacy of children born out of wedlock.

Under Yoruba custom, if a father acknowledges a child born out of wedlock as his child, he would become a legitimate child. This means that he would have an equal right to inheritance along with those born legitimately in the marriage.

In the case, the father acknowledged the illegitimate child while he had other legitimate children under the Marriage Ordinance. The court held that equating the right of a child born out of wedlock with the rights of children born under the Marriage Ordinance would be contrary to public policy.

The rationale behind the decision was that the Marriage Ordinance was of colonial origin. As a result, any custom that would try to undermine a colonial law would be contrary to public policy.

If a customary law can pass these validity tests, it is well on its way to becoming a primary source of Nigerian law.

International Law as a primary source of Law

In the days before the United Nations, there wasnâ€™t much unity among the countries of the world. The only unity between countries occurred through alliances.Â During this tine period, the major laws between countries were treaties between two to three countries. Luckily for us, this is not the case today. Today, there are international treaties that bind hundreds of countries all over the world.

These treaties are called International Law, and they are also a crucial primary source of Nigerian Law.

How is International Law a Primary Source of Nigerian Law?

As I have stated, a source of law would be a considered a primary source of Nigerian law if it is binding on the law courts. Does this mean that Nigerian courts have to enforce every treaty signed by Nigeria? The answer to this is a resounding no.

When it comes to the bindingness of international law, countries have two options. In some countries, the moment the countryâ€™s representative signs the treaty, it becomes binding in the countryâ€™s law courts. In other countries, a treaty does not become binding unless the legislature domesticates it. Domestication means that the countryâ€™s legislature would have to pass the treaty as a law.

Nigerian belongs to the latter camp. You can find support for this in **Section 12 of the Constitution**. This is what happened in the case of***Â Abacha vs. Fawehinmi (2000) 4 FWLR 533***. In this case, the respondent contended that the provisions of the African Charter on Human and Peopleâ€™s Rights were not applicable in Nigeria. The court held otherwise because the legislature had already domesticated the African Charter.

Conclusion

It is very important for you to understand primary sources of Nigerian law. They are most important when you want to determine the weight of an authority in the law court. If you are armed with a primary source of Nigerian law, you can be sure that your argument would have more weight before the court of law.

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