BAYERO UNIVERSITY KANO
SCHOOL OF GENERAL AND ENTERPRENEURSHIP STUDIES

MODDULE 5
FOUNDATION OF NIGERIAN CULTURE, GOVERNMENT AND ECONOMY

COURSE
ETHICS AND NIGERIAN LEGAL SYSTEM: GSP 2204

LECTURER
DR MUHAMMAD NURUDDEEN
DEPARTMENT OF PUBLIC LAW
FACULTY OF LAW

SESSION
2020/2021

Course Contents

1. Definition of Ethics
2. Ethical Issues in Nigeria
3. The Concept of Legal System
   a) Meaning of law
   b) Nature of Law
   c) Functions of Law
   d) Classifications of law
   e) Sources of Nigerian law
4. Administration of criminal justice in Nigeria

1. Definition of Ethics:

When most people think of ethics (or morals), they think of rules for distinguishing between right and wrong, a code of professional conduct, a religious creed, or a wise aphorisms[1]. As such, the most common way of defining "ethics" is: norms for conduct that distinguish between acceptable and unacceptable behavior.[2]

But just like many concepts in the realm of social sciences, the term ethics may defy universally agreed definition. This is because the nature of one's discipline, profession, trade or calling may influence his definition of the term. Hence the definition of ethics in medical field will certainly differ from that in legal, engineering, educational or military sense. Additionally, the definition of ethics may also defend on the context in which it is being defined. In the government sector, for example, the word 'ethics' is often used to refer to specific legal rules of conduct for government employees that emphasize conflicts of interest.[3] Similarly, in the corporate world, 'ethics' is often understood to mean adherence to legal and regulatory requirements, and is often used interchangeably with the term ―compliance.[4]

Microsoft Encarta Dictionary defines the term ethics as "code of morality: A system of moral principles governing the appropriate conduct for a person or group." According to Resnik,[5] "Another way of defining 'ethics' focuses on the disciplines that study standards of conduct, such as philosophy, theology, law, psychology, or sociology. For example, a "medical ethicist" is someone who studies ethical standards in medicine. One may also define ethics as a method, procedure, or perspective for deciding how to act and for analyzing complex problems and issues. For instance, in considering a complex issue like global warming, one may take an economic, ecological, political, or ethical perspective on the problem. While an economist might examine the cost and benefits of various policies related to global warming, an environmental ethicist could examine the ethical values and principles at stake."

---

[1] Resnik, D.B., What is Ethics in Research and why is it important, accessed at http://www.niehs.nih.gov/research/resources/bioethics/whatis/index.cfm

[2] Ibid.

[3] Fox, E., etal, Integrated ethics: An innovative program to improve Ethics Quality in Healthcare, The Innovation Journal: The Public Sector Innovation Journal, Vol. 15(2), article 8 at P.3

[4] Ibid.

[5] Supra note 2

From the definitions above, ethics could simply be defined as consisting of certain rules and standards of conduct recognized as binding on members of a society, professional body, association, trade, institution or organization and which guides the relationship between members inter se and their relationship with the general public. This relationship could be in the course of discharge of moral, religious, contractual or legal duties.

2. Ethical issues in Nigeria:

Ethical issues in Nigeria are many and tied to different dictates of one's professional/ institutional calling. Hence you have ethical issues in medical practice; in journalism; in teaching profession; in legal profession; in research; in public service; in business; in banking; etc. Each of these has a distinct code that guides the conduct of members in the practice of the profession or the discharge of duties placed on him by law or by agreement. Each of the Nigerian communities and societies has its code of ethics made up of moral values of what is right or wrong which dictates the standard behavior of members of the society when dealing with his fellow members of the society. These codes of ethics are mostly unwritten but developed from time immemorial and came to be accepted as part of the custom of the people living in the community. In the communities, you find individual members belonging to different profession, trades and other callings. To attain an ideal society, each and every member of the society must play by the societal and professional ethical rules. In the large picture, Nigeria as a country will prosper and flourish economically, socially, morally, educationally, etc if all Nigerians will abide by the dictates of the ethics of his profession or calling. It will also aid in engendering good governance and maintenance of equitable, stable and secured Nigeria.

Development is highly desirable in any society because it enhances people's standard of living anywhere in the world[6]. However, there are some basic procedures to follow in doing business and in the handling of government activities before development can take place; and the Nigerian society is not an exception[7]

[6] Gberevbie, D.E., Ethical issues and nigeria's quest for development, African Journals online (AJOL), Vol. 1(2013) accessed at https:/www.ajol.info>article>view
[7] Ibid.

Ethical issues in Nigeria are not documented and compiled in a single document or law, but are contained in the respective codes of conduct of all professions and callings. For instance in the legal profession, the ethical issues are contained in the Legal Practitioners' Ac[8]t and Rules of professional conduct. The rules explain how a lawyer should conduct himself when dealing with his clients. For example the Rules of Professional Conduct for Legal Practitioners[9] provides that "a lawyer shall uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner"[10]. Yet, while the objective of the legal professional is to provide the best possible representation for the client, the professional must also be constantly aware of the demanding ethical considerations[11]. The obligation to act in what society would consider a morally correct manner may well affect the method in which representation is given to client[12]. Flowing from this responsibility, a lawyer is ethically bound to be dedicated and devoted to the cause of his client[13], represents his clients within the bounds of the Law[14] and competently[15], to avoid conflict of interest in the course of representing his clients[16], to observe good faith in dealing with another lawyer[17], to always treat the court with respect, dignity and honor[18], etc. Any lawyer that disregards the rules will be said to have acted unethically and may be sanctioned appropriately.

[8] Legal practitioners Act 1962 as amended
[9] Rules of Professional Conduct for Legal Practitioners 2007
[10] Section 1 of the Rules
[11] Dunham, B.W., Introduction to Law, 2004, Thomson Delmar learning United States, p. 138
[12] Ibid.
[13] Section 14 of the Rules
[14] Section 15 of the Rules
[15] Section 16 of the Rule
[16] Section 17 of the rule
[17] Section 27 of the Rule
[18] Section 31 of the Rule

In the medical profession, the conduct of a medical practitioner is regulated by the Medical and Dental Practitioners Act, 2004, Code of Medical Ethics 2008, the National Health Act 2014, etc. Under these provisions, certain principles are obviously manifest with respect to medical ethics and the physician ought to be familiar with most of these principles and that will serve as a guide in their conduct vis' avis patient care[19]. These principles include patient's autonomy, beneficence, non-malfeasance, honesty, confidentiality, informed consent, medical reasonableness, etc[20]. The responsibility of a medical practitioner towards a patient commences as soon as the medical practitioner consents to undertake a medical examination of the patient[21]. A medical doctor who acted in contravention of these principles is said to have acted unethically and is liable to be sanctioned by the appropriate authority. The same thing applies to members of other professions like engineering, accounting, teaching, etc.

In the public service, all holders of public office are expected to discharge their duties in accordance with the public service rules and the code of conduct for Public officers[22]. Under the code, public officers includes the President, Vice President, Governors and their Deputies, the President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives, the Speaker and Deputy Speaker of the States Houses of Assemblies, Chief Justice and Justices of the Supreme Court of Nigeria, President and Justices of the Court of Appeal, all other Judicial Officers and staff of Courts of Law, Attorney-General of the Federation and Attorney-General of each of the States in Nigeria, Chief of Defence Staff, Chief of Army Staff

[19] Osime, C.O., Understanding Medical Ethics in a Contemporary Society, Benin Journal of Postgraduate Medicine, Vol. 10, No.1 (2008) at p.1

[20] Ibid.

[21] Okojie, E., professional medical negligence in Nigeria, accessed at www.nigerianlawguru.com last visited on 15/09/2018

[22] Code of conduct for public officers contained in the fifth schedule to the constitution of the federal republic of Nigeria 1999 as amended.

Chief of Naval Staff, Chief of Air Staff and all members of the Armed Forces of the Federation, Inspector General of Police, all members of the Nigerian Police Force and other government security agencies established by law, Secretary to the Government of the Federation or State, Head of the Civil Service of the Federation or State, Permanent Secretaries, Directors Generals and all other persons in the Civil Service of the Federation or State, Ambassadors, High Commissioners and other Officers of Nigerian Missions abroad, Chairman, Members and Staff of the Code of Conduct Bureau and Code of Conduct Tribunal; Chairman, Members and Staff of Local Government Councils; Chairman and Members of the Boards or other Governing Bodies and Staff of Statutory Corporations and Companies in which the Federal or State Governments or Local Government Councils; all Staff of Universities, Colleges and Institutions owned and financed by the Federal or State Governments or Local Government Councils; Chairman, Members and Staff of Permanent Commissions or Councils appointed on full time basis[23]. Under this code a public officer shall not:

a. Put himself in a position where his personal interest conflicts with his duties and responsibilities;
b. Receive the emoluments of any public office at the same time as he receives emoluments of any other public office;
c. Ask for or accept property or benefits of any kind, from commercial firms, business enterprises or persons who have contracts with the government;
d. Receive any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties, for himself or

[23] Ibid.

any other person on account of anything done or omitted to be done by him in the discharge of his duties;

e. Do or direct to be done, in abuse of his office, any arbitrary act prejudicial to the rights of any person knowing that such act is unlawful or contrary to any government policy[24]; etc.

In the business angle, banks, financial institutions, insurance firms, issuing houses, companies, partnerships, enterprises, industries, fund managers, journalism and media practice, etc are all duty bound to operate with the highest ethical values and standards. Ethical rules contained in Standard operating Procedures (SOPs), Prudential Guidelines (PGs), Proper Ethical Standards (PES), etc are design to regulate doing business between themselves and the general public.

The ethical challenge in Nigeria is how to make the public and private institutions/organizations work within their ethical boundaries for the overall nation's development in terms of governance, rule of law, investment potentials, attracting foreign investments, infrastructure, human rights, employments, etc. As pointed out earlier, every player in the Nigerian public and private sector has a duty to act in accordance with the rules regulating the conduct of his trade, profession or calling. As such, the responsibility of making Nigeria great, in all respect, is not a lone duty of any individual or profession, but a joint task to be discharged by every Nigerian at whatever level, capacity or sector he operates. It is only when this is done, that Nigeria will join other developed nations.

However, it is sad to observe that in Nigeria of today no single institution, organization or establishment is working perfectly due to unethical practices that cut across all sectors. These practices include corruption, nepotism, impunity, disregard for rule of law, etc. Lack of proper ethical standards (PES) and behavior as a way of carrying out businesses and government

[24] Ibid.

transactions by the citizens and public officials has been identified as the major obstacles to the realization of Nigeria's quest for development[25].

In order to arrest the situation and bring Nigeria back to the path of development, the first major stride is to make all holders of public and private offices, decision and policy makers, responsible and accountable for whatever act or decision they take. This will help check the culture of corruption and impunity in disregard of rules of ethics in the codes.

3. The Concept of Legal System

The concept of legal system embodies a complete system of laws operating in a given society, setting, State and Nation. Such system usually includes the definition and classification of laws, offences, rights, duties, responsibility and the procedures through which they can be established, disproved, sanctioned, compensated or enforced. It explains roles of the court and its relationship with each of the institutions responsible for law enforcement such as the, the police, the prison, etc. As such Nigerian legal system consists of study on the court system and its hierarchy, sources, classification, functions and branches of law and law enforcement agencies such as the police and the prison.

4. An Overview of Nigerian Legal System

a) Meaning of Law

The phenomenon "law' resists what modern students crave for the most: certainty of definition. The question 'what is law?' may appear very simple and may seem to require only few words in response. On the contrary, it is it arguably one of the most difficult and energy-demanding questions under the sun. It is, in the words of Kant[26], as embarrassing to a lawyer as the question:

[25] Supra note 7

[26] J. Ladd and I. Kant, The Metaphysical Element of Justice (Newyork, The Boobs-Merrill Co Inc., 1965) p. 33, quoted in J. O. Asein, Introduction to Nigerian Legal System, 2nd ed. (Nigeria: Ababa Press Ltd., 2005) p. 9

'what is truth?' is to a logician. It is the most elusive of the lexicon of legal vocabularies. In the words of Hart,[27] few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question 'what is law?'. Many scholars of varying erudition have attempted to offer a single answer that will satisfy all curious minds, but all in vain.

It is not that the scholars are intellectually incapable of producing what is or what should be the answer to this apparently simple question, but that the phenomenon is multi-disciplinary and appears in almost all dictionaries. As a result, whoever attempts to define it will be influenced by his profession and will offer a definition that is 'coloured' by his perception of the term. Theologians see law as divine rules, traditionalists equate it with morality, lawyers say it is a rule of human conduct, scientists view law as a rule of action, to mention but a few.

In general, the term may be viewed from two broad senses: the wider sense and the narrowed sense. Law in the wider sense is a broad and open usage of the concept to mean a rule of action expressing a verified regular pattern of behaviour or consequence in given circumstances".[28] Thus, you hear the Law of Activation Complex, Newton's Law of Motion, Bois Law and so on in the pure sciences. You also hear economists speak of the Laws of Demand and Supply, the Law of Diminishing Marginal Utility, etcetera.

In the narrowed sense, it is used to denote a rule of human conduct tacitly or formally recognized and accepted by a people as binding and backed up by some mechanism for the sustenance of its binding nature.[29] Thus, this book is interested in the narrow and restricted meaning of the concept.

[27] H. L. A. Hart, The Concept of Law (London, Oxfrd University Press, 1971) p. 1
[28] J.O. Asien, Introduction to Nigerian Legal System. 2nd ed., (Nigeria Ababa Press Ltd. 2005) p. 1
[29] J. O. Asein. Ibid p. 9

We can therefore simply define law as a set of rules prescribing and/or proscribing human conducts whose violation attracts the payment of some price.

b) Nature of Law

1. Laws are made. Unlike morality, laws are not just discovered but consciously made. Legislation or statutes arc made (passed) by legislature/parliament. Case laws are made by judges. Even customs are made though in a weaker sense.[30] This is because a custom becomes binding not because it is necessarily the best way of acting in a given situation but because that is the way the community acts and which it has accepted as (made) binding.
2. It is a body of rules. It comprises of multiple rules, which arc not contained in a single document. For instance, as will be discussed in subsequent sections, there are various sources of the Nigerian law such as the constitution, judicial precedents, customary law, primary and secondary legislation.
3. It has territorial limitation. Law is meant to be applied within a particular territorial boundary and losses its legal weight the moment it is taken out of such territorial boundary. Even international laws are generally applicable to countries that have domesticated and assented to them and thus they are territorially limited.
4. It is not necessarily formal. It may be tacitly accepted by a people as binding upon them.
5. Law is dynamic. Under normal circumstances, laws arc never static. They constantly change to cope with the challenges of the ever-changing society and to cover new emerging issues.

[30] J.M. Elegido. *Jurisprudence*, *op cit* p. 339

6. It is backed up by sanction or means of coercion. The word *'sanction* denotes punishment or, perhaps, rather a price be paid in the event of violation. For a rule to be Qualified as a rule of law there must be a punishment/price provided against its violation. Any rule that does not have a punishment is merely a rule of morality, not a rule of law. It is pertinent to point out here that the above list is not intended to provide a list of qualities that must be present in any valid legal system. It is rather a mere guide and thus some may be missing and yet the law in question remains one. Much still, others not mentioned here may be found and this does not affect the validity of the law.

c) Functions of Law

The primary function of law is the advancement of the common good of the community through the co-ordination of the activities of its members,[31] and it implies that the law provides guidance to all the citizens and other inhabitants of a particular country on the way and manner they are expected to act in order to foster and promote the common good of that country. It sets a limit to human behaviour and tells the members of the society what to do and what to avoid – it prescribes and proscribes some conducts. It guides the actions of *rational* beings through *rational* means.[32]

1. It creates rights and duties. Your right is what you expect from others the violation of which gives rise to claims while your duties are what you are expected to give others the violation of which gives rise to liabilities.
2. It lays down the processes and procedures one is expected to follow to enforce one's rights when they are violated by others. When your right is violated, the law does not allow you to struggle it back through any other means than the one provided by it. It prohibits jungle justice or self-help for two wrongs cannot make a right.

[31] J.M. Elegido, *op cit* p. 337
[32] J.M. Elegido. *Jurisprudence, ibid p.* 339

3. It creates and recognizes the organs and tiers of government, provides for their duties and regulates their relationships. It provides for succession to power and defines who shall exercise what power and how.
4. It minimizes arbitrariness in the exercise of power and maximizes freedom of the members of the society. This is achieved through government based on the fundamental ideals of the rule of law that preaches governance according to the laws of the land rather than based on the capricious wishes and whimsical desires of those in power.
5. It protects lives and property.
6. It regulates social relationships. It controls interpersonal, communal, inter-communal, national and international relationships.
7. It communicates and reinforces social values of the society. Societal values arc, simply put, the morals of the society. Law assists the society by identifying its norms and values, ensuring that they are communicated from generations to generations and if necessary enforce them.[33]
8. It regulates commercial transactions. For instance, it provides for the right of the buyer and the seller in a sale of goods transaction and the remedies of each against the other in the event of breach. It also provides for a system of transfer of rights and interests through contract, succession, assignment and the likes.
9. It guides the members of the society in predicting the legal consequences of human conducts.

d) Classifications of Law

Law may be classified into:

a. Civil & Criminal laws,

[33] T. R. Ikpotor. *ibid p. 6*

b. Private & Public laws,

c. Substantive & Procedural laws

d. Domestic & international laws

e. Case law & Legislation

Civil & Criminal law

Civil law is a law that deals with the rights and duties of private individuals, group's states or organizations. Law of contract, commercial law, and labour law, for instance, regulate the relationship between contracting parties. Criminal law, on the other hand, is a branch of law that deals with offences against the authorities of the state. It deals with public interests at large. The following are the major differences between these two laws:

1. **The objectives**: criminal law is intended to convict and punish the offender as this gives him as well as others a strong inducement not to commit the same crime again, reform the offender and perhaps satisfy the sense that wrongdoing ought to meet with retribution. Civil law, on the other hand, is intended to address disputes between private individuals and organizations. This is done by compelling the wrongdoer to pay compensation or restitution.[34]
2. **The interests involved:** The overriding interest in civil law is that of the affected individual, while in criminal law the overriding interest is that of the public represented by the state.
3. **Prosecution of Case:** It is the affected individual (the victim) that institutes civil actions, while criminal actions are instituted by the government on behalf of the public, since, as noted above, the interest of the whole society is at stake in the latter.
4. **The parties involved:** The party that instituted civil proceedings is called the plaintiff, while the party against whom it was instituted is called the defendant'. In criminal proceedings, the

[34] See Geldart W. (1984). Introduction to English Law, D.C.M. Yardley ed., 9th ed. P. 146.

instituting party (the state) is called the Prosecutor or Prosecution while the party against whom it was instituted is called the Accused.

5. **Burden of proof:** In civil proceedings, the burden of proof shifts between parties, while in criminal proceedings the burden of proving guilt has permanently on the state.
6. **Standard of proof:** Civil wrongs arc proved on preponderance of evidence meaning that the plaintiff must convince the court that his/her version of the story is more likely to be true and that judgment, should be given in his/her favour. In other words, the standard in a civil wrong is less stringent. Usually, at least a 51% probability is required. This standard is otherwise called prima facie case or "crossing the 51% line". On the other hand, criminal offences are to be proved beyond reasonable doubt before conviction can be secured. More than 99% certainty is required.[35] The standard of proof here is high.
7. **Types of remedies:** Civil wrongs are usually remedied with specific performance, payment of damages, restriction and so on, while criminal offences are punished with fine, imprisonment, death sentence and so on.

It is to be noted that both civil and criminal cases may arise from a single action. When a person driving under the influence of alcohol crushes into another person's car. The offender may be arrested and prosecuted for drunk driving. But his victim (the affected driver) can also sue civilly to get damages for injuries sustained. However, these two cases must be kept separate. They can never be tried together.

Private & Public

Private law, as the coinage suggests, is a branch of law that deals with the rights and duties of private individuals, organizations and companies against one another. Where there is a dispute

[35] See www.articlelick.com/civ-law.html

between a private individual, group of individuals or private organizations/companies on the one hand and the government of the federation or any part thereof or its organizations, agencies, etcetera, on the other hand, it is private law that will apply. Examples of private law include law of contract, family law, law of torts, commercial law and the likes.

Public law, on the other hand, regulates the relationships between or amongst the organs, tiers and agencies of the government. This branch of law is otherwise known as administrative law. It is mainly concerned with governmental type of decision-making and available challenges to quash such decisions which are *made ultra vires* (in excess of power), in bad faith, in breach of procedural fairness or unreasonableness.[36] Typical examples of this branch of law are administrative law and constitutional law.

Substantive & Procedural Law

Substantive law creates, defines and regulates legal rights and obligations. They guide the court in deciding whether a right exists, whether it is breached and the remedies for such a breach. Procedural law, on the other hand, comprises the rules by which a court hears and determines a particular proceeding, civil or criminal. It deals with the way and manner in which substantive law is made and administered. For instance, the time allowed for a party to institute a lawsuit and the rules relating to the process of instituting such action are examples of procedural law. Thus, whereas substantive rules of law create rights and duties, procedural rules of law provide the machinery for enforcing such rights. All the courses taught in our universities with exception of law of evidence, civil and criminal procedures, deal with substantive law.[37]

Municipal & International law

[36] See Sir Anthony Mason's address titled "The Importance of Judicial Review of Administrative Action as a Safeguard of Individual Rights" delivered to the Australian Bar Association. 5th Biennial Conference, Noosa. 4th July, I994.p.4 and the Australian case of General Newspapers Ply Ltd. V Telstra Corporation (1993)45 FCR 164

[37] See Ikpotor, T.R. (20030): *Legal Methods*: Nigeria: Emiola Publishers Ltd., p. 17.

Municipal law is otherwise known as national law. It is a collective name for the laws that have binding effect only within the territorial jurisdiction of a particular country. A typical example is the Constitution of the Federal Republic of Nigeria. Despite its absolute supremacy,[38] the constitution losses its legal authority once it is taken out of the territorial boundaries of the country. International law, on the other hand, regulates relationship between and amongst different countries of the world. It does not enjoy any legal weight unless it is domesticated by the legislative body of a particular country, except whre it assures the status of jus cogens.

Case law & Legislation

Case law is otherwise called judge-made law. They are the laws that evolved gradually from decided cases. They refer to that body of principles and rules of law which, over the years, have been formulated or pronounced upon by the courts as governing specific legal situations.[39] Going by the doctrine of judicial precedent, principles and rules of law enunciated by our courts become binding in similar later cases.[40] Legislation, on the other hand, is deliberations duly passed into law by bodies that are legally competent to do so. They are otherwise called statutes and are written in form. Depending on the body making it, legislation may be an Act, a Decree, a Law, an Edict, or a Byelaw.[41]

It would be important to conclude by saying that there is no hard and fast way of classifying law. The classifications explained above may not therefore be that exhaustive and the various classes set out may overlap each other. However, the aforementioned are the major ones explained in a precise.

e) Sources of Nigerian Law

[38] See Section 1 of the Constitution.
[39] See J. O. Asein. *op cit* p. 73
[40] J.M. Elegido. *Jurisprudence, op en* p. 252
[41] Sec a fuller discussion on this point under Nigerian as a Source of Nigerian law

The term 'sources' is simply the plural form of the word 'source' which refers to a place where something is found or whence it is taken or derived.[42] Thus, the coinage or expression "sources of Nigerian Law' is capable of denoting several different meanings depending on the context in which it is used. It could either denote the starting point of the law or the place where the law could be found or derived. When dealing with the sources of law, the word 'source' could be broadly classified into four, to wit, the literal or material source, the historical source, the formal source and the legal source. The literal or material source is the physical materials from which the law could be found. These physical materials include statute books (like the Penal Code, Land Use Act, and Matrimonial Causes Act) law reports (like the Nigerian Weekly Law Reports, Western Nigerian Law Reports and Judgments of the Supreme Court of Nigeria) and other text materials. The historical source refers to the antecedent event or remote causes that led to the formulation of the principle of law or statute. For instance, the Penal Code of Northern Nigeria was purported to have been enacted as a result of agitations by Muslims in the region to have a criminal statute that has some bearings with the dictates of their faith, Islam. The formal source is the fountain from which a particular rule derives its binding force and this U, refers to the constitution which is the supreme law of the land from where all other laws seek their validity and enforceability. The legal source is the process by which all laws are validated, the law-making process.[43]

We shall, however, be dealing with only one of these source here, the legal sources. The main legal sources of law are:

I. The Received English Law

II. The Constitution

III. Nigerian Legislation

[42] Black's Law Dictionary 6th edition, p. 1395

[43] See J. O. Asein, *op oil* p. 22

IV. Judicial Precedent

V. Islamic Law

VI. Customary Law

The Received English Law

The coinage 'the Received English Law' should not be mistaken to mean voluntary (warm) reception. It is clear from historical records that the indigenous people of the communities of the Nigerian area vehemently resisted the colonial powers and their systems of governance, justice and economy to the extent that some kings were deposed and deported, many people lost their lives while others were jailed. Allot[44] opined that 'translocation' should instead be used. This writer proposes that the coinage should be 'the Imposed English Law'.

a. Two broad sets of English law apply in Nigeria: there are English laws 'received' into Nigeria by Nigeria itself through local legislation and those made to apply in Nigeria by English legislation.
b. The first set applies in Nigeria because Nigerian legislation made them so. The include rules of common law, doctrine of equity and statute of general application. The first local enactment that introduced English law into Nigeria is Ordinance No. 3 of 1863 which provided for the establishment of the Supreme Court of the Colony of Lagos and allowed it to apply the English law. Since then various statutes establishing English courts have allowed them to apply the English law.[45]

[44] In A. Allot, Reception of Common Law in the Commonwealth: Some Problems of the Resulting Pluralism," Proceeding and Papers of the Sixth Commonwealth Law Conference, Lagos, 1980. p. 163

[45] See, for example. Section 17 of the Supreme Court Act. Cap. 424, Laws of the Federation of Nigeria (LFN). 1990 and Section 10 of the Federal High Court Act. Cap. 134. Laws of the Federation of Nigeria (LFN), 1990

c. On this same issue, Section 32 of the Interpretation Act[46] provides:

d. *Subject to the provisions of this section and except in so far as other provision is made by any federal law, the common law of England and the doctrines of equity together with the statutes of general application that were in force in England on the 1st day of January, 1900 shall in so far as they relate to any matter within the legislative competence of the federal legislature be in force in Nigeria.*

e. Let us now discuss these three aspects of English law in some details. The phrase common is a chameleon phrase.[47] This is because its meaning depends upon the context within which it is used. Since we are discussing ‘common law' as one of the 'English sources of Nigeria law', the phrase, in this context, means the laws created by the decisions of English judges and the custom of English people, which apply in Nigeria. These rules of law are handed in the common law courts of King's Bench/Queen's Bench, Common Pleas and Exchequer.

f. The doctrines of Equity, on the other hand, are rules of law developed by the Courts of Chancery. In the middle ages, the common law courts refused to give redress in certain cases where the claimant's claim did fall within the scope of an existing writ. Even where the claimant did obtain a suitable existing writ that fits his claim, he might yet be defeated by the power or influence of his opponent. This meted out a lot of injustices on poor litigants who were left to go without redress. Disappointed litigants who could not obtain remedy either through lack of it or failure to administer it petitioned the King, the fountain of Justice, for extraordinary relief through the exercise of his wide discretion. The King, through the Chancellor (the King's prime minister and The King's secretary of state for all

[46] Cap. 89, Laws of the Federation of Nigeria (LFN). 1990
[47] Glanville Williams: *Learning the Law, Twelfth Edition,* London: Sweet & Maxwell, p. 24

departments),[48] eventually set up a special court, the Court of Chancery, to consider the petitions. As time went, the rules applied by the Courts of Chancery hardened into law and were called 'the doctrines of equity', which later became part of the law of England and, consequently, introduced into Nigeria.

g. It is to be noted that the various indigenous laws introducing these English laws made provisions to the effect that in the event of conflict between the rules of common law and the doctrines of equity, equity shall prevail.[49]

h. Whereas the common law and equity apply with minimum restrictions, statutes of general application apply with many conditions. The statutes must pass a number of litmus tests. These include the 'general application' test, the 'nature of statutes' test, the 'in force in England date' test, the 'limits of local jurisdiction' test and the 'formal verbal alteration' test.[50]

The Constitution as a Source of Nigerian Law

The most comprehensive definition of Constitution is arguably the one given by the Black's Law Dictionary which defined it as "the organic or fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the manner of the exercise of sovereign powers'.

A constitution could be written or unwritten. It is called written when it is contained in a document called 'The Constitution' like in the case of Nigeria. It is unwritten like in the case of Britain.

[48] See Kodiliye. *An Introduction to Equity in Nigeria,* Ibadan: Spectrum Books Ltd.. 1974 p. 2

[49] See. for instance, Section 12 of the Federal High Court Act *supra*

[50] See Lawaly Ejidike (lQ97) 2 NWLR (Pt. 487)"319 at 332

Similarly, it could also be a rigid or a flexible constitution. It is rigid when it requires stringent procedure before it is amended. It is flexible when the procedure for its amendment is less stringent. Furthermore, it could be a federal or a unitary constitution. It could also be a presidential or parliamentary constitution depending on the form of government in operation.

"Just like all other constitutions hitherto operated in this country, The 1999 Constitution of the Federal Republic of Nigeria is written. It is not only written but also supreme.[51] It is, to borrow the wordings of Niki Tobi JSC in the case of *Attorney General of Abia State v Attorney General of the Federation*,[52] *the fans et origo,* not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the alpha and the omega. It is the barometer which all statutes are measured. In line with this kingly position of the Constitution, all the three arms of Government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and above every statute, be it an Act of the National Assembly or a law of the House of Assembly of a State.

The learnt Justice continued in the case:

> *The supremacy clause is provided for in section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999. All the three arms of Government must dance to the music and chorus that the Constitution beats and sings, whether the melody sounds good or bad. Regarding the first place section 1 occupies in the Constitution, I regard and christen it as the golden section of the constitution, the adjectival variant of the noun gold. It is the same golden position in sports that the Constitution occupies in any jurisprudence and legal system, including ours.*

[51] See Section 1(1) of the Constitution
[52] (2006)16 N.W.L.R. P. 284.

> *While I recognize the constitutional right of the Legislatures, that is, the National Assembly and the House of Assembly of the States, to amend the Constitution, until that is done, they must kowtow (using the Chinese expression) to the provisions* of the Constitution, whether they like it or not.

In the case of *I.N.E.C. v Musa*[53] the Supreme Court of Nigeria[54] held on the supremacy of the Constitution and its consequences on the powers of the National Assembly as follows:

> *First, all powers, legislative, executive and judicial must ultimately be traced to the Constitution. Secondly, the legislative powers of the legislature cannot be exercised inconsistently with constitution. Where it is so exercised it is invalid to the extent of such inconsistency. Thirdly, where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution had enacted must show that it has derived the legislative authority to do so from the Constitution. Fourthly, where the Constitution sets condition for doing a thing, no legislation of the National Assembly or of a State House of Assembly can alter those conditions in any way, directly or indirectly, unless, of course the Constitution itself as an attribute of its supremacy expressly so authorized.... However it is described, where the Constitution has covered the field as to the law governing any conduct, the provision of the Constitution is the authoritative statement of the law on the subject.*

Similarly, in *Tanko v State*[55'] held:

> *It cannot be denied that the Constitution, the grundnorm of this country, indeed, the Constitution of any country is supreme, it is by it (the Constitution) that the validity of any laws, rules or enactment for the governance of any part of the country will also be tested. It follows therefore, that all powers: be the legislative, executive and judicial, must ultimately be traced and*

[53] (2003)10 W.R.N. p. at pp 40-41
[54] Per Ayoola. J.S.C.
[55] (2009)4 N.W.L.R. p.430 at 452

predicated on the constitution for the determination of their validity. All these powers I have mentioned must and indeed, cannot be exercised inconsistently with any provisions of the Constitution.... Such is the eminent position of power and authority which the Constitution enjoys". The Constitution is very much supreme to all other laws of the land and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

It should however be noted that the Constitution loses its supremacy whenever there is a change of government through extra-constitutional means: coup. The first thing a military government does to solidify its take over is the promulgation of what they call "the Constitution (Suspension and Modification) Decree'.[56] This Decree has the effect of totally and completely abrogating the supremacy clause contained in the Constitution and making other provisions of the Constitution subject to the provisions of Decrees. Okey Achikc succinctly captured this point where he noted while referring to the 16th January, 1966 coup that:

In this connection it may be said that about midnight of 16th January, 1966 (i.e., immediately after the broadcasts to the nation by the (then) Acting President and Major-General Ironsi), the constitution and the government of the First Republic of Nigeria were destroyed.[57]

On this issue, Hans Kelsen remarked that:

No jurist would maintain that even after a successful revolution (a coup in this case) the old constitution and the laws based thereupon remain in force, on the ground that they have not been nullified in a manner anticipated by the old order itself.[58]

[56] See for instance, the Constitution (Suspension and Modification) Decree. 1966
[57] Groundwork of Military Law and Military Rule in Nigeria (Enugu Fourth Dimension. 1978) p. 122
[58] General theory of law and state (Harvard ed., 1945) p. 118 quoted in Achike O., *ibid.*

Thus, once there is a successful coup the old legal order becomes subverted and the new one takes over.

The Constitution of the Federal Republic of Nigeria, 1999 is rigid. This because it requires two-thirds majority of both Houses of the National Assembly (The Senate and the House of Representatives) and an approval by resolution of the Mouses of Assembly of not less than two-thirds of all the States of the federation before any section beside sections 8, 9 and Chapter IV could be amended.[59] For the purpose of Sections 8, 9 and Chapter IV, it requires four-fifths majority of each House of the National Assembly and an approval by resolution of the Houses of Assembly of not less than two-thirds of all the States of the federation.[60] Section 9 (4) reiterated it, apparently for the purpose of emphasis, that 'For the purposes of section 8 of this Constitution and of subsections (2) and (3) of this section, the number of members of each House of the National Assembly shall, notwithstanding any vacancy, be deemed to be the number of members specified in sections 48 and 49 of this constitution'.

Section 48 provides that 'the Senate shall consist of three Senators from each State and one from the Federal Capital Territory, Abuja' making a total of 109 senators in the House. Section 49, on the other hand, provides that 'Subject to the provisions of this Constitution, the House of Representatives shall consist of three hundred and sixty members

More so, the 1999 Constitution of the Federal Republic of Nigeria is a federal Constitution. This is because Nigeria is federation.[61]

Finally, the 1999 Constitution of the Federal Republic of Nigeria is a presidential constitution. This is because the Constitution under Section 130 (2) provides that 'The president shall be the

[59] See Section 9 (2) of the Constitution
[60] See Section 9 (3) of the Constitution
[61] See Sectioit 2 (2) of the Constitution

Head of State, Chief Executive of the Federation and Commander-In -Chief of the Armed Forces of the Federation.

Nigerian Legislation

Legislations are simply laws enacted by lawmaking body.[62] Thus, Nigerian legislations are laws made by bodies legally competent to make laws or laws made in the exercise of power conferred by those bodies. The former are called 'Primary Legislation' while the latter 'Subsidiary Legislation'.

At present (democratic dispensation), Nigeria legislation consist of Acts made by the National Assembly, Laws made by State Assembly and L subsidiary legislation which includes all rules, regulations, orders, bye laws and other instruments made pursuant to a power conferred by a Statute.

During military rule, Nigerian Legislation include Decrees made For the Federation by a body of persons duly constituted to make laws under a military regime, Edicts enacted by States' military Governors/Administrators for their States pursuant to the power conferred on them by the enabling Decree and subsidiary legislation which include all rules, regulations, orders, bye laws and other instruments made in pursuant to a power conferred by a Decree.

The 1999 Constitution of the Federal Republic of Nigeria vested the lawmaking powers of the Federation and of the State in the National Assembly and the various States Houses of Assembly respectively. This is provided for under Section 4 of the Constitution. Section 4 (1) of the Constitution provides:

> *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.*

[62] Black's Law Dictionary 6th edition, p.899

For the States, Section 4 (6) provides:

> *The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.*

As noted above,[63] the power of these bodies to make laws must be ultimately traced and predicated on the Constitution. It follows therefore that these lawmaking bodies must exercise their lawmaking power in accordance with letters and spirit of the provisions of the Constitution. Thus, in *A.G. of the Bendel State v A.G. of the Federation and Ors,* a law made by a House of Assembly, instead of the National Assembly itself, was declared null and void because of its failure to conform to the provisions of the basic norm.

It is imperative to note that legislation have some clear advantages over and above judicial precedent as a source of law. First, whereas legislation is made by the legislature elected by the people, judges who are not elected by the people make judicial precedent. Therefore, while the legislature represents the people, the courts represent no one. As such, legislation enjoys what one may call "direct democratic legitimacy' which judicial precedent lacks. Secondly, judicial precedent somewhat impinges the doctrine of Separation of Powers as judges take part in what may be called 'mini lawmaking activity'. Thirdly, as the ever-changing society becomes more complex and sophisticated and since laws are meant for the betterment of the society and not *vice versa,* it is very important to get in depth information on the probable social effects of new laws. The legislature, as representatives of the entire country, is more placed than the judiciary to gather

[63] Under the Supremacy of the Constitution

the required information before engaging in the process of enacting complex laws. Finally, legislation is more placed than case law to quickly change related but different rules of law.[64]

Judicial Precedent

These are rules of law derived from the pronouncements of superior courts of law in cases prior to the one at hand. Going by the doctrine of *stare decisis,* law courts are bound to follow the decisions of the courts above them in similar later cases. In the case of *Usman v Kusfa,*[65] the Supreme Court succinctly explained the meaning of this doctrine as 'to stand by what has been decided and not to disturb and unsettle things which are established...., fully expressed in the Latin maxim *"stare decisis et non quieta movare'.* This doctrine is otherwise called the doctrine of judicial precedent. The word precedent itself is synonymous to the former doctrine and it means an earlier happening, decision, etc., taken as an example or rule for what comes later.[66] In *National Electric Power Authority* v *Onah,* the Supreme Court interpreted this doctrine to mean 'stand by your decisions and the decisions of your predecessors, however wrong they arc and whatever injustice they inflict'. This therefore implies that courts arc bound to follow the decisions of superior courts to which they are subordinate in the hierarchy of courts in later similar cases and cannot depart from them even if they are informed by good reasons to do so. Appellante courts are bound by their previous decisions, but they can in certain circumstances depart from such decisions. The Supreme Court of Nigeria observed, in the case of *Utih v Onoyivwe*[67] that for the court to overrule one of its past decisions, the decision should be such that either "was given *per incuriam* and it was manifestly erroneous or that rigid adherence to it may perpetuate injustice in a particular case and

[64] See J. M. Elegido, *Jurisprudence, op cil* p. 267
[65] (1997) 1 S.C.N.J. 133 at 137
[66] P. U. Umoh, *Precedent in Nigerian Courts* (Enugu. Fourth Dimension, 1984J. p. 5
[67] (1991) I N.W.L.R. (pi 166) 166 at 205

also unduly restrict the proper development of the law" Thus, the Supreme Court can depart from its previous decisions in any of the following circumstances:

1. Where the decision was *given per incur/am.*[68]
2. Where the decision is found to be erroneous as in the case of *Johnson v Lawanson.*[69]
3. Where rigid adherence to the decision may perpetuate injustice.[70]
4. Where adherence will curtail constitutional rights.[71]

The Court of Appeal is strictly bound by the decision of the Supreme Court. It is also bound to follow its previous decisions except:

1. Where the decision was given *per incuriam.*
2. Where it has to choose between two or more of its own past decisions and overrule the others on the ground of illogicality.
3. Where its decision is incompatible with a decision of the Supreme Court even if that decision has not been expressly overruled by the Supreme Court.

The most important thing required in the application of the doctrine of judicial precedent is that the case under consideration and the one being cited and urged as authority must agree on legally material facts even if not on points of details.[72] They must be on all fours.[73]

It is also important to note that it is the *rationes decidendi* of cases that bind inferior courts and not their *obiter dicta. Rationes decidendi* is the plural form of the Latin *ration decidendi,* which simply means "the reasoning or principle or ground upon which a case is decided after

[68] See *Utih v Onoyivwe. Supra*
[69] .....
[70] See *Yonworen v Modern Signs Ltd.* (1985)2 S. C. p. 86
[71] See Mobil Oil v Cote (1 975) E.CS.K.L.R. p. 175

[72] See J. O. Asein *op cit* p. 75\
[73] See Abu v Adegbo (2001)41 W.N.R. I

considering the facts of the case, the issues calling for a decision and the answers to those issues."[74] *Obiter dicta,* on the other hand is the plural form of the Latin word *obiter dictum,* which is defined in *Bello v Udoye* as passing, incidental or collateral remarks not bearing directly upon the issue at hand. It is statement by the way side or statement of opinion by the judge, which does constitute the judgment of the court.

Islamic Law

Unlike other faiths, Islam is a total and complete way of life. It is not only spiritual but also temporal. It regulates its believers' personal, inter-personal, communal, inter-communal, national and inter-national spheres of life.

From the features of customary law discussed above, it is needless to state that Islamic law is not, will not and can never be a branch of customary law. In search for the reasons, one does not need to go far. First, whereas customary law derives its legal weight from long usage and universal acceptance, Islamic law is divine and did not emanate from the culture or long usage of any particular society. In fact, it was revealed as a revolution to the pre-Islamic practices of the Arabian peninsula where it was first revealed. Secondly, unlike customary law which is unwritten, Islamic law is largely written and its principles are contained in the Quran, the Sunnah and the consensus of the Muslim jurists which were all reduced into writing long before the English common law. Thirdly, whereas customary law changes from time to time to reflect the changes in the society, Islamic law does not. Instead, it is Islamic law that moulds and sharpens the society and not *vice versa.* Hence, the Supreme Court of Nigeria succinctly remarked in the case *of Alkamawa v. Bello*[75] that:

[74] J. 0, Asein, *op cit* p. 76

[75] (1998)8NWLR (Pt. 561) p. 173 at 182

> *Islamic law is not the same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and permanent and more universal than the English common law.*

Thus, any assertion that Islamic law is an aspect of customary law is, to say the least, baseless, unfounded and untenable. The Constitution of the Federal Republic of Nigeria, 1999 recognizes this glaring fact and therefore makes some provisions to that effect. The first provision of the Constitution that provides for the application of Islamic law, though impliedly, is Section 38 of the Constitution which provides:

> *Every person shall be entitled to freedom of thought, conscience and RELIGION, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance (capitalization supplied).*

It goes without saying therefore that the foregoing provision accords every person (Nigerian or not) the fundamental right to practice, propagate and manifest his religion in the manner provided by that religion, not by the Constitution. Islam, as mentioned earlier under this head, is a total and complete way of life. It is not merely a religion among other religions as many erroneously conceive it to be.[76] Islam admits of no sovereignty except that of Allah, the Exalted, and consequently does not recognize any Lawgiver other than Him. The concept of the unity of Allah, the Most High, as advocated by the Qur'an is not limited to His being the sole object of worship in the religious sense alone. Along with it, He is invested with complete 'legal sovereignty' in the sense in which the term is understood in jurisprudence and political science. This aspect of the

[76] K. R. Suleiman (1986): The Shari'ati and [he I 979 Constitution in S K. Rashid (eel.) Islamic law in Nigeria: Application and Teaching (Nigeria: University of Sokoto Press pp. 52 - 74] 1986 er

legal sovereignty of Allah, the Most High, is as much as clearly emphasized by the Qur'an as the one pertaining to His being the only deity to be worshipped. According to the Qur'an, these twin facets of the divinity of Allah, the Most Exalted, are the *sine qua non* of the Divine Entity and are so vitally interlinked that a negation of either *ipso facto* infringes the very concept of His Divinity.[77] Therefore, if the foregoing section of the Constitution is to have any practical meaning or even make any sense at all, then, Muslims must be allowed to practice their faith in its letters and spirit. It is important to stress here that the Shari'ah is the life-blood of the Islamic faith.

> *... The fact is that the Shari'ah is the life of Islam itself. Therefore, any society in which the Shari'ah is not applied in toto cannot be said to be truly Islamic even though all its members claim to be Muslims.... This is because to submit to a law other than that prescribed by Allah is to submit to another god beside Allah which amounts to rejection of Islam.*[78]

Thus, the total abrogation or restriction of the application of Shari'ah is in contravention with provision of the section quoted above.

Secondly, the Constitution under section 277 recognizes Islamic law as one of the sources of Nigerian law albeit this section, as interpreted by our courts, restricts the application of Shari'ah to Islamic law of personal status bordering on issues like the formation and dissolution of marriages contracted in accordance with Islamic law, custody of children, etc.

A community reading of the foregoing sections of the Constitution and the Supreme Court's remark in *Alkamawa v. Bello (supra}* should be enough that Islamic law is a separate and distinct source of Nigeria law, not a branch of any other source.

Customary Law

[77] Abul A'la Al Maududi: *The Islamic Law and Constitution.* p. 68
[78] *Ibid.* p. >*b* and Qur'an 5:47

There is no single universally accepted definition of the term 'customary law'. In fact, even the expressions used to denote this set of rules differ. For instance, 'native law and custom', 'native law', 'native customary law', 'local law', etc. are used to describe this class of laws.[79] It may however be simply defined as 'a rule, which in a particular district has the force of law'.[80] ^ Or 'a body of customs and traditions which regulate the various kinds of relationship between members of the community in their traditional setting'.[81] The most .comprehensive definition of customary law is perhaps the one offered by Customary Courts Law of Anambra State[82] as:

> *A rule or body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage and which is appropriate and applicable to any particular cause, matter, dispute, issue or question.*

A critical look at the definition set out above reveals some basic features of customary law. First, it is accepted by the members of a given community as binding upon them. This is apparently why the Supreme Court, in *Owonyin v. Omotosho,*[83] described it as 'a mirror of accepted usage'. Secondly it is unwritten. Thirdly, it is flexible in nature. It is flexible not only because it differs from one society to another or from one tribe to another in the same society but also because it changes from time to time in the same society to reflect the needs of the ever-changing society. In Lewis v. Bankole,[84] Osbome C. J. remarked that:

---

[79] See J. 0. Asein. *op cit* p. 114

[80] Section 2(1). Evidence Act. Cap. 112, Laws of the Federation of Nigeria. 1990

[81] CO. Okonkwo. ed.. Introduction id Nigerian Law (London. Sweet and Maxwell, 1979) p. 41

[82] See Section 2, Customary Court:, Law, Cap., 49 Revised Laws of Anambra State of Nigeria, 1979

[83] (19611) 1 AHN.L.R. p. 304 at 309

[84] (1908) I N.L.R. p 81 at 100 - 101 quoted in A. O Obilade. The Nigerian Legal System (Nigeria. Spectrum Law, Series. 1977) p.84

> *One of the most striking features of West African native custom... is its flexibility; it appears to have been always subject to motives of expediency and it shows unquestionable adaptability to altered circumstances without losing its character.*

The features of customary law mentioned above are sufficient to show that the argument that Islamic Law is a variety of customary law is baseless, unfounded and untenable.[85]

Customary law is recognized as a source of Nigerian law because Nigerian statutes recognize it as such. Section 14 (1) of the Evidence Act[86] provides:

> *A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The burden of proving a custom shall lie upon the person alleging its existence.*

It should be clear from the foregoing section that there are two ways of establishing customary law - judicial notice and proof by evidence. [87]

5. Administration of Criminal Justice in Nigeria

Justice administration in Nigeria is not the sole responsibility of one agency, institution or organization. Rather it is the combined responsibility of different institutions coming together to work harmoniously for the smooth working of wheels of the justice. Among the institutions of justice administration you have the Courts and the Law enforcement agencies.

a) Court system in Nigeria

[85] This % will be discussed in details under Islamic Law as a source of Nigerian law, below

[86] *ibid*

[87] For judicial notice and proof through evidence see Section 14 (2) and (3) of the evidence Act and the case of Okonkwo v. Okagbue (1994) 9 NWLR(Pt. 368) 301\

The Nigerian Constitution has vested the judicial powers of the federation in the courts.[88] As such they bear the responsibility and privilege of interpreting and applying the laws of the land. Accordingly, all cases, civil or criminal, are heard and determined in the courts, by officers appointed as judges, to man those courts. By their general functions, judges are obliged to interpret and apply the laws of the land as laid down in the relevant authoritative sources.[89] Often, in an effort to apply the law as it is, the sense of justice is outraged in consequence.[90] This, however, is not to say that judges always apply rules according to their tenor irrespective of their views as to the justice of those rules.[91]

Courts play a vital role in justice administration in Nigeria. As part of their responsibilities under the constitution, courts are duty bound to act as impartial umpire in determination of cases brought before it by aggrieved citizens either in civil or criminal cases. Section 36(1)[92] provides "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality". Flowing from this section, a judge must be guided by the twin principles of fair hearing: *Nemo Judex in Causa Sua* (meaning no man shall be a judge in his own cause) and *Audi Altrem Partem* (meaning 'hear the other side'). He must not preside over matters which he has interest in, and shall hear the two sides to the case before him before passing his judgment. To ensure that every Nigerian citizen receive fair hearing, ample provisions are made under the sub –sections to section 36 to further ensure and protect the right of parties in trials

[88] See s. 6 of the CFRN 1999 (as amended)
[89] Ladan, M.T., Introduction to Jurisprudence: Classical and Islamic, (Lagos: Malthouse Press Limited, 2010) p. 33
[90] Ibid.
[91] Ibid.
[92] The Constitution of the Federal Republic of Nigeria 1999 (as amended)

before the court. For instance it is a requirement of the constitution under section 36 that every person taken to court is entitled to, fear hearing in public and within reasonable time[93]; be presumed innocent until when the case is proved against him[94]; be informed promptly and in the language he understands, the nature of the charges against him[95]; be given adequate time and facilities to prepare his defence[96]; to defend himself in person or through a legal practitioner of his choice[97]; to examine all witnesses called by the prosecution[98]; entitled to a record of proceedings of his trial; have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence[99];no to be tried twice for a single offence[100]; not to be compelled to give evidence in his trial[101]; and must not be convicted for an offence that is not known to law[102].

It should be noted that this constitutional right to fair hearing is not limited to judicial courts, but rather it applies to all tribunals and commissions of inquiry.

Historically however, before the advent of the Europeans, the various indigenous people of Nigeria had difficult methods of dispute resolution mechanism[103]. Among the Yoruba and Ibo, the system resolved around their traditional institutions and it was fashionable among the Yoruba to refer contentious matters to the head of the family[104]. If he could not settle the dispute, the matter was taken to the head of the compound until a solution could be found up to the Oba[105]. Similar systems

[93] Sub-section 4
[94] Sub-section 5
[95] Sub-section 6(a)
[96] Sub-section 6 (b)
[97] Sub-section 6 (c)
[98] Sub-section 6 (d)
[99] Sub-section 6 (e)
[100] Sub-section 9
[101] Sub-section 11
[102] Sub-section 12
[103] Ali, Y., The Evolution of Ideal Nigerian Judiciary, p.3 at https://www.yusufali.net accessed 21/09/18
[104] Ibid.
[105] Ibid.

existed among the Ibo[106]. In the North, there was a bit of formalization as founded on the Islamic legal system, the Sharia and an elaborate system of court systems, the hub of which was the Alkali system[107]. The Emir was the ultimate appellate judge[108]. In administering justice, the Yoruba and Ibo communities applied their customary rules, whereas in the North, the courts applied the principles of Islamic law.

The establishment, jurisdiction and appointment of judges of Nigerian courts are provided under the constitution of the federal republic of Nigeria and the laws establishing them. The jurisdiction of the courts is also determined by the parties, the subject matter or place where cause of action arose.

b) Hierarchy of Courts

The courts in Nigeria are arranged in hierarchical order to indicate superiority of one over the other. they are as follows:

1. The Supreme Court;
2. The Court of Appeal;
3. The Federal High Court / The High Court of a State and the High Court of the F.C.T. Abuja / The Sharia Court of Appeal of a State and the Sharia Court of Appeal of the F. C. T./ Customary Court of Appeal of a State and the Sharia Court of the F.C.T. Abuja / The National Industrial Court;
4. The Magistrate Courts/ District Courts/ The Sharia Courts/ The Customary Courts.

By operation of the doctrine of judicial precedent court below are bound to follow the decisions of the courts superior to them at all times, with some few exceptions (to be discussed in details later when explaining 'judicial precedent' as a source of law in Nigeria).

[106] Ibid.
[107] Ibid.
[108] Ibid.

c) Law Enforcement Institutions/Agencies: In every community, society, state or nation, enforcement of laws necessary for the ensuring rule of law and maintenance of peace, security and well being among its citizens. In Nigeria there are a number of institutions/agencies that are responsible for the enforcement of laws. These agencies ensure that every citizen abides by the law and where any person is found to have breached the provisions of the law, they take steps to bring him to justice. Examples of these agencies are the Nigerian Police Force (NPF), the Economic and Financial Crimes commission (EFCC), the Nigerian Custom Service (NCS), the Nigerian Immigration Service (NIS), Nigerian Security and Civil Defence Corps (NSCDC), Department of State Security (DSS), the Nigerian Prison Service (NPS), etc. The establishment, recruitment and powers of these agencies are provided under the Laws establishing each of them. For instance the Nigerian Police Force is established under section 214 of the 1999 Constitution of Nigeria, and its duties provided under the Police Act[109] which includes:

1. Prevention and detention of crime;
2. Apprehension of offenders;
3. Preservation of law and order;
4. Protection of life and property;
5. Enforcement of laws and regulations with which they are directly charged; and
6. Perform such military duties within or outside Nigeria as may be required of them.

In discharging these duties, the police have the powers to arrest and detain a suspect, investigate an offence, prosecute an offender and execute a lawful court order.

With the exception of the Nigerian Prison Service, all the other law enforcement agencies like the EFCC, DSS, NIS, NCS, NSCDC, etc have powers similar to that of the police.

[109] The Police Act 1967 (as amended) Cap. 19 Laws of the Federation of Nigeria 2010

The functions of the Nigerian prison service on the hand is principally to keep custody of persons convicted by the courts, or persons awaiting trial, or persons ordered by the court to be remanded in prison whether in civil or criminal case.

A prison, according to McCorkle and Korn, is a physical structure in a geographical location where a number of people live under highly specialized conditions[110]. The functions of the Nigerian Prison Service drive from the Prison Act 1972[111] and it includes:

1. Take into lawful custody all those certified to be so kept by courts of competent jurisdiction;

2. Produce suspects in courts as and when due;

3. Identify the causes of their anti-social dispositions;

4. Set in motion mechanisms for their treatment and training for eventual reintegration into society as normal law abiding citizens on discharge; and

5. Administer prisons Farms and Industries for this purpose and in the process generate revenue for the government[112].

Despite provisions of laws and regulations defining their functions, the law enforcement institutions have performed below expectations towards the realization of the main objective of their establishment. This could be attributed to any or all of the following problems:

1. Lack of due process in recruitment processes,

2. Inadequate manpower,

3. Corruption and bribery in the institutions,

4. Lack of professional training and capacity development for personnel,

---

[110] Quoted in Chukwudi, F., Challenges of Reforms in the Nigerian Prison System: Lessons from U.S.A and South Africa, Vol.4 Journal of Social Science and Public Policy, p.1 at www.cenresin.org accessed on 22/9/18

[111] Cap. P 29 Laws of the Federation of Nigeria 2004

[112] www.prisons.gov.ng accesses on 22/9/18

5. Lack of regular promotion for the personnel,

6. Poor salary and welfare package for the personnel,

7. Overhead and operational logistics issues, etc.

Therefore, for law enforcement institutions to live up to expectation and achieve the goals for which they are set to achieve, it is imperative to address these identified problems.