

**NOTE OF LESSON FOR LEGAL METHOD  
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**SOURCES OF LAW**

**By**

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**1.0 Introduction**

**1.1** Sources of law refers to **where, how** and **by what authority** a particular law is made. The entire sources of law is classified into two namely:

- a. Primary Sources
- b. Secondary Sources

**A. Primary Sources of Law**

The primary source of law is the fundamental source of law that has ground and binding significance. Primary sources of law constitutes *ground norms*, precedents and binding authorities. They are the first point of call for a legal researcher to rely on while writing assignments, examination or legal papers.

**2.1** The primary sources of law comprises of the following:

- a. Statutory materials
- b. Judicial materials

Under the Statutory materials, we have the following subdivisions:

- i. Constitution
- ii. Nigerian Legislation
- iii. Subsidiary Legislation
- iv. Received English Law
- v. Nigerian customary Law/Islamic law

### **3.0 CONSTITUTION AS SOURCE OF LAW**

**3.1** The Constitution refers to the rules which stipulate the manner in which the state and the various arms of government are constituted and which streamline the execution of governmental powers. It is the bedrock of the legal prestige of a country and it controls the relationships between the individual and the state.

**3.2** **The Constitution** is the supreme law of the country which has the highest legal power. It is fundamental and the organic law of the nation. It establishes the framework for the governance, safeguards individual rights and dictates how justice is administered. Its status as supreme means all other laws must conform to its provisions. Please note that Constitution is an important source of law for the conduct of legal research.

**3.3** In Nigeria, the applicable Constitution in force is the 1999 Constitution of the Federal Republic of Nigeria together with its amendments. It came into operation in May 29, 1999.

#### **3.4 Key Aspects of the Constitution include the following:**

a. **Supremacy:** The Constitution holds ultimate authority; and any other law conflicting with it is void. This ensures that other sources of law, including legislation, judicial precedents, customary law, and Islamic law, remain subordinate to the Constitution.

b. **Foundation for the Legal System:** The Constitution provides the foundational structure for Nigeria's legal framework defining the powers and responsibilities of various governmental bodies and establishing the processes for law-making and judicial review.

c. **Protection of Fundamental Rights:** The Constitution enshrines fundamental human rights, guaranteeing citizens certain freedoms and

protections against governmental overreach. These rights are justiciable, meaning they can be enforced through the Courts.

#### **4. 0 NIGERIAN LEGISLATION AS SOURCE OF LAW**

The Nigerian legislation is a primary source of law in the country. These laws formally known as statutes or acts are vital in shaping the legal landscape and regulating various aspects of life in Nigeria. The Nigerian legislation constitutes of:

- a. Act of Parliament of the National Assembly,
- b. Laws of the State House of Assembly and the
- c. ByLaws of the Local Government Legislative Council.

**4.1 Legislation** is created through a formal process involving drafting, debate, amendment, and eventual enactment by the appropriate legislative body. This ensures a level of accountability and transparency in the law making process. The Law making power at the federal level is vested in the National Assembly. The National Assembly includes the Senate and the House of Representatives. To constitute law on any of the matters assigned to the federal legislature, the National Assembly must act as a whole. Nigeria federal legislature operates a bicameral legislature, which means there are two primary bodies or chambers, the Senate and the House of Representative. Both Chambers make up what is referred to as the National Assembly, which is empowered by the provisions of s 4(1) of the Constitution to make laws for the peace, order and good government of the federation. The Senate and House of Representative should comply to the law making process.

**4.2 The Federal Law Making Process-** Before a document can be considered as a Law, it is first tabled as a bill before the National Assembly, there will a **first review of the bill** by relevant committees to

ensure the bill meet the required standard. In the event that the bill is substandard, it will be sent to the Legal department of the National Assembly for redrafting. After which the bill is sent out for gazetting and the date and time for the first reading is fixed.

**4.2.a** The **first reading** is done to introduce the bill to the members of the appropriate chambers. Only the short title of the bill will be read and there will be no deliberations. During the **second reading**, a motion to discuss the bill must be moved by a member of the appropriate chamber and seconded by another member. There will be argument for or against the bill. After which the bill will move to the committee stage.

**4.2.b** The Committee is a special committee namely the **standing committee and the committee of the whole House** charged with the responsibility of examining the the bill and making necessary adjustments. Their duty is to look at and analyse the bill. During the process of analysing the bill, members of the public who have useful contributions may be invited during **public reading**. The bill is amended and report is presented by special committee to the appropriate committee.

**4.2.c** A motion to proceed with amended bill takes the bill to the **third and final reading**. At the final reading, the Clerk reads the long title of the bill and members of the House are only required to study the bill for any mistakes or errors. Where there is none, the bill is accepted and passed into law by the appropriate chamber. The Clerk will print the final copy and sign same and send it across to presiding officer to append his signature.

**4.2.d** **A bill passed by the National Assembly must be sent to the House of Representative for concurrence and vice versa.** If the bill

succeeds, then final copy approved by both chambers is presented to the president for his signature. The signature of the President is required to convert the bill into the law and s 58(4) CFRN requires the President to sign within 30 days. If President proposes amendments the National Assembly will consider such amendments and agree to incorporate same into the bill. Where the President rejects the whole bill, National Assembly is empowered by s 59 (4), to recall the bill and re-pass it into law by a two-third majority vote in both chambers. Thereafter such a bill will be regarded as Law, regardless of the absence of the presidential assent. The Acts of National Assembly applies to the entire country.

**4.3.** The 1999 Constitution contain lists which divide the legislative competence to the various arms/tiers of Government in Nigeria. This list can be found in the second schedule of CFRN. **We have the Exclusive and Concurrent List.** Matters touching on Banking, currency, armed forces, police, oil and gas exploration etc are granted to the Federal legislature in the Exclusive list, on the other hand, matters relating to electric power, industrial, commercial and agricultural development, scientific and technological research, statistics, universities, post-primary education **are shared by both the federal and state legislatures under the concurrent list.**

#### **4.4 State Legislation as Source of Nigerian Law**

State Houses of Assembly enact laws that are applicable only within their respective states. In Rivers State, examples of laws that had been passed included- **Rivers State University Law Number 4 of 2017** which changed the name of Rivers State University of Science and Technology (RSUST) to Rivers State University (RSU), **Rivers State Education (Return of Schools) Amendment Law Number 1 of 2017**, Rivers

**State Prohibition of the Curtailment of Women's Rights to Share in Family Property Law No 2 of 2022, Rivers State Local Government Bill 2025 etc.**

Where the State make laws on subject matter that are in the exclusive list, such laws when challenged in the court of Law shall be declared void. See the case of *Benjamin v Kalio* (2018) EJSC (vol 101) 155 (SC)

The brief facts- The appellant insisted that a wrongly admitted evidence (an unregistered titled document) should be expunged from evidence together with all the findings of the lower court based on it. Appellant's contention were based on the provisions of the Land Instruments Registration Laws of Rivers state, Cap 74, Laws of Rivers State, 1999, sections 20 & 37. These section stated that any instrument that transfer any interest in land that is not registered cannot be pleaded or accepted in evidence in the court of law to prove title. Relying on Sections 4 (3) and (5) of Constitution, the Supreme Court ruled that the State Houses of Assembly are precluded and prohibited from enacting any laws on evidence which is a subject matter in the exclusive list. The Court further held that a piece of evidence pleadable and admissible in evidence by dint of Evidence Act cannot be rendered unpleadable and inadmissible in evidence by a law enacted by a State House of Assembly.

#### **4.5 ByLaws as Source of Nigerian Law**

Bylaws are a significant source of Nigerian law, operating as subsidiary legislation within the framework of the country's legal system. Bylaws are essentially subordinate legislation, created by local governments. Their validity and enforceability depend entirely on the enabling legislation that permits their creation.

The 1999 Constitution-(Fourth Schedule) assigns to the Local Government Legislative Assembly competence to make laws in respect

of collection of tenement rates of houses, radio & television licenses, establishment and maintenance of cemeteries, burial grounds, homes for infirm, regulation of motor parks, licensing of bicycles, trucks, canoes, cart, building of slaughter houses, public conveniences, construction of roads, registration of all births, deaths, marriages, control of outdoor advertisement etc.

#### **a. Scope and Subject matter of Bylaws**

Local Government bylaws cover a wide range of issues pertinent to the local community, these can include environmental regulations, sanitation, public order, and other matters impacting the daily lives of residents.

#### **b. Legal Basis and Authority of Bylaws:**

The authority for local government to enact bylaws stems from enabling legislation at the State or Federal level. This means that the power to make bylaws is not inherent but is explicitly granted through laws passed by higher legislative bodies. The specific powers granted vary depending on the enabling legislation and the level of autonomy given to local governments. The bylaws must remain within the boundaries set by this enabling legislation; they cannot contradict or supersede higher-level laws.

#### **c. Enforcement and Challenges of Bylaws**

Enforcement of local government bylaws relies on the local government's administrative mechanisms. Penalties for violations are typically outlined within the bylaws themselves. However, challenges can arise in enforcement due to limited resources, capacity constraints and sometimes a lack of public awareness regarding the bylaws.

#### **d. Where Bylaws Conflict with Other Laws**

Local Government bylaws are subordinate to federal and state laws. If a bylaw conflicts with a higher-level law, the higher-law prevails. This hierarchical structure ensures consistency and avoids legal contradictions within the Nigerian legal system

### **5.0 SUBSIDIARY LEGISLATION AS SOURCE OF LAW**

**5.1** Subsidiary legislation, also known as delegated legislation, plays a significant role as a source of law in Nigeria. It complements primary legislation by providing detailed rules and regulations to implement the broader principles set out in the principal legislation. Subsidiary legislation are laws made by bodies other than legislative bodies. They are rules, regulations, orders, resolutions, notice, rules of court made by virtue of any principal law.

**5.2** Due to pressures and demands on the legislature as well as the need for expertise law making power on certain aspects in the field of law could be delegated to bodies or persons.

**5.3** For example, s 153 Electoral Act, INEC was given power to issue, make regulations and issue guidelines for the conduct of the election. Also in the Judiciary, the Chief Judge is empowered to make Civil procedure rules to regulate how proceedings will go on in the court.

#### **5.4 Key Aspects of Subsidiary Legislation in Nigeria**

##### **a. Nature and Function**

Subsidiary legislation is created by bodies or individuals granted power by the National Assembly through primary legislation. This delegated power allows for the creation of detailed regulations, rules, and bylaws to effectively implement the broad mandates of the principal legislation.

These subordinate laws are necessary to address specific situations and operational details that may not be practical to include in primary legislation.

#### **b. Relationship with Principal Legislation**

A crucial aspect of subsidiary legislation is its relationship to the primary legislation from which it derives its authority. Subsidiary legislation must be consistent with the enabling Act or Statute. Any inconsistencies render the subsidiary legislation void to the extent of the inconsistency. In essence, subsidiary legislation cannot contradict or expand the powers granted by the principal legislation.

#### **c. Types of Subsidiary Legislation**

Various types of subsidiary legislation exist in Nigeria, including regulations, rules bylaws, and orders. These are by diverse bodies empowered by primary legislation, such as ministries, local governments, the President, Commissioners, Public corporations, statutory bodies, and regulatory agencies and so fourth.

#### **d. Control and Scrutiny**

While subsidiary legislation is necessary for effective governance, it is subject to control and scrutiny to prevent abuse of delegated powers. This control mechanisms often involve parliamentary oversight committees to ensure compliance with the enabling acts.

### **5.5 Reasons for Delegated Legislations**

It reduces parliamentary work load; it enables experts to legislate on technical matters; saves time of National Assembly; allows for flexibility in administration; it brings Government nearer to the people; create room for making of laws that conforms to local needs.

## **5.6 Arguments Against Delegated Legislation**

It is contrary to the doctrine of separation of powers which advocate for Legislature to make laws; it reduces the supremacy of the legislature; it encourages arbitrariness and dictatorship; there is lack of sufficient consultation; it gives administrative lawmakers much power and discretion.etc.

## **5.7 The Rule Against Sub-Delegation**

The general rule is that a delegate cannot sub-delegate his functions and powers. As a matter of fact, a delegate cannot delegate. The latin maxim is *delegatus non potest delegare* means a delegate cannot delegate his functions unless he is otherwise authorised or permitted to do so. This is especially where he is required to personally perform the delegated function or exercise the power concerned. *AG Bendel State v AG Fed & 22 others* (1982) where the Supreme Court held that the National Assembly cannot delegate its law making function to a joint committee of the National Assembly.

Powers involving discretion cannot be delegated; Judicial or quasi-judicial powers cannot also be delegated; Power to declare war or to impeach cannot delegated; Power to create new States cannot be delegated.