NOTE OF LESSON FOR LEGAL METHOD
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SOURCES OF LAW-PART 2

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1.0 Introduction

The Nigerian legal system is a fascinating blend of indigenous traditions and external influences, owes a significant portion of its framework to the received English law. This adoption, a consequence of British colonial rule, has shaped the nation's jurisprudence in profound ways, leaving a lasting legacy that continues to influence legal practice and societal norm.

1.1. RECEIVED ENGLISH LAW AS SOURCE OF LAW

Refers to the rules of Law and legal principles that have roots or origin in England and were adopted into Nigerian legal system to form part of Nigerian laws.

Components of Received English law include:

a. Common Law

b. Doctrines of Equity

c. Statutes of General Application in force in England on January 1 1900.

1.2 Historical Antecedent

The genesis of this legal inheritance lies in British colonization. Nigeria's historical connection with England, marked by prolonged colonial rule, led to the adoption of substantial aspects of English law. This reception was not a singular event, but a gradual process spanning decades, involving the introduction of various elements of English law through legal legislation. The intial reception of English law occurred through Ordinance No 3 of 1863, which incorporated English laws in force on

January 1st 1863, unless inconsistent with existing Nigerian Ordinances. The Supreme Court Ordinance of 1876 later adjusted the reference date to January 1st 1900.

Due to Nigeria's historical link with Great Britain, English law had become the major source of law. Conscious efforts were made to incorporate English laws into Nigerian legal system either by imperial force or by local inception. Thus we will classify operative English laws according to their sources of validity:

a. Those that apply by imperial force consisting of statutes and subsidiary legislation,

b. Those that have been received into Nigeria by local enactments and comprising of common law, the doctrines of equity and statutes of general application.

In the case of *Ibidapo v Lufthansa Airlines* (1997) 4 NWLR 124, the Court held that all received English laws, multilateral and bilateral agreements concluded and extended to Nigeria, unless expressly repealed or declared invalid by court or tribunal established by law, remain in force subject to the provisions of s 315 (4b) of CFRN dealing with existing laws. In that case, the carriage of Goods by Air (Colonies Protectorates and Trusts Territories) Order 1953 was declared to subsist as part of Nigerian law, despite its omission from the *Laws of the Federation of Nigeria, 1990*., since it had neither been repealed nor declared invalid.

A. Those Applying by Imperial Force

Nigeria's early structure comprised three distinct entities; the colony of Lagos, and the Protectorates of North and South. Lagos was a sovereign

state component, and differed significantly from the Protectorates, which were considered foreign territories under British protection. The British Crown, empowered by the Foreign Jurisdiction Act 1890 and Colonial Laws Validility Act 1865, held ultimate legislative authority through orders-in-council across all three regions. This established the Crown as the central governing force in Nigeria during its colonial period.

When Nigeria got her independence on October 1, 1960, the Crown ceased to make law or exercise sovereignty over Nigeria. The 1960 Independence Act abolished the Colonial validity Act and made English Statutes passed on or after October 1, 1960 inapplicable to Nigeria.

The local legislature was empowered to repeal any English statute as it deemed necessary. All existing English statutes were to remain in force until so repealed notwithstanding that such statutes has been repealed in England.

B. Those English Laws Received into Nigeria by Local Enactments

It was not every English laws in operation in England that was been imported into Nigeria but it was only those that were received into Nigeria. The reception clause has been justified as inevitable by English commentators on the following three reasons:

a. because the existing customary law at the time did not favor our colonial masters.

b. Secondly the growing complexity of business and trade required a more elaborate and better suited legal regime as customary law was considered inadequate in the circumstance.

c. Thirdly the arrogance inherent in the colonial system viewed English law as the best form of law that could ensure the best form of justice while most rules of customary law were condemned as barbaric and crude.

The first reception clause was contained in Ordinance No 3 of 1863 which stated as follows:

> *All laws and statutes which were enforced within the realm of England on the 1st day of January, 1863, not being inconsistent with any ordinance in force in the colony, or with any rule made in pursuance of any such ordinance, should be deemed and taken to be in force in the colony, and should be applied in the administration of justice, so far as local circumstances permit*.

By provisions of Supreme Court Ordinance of 1876, the reference date was shifted forward to July 24, 1874 and finally **s 32 of the Interpretation Act Cap 192, Laws of the Federation of Nigeria 1990** finally fixed the reference date on January 1 1900.

> *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 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*.

1.3 COMMON LAW

The common law of England is a legal system based on court decisions and precedents rather than codes or statutes. It was later the formulation of Her Majesty's courts based on the prevailing customs and practices of the generality of the people and designed to meet the demands and challenges of changing situations. At the center of common law is a legal principle known as stare decisis, meaning to stand by things decided. Its origins trace back to the period after Norman Conquest of 1066, gradually

replacing localized customary laws with a unified system for the entire Kingdom.

During the middle ages, Anglo-Saxon rulers and their successors the Normans, issued so-called specific writs. Writs were legal orders issued by courts in the name of the sovereign and addressed many different situations. If the claimant did not bring action on the correct writ, his case will be thrown without any justice.

The old common law courts included the Court of Exchequer, Court of Common plea, and King/Queen's Bench. Exchequer dealt with revenue matters, Court of common plea dealt with civil matters, while the King/queen's Court emerged later, originally following the Crown on his or here visits round the country. Because of its close connection with the Crown, this court became the most powerful of the three with exclusive criminal jurisdiction.

The common law at the early stage did not always grant automatic access to the courts. A suitor (Claimant) contemplating and action had to apply to the Chancellor for a writ after paying requisite fee into the chancery. The writ was a formal document containing the allegation of wrong and directing the Sheriff to summon a jury of ordinary men to try the dispute. In the first place, it was important to choose the correct writ that covered the remedy sought else the party applying for it was disallowed from proceeding with his action. The common law at that time was concerned with form and procedure that the just and equitable determination of individual rights and duties.

With the passing of the Statutes of Westminister, the Chancellor was empower to issue new writs on what is called Action on the case. This

gave way to deal with new complaints and novel cases. Explain examples in Law of Contract (Detinue) and Law of Tort. Due to its rigidity, in application, it gave way to emergence of the doctrines of equity.

1.4 DOCTRINES OF EQUITY

The litigants who could not get justice because of not coming with proper forms petitioned the Crown as fountain of justice to exercise his prerogative. These petitions were considered by King's council. Later the claimant could directly petition the Chancellor (usually a clergy), who will invite the defendant, hear from him and order him to make good his wrong and clear his conscience. Hence the Court came to be known as court of conscience and this flexible form of justice was called equity.

Hence doctrines of Equity were developed by English Court of Chancery wih the general purpose of providing legal remedies for cases wherein the common law is inflexible and cannot fairly resolve the disputed legal matter.

The Law of Trusts, the equity of redemption in mortgages and remedies of specific performance and injunction are some of the legacies of the Chancery. The following maxims reflect the general juridical philosophy of the court of equity.

He who seeks equity must do equity

Equity follow the law

Equity looks to intent rather than the form

He who comes to equity must come with clean hands

Delay defeats equity. (And others).