CONSTITUTIONAL LAW II

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COURSE OUTLINE: THE LEGISLATURE

MEANING OF LEGISLATURE

The legislature is the organ, arm, branch or department of government that is charged with the responsibility of law-making for the peace, order and good governance of the State. Under the doctrine of separation of powers, the three powers or responsibilities of government are identified as legislative (law-making), executive (law implementing or executing), and judicial (law interpreting and adjudicating). These responsibilities of government are assigned as follows:

- Legislative function is assigned to the legislature/legislative arm
- Executive function is assigned to the executive arm
- Judicial function is assigned to the judiciary

The essence of this allocation of governmental powers to distinct organs or institutions of government manned by distinct personnel is to provide a check against arbitrariness, absolutism and corruption by absolute powers as argued by Montesquieu. It is a design to prevent any one arm of government from being too powerful by exercising two or all three of the powers. This is because experience has shown that a man entrusted with power would be inclined to carry that power as far as it will go. This will lead to absolutism which will in turn lead to gross violation of the rights and freedoms of individuals.

Therefore, when we talk about the legislature, we are referring to the branch of government constitutionally assigned the responsibility for law-making in any given State. However, it should be noted that the separation of powers advocated by Montesquieu is not one that is characterised by watertight compartmentalisation of governmental powers – in which the legislative, executive and judicial powers do not co-operate or intermingle. Rather, what is advocated in the doctrine of separation of powers is government of separated institutions but sharing powers in order to constitute one branch of government as a check on the exercise of the core functions assigned to each branch.

This is known as the principle of checks and balances, the aim of which is to provide for an internal mechanism of power checking power, to the end that the liberties of citizens are not compromised. Therefore, each arm of government performs or shares in the performance of the functions of the other arms of government. In other words, the checks and balances mechanism

is structured in such a way that no one organ of government can perform its constitutionally assigned role to completion without some level of co-operation or checks from the others.

In this lesson, we shall examine the legislature in Nigeria. We shall examine the structure and composition of the legislature at the Federal, State and Local Government Area levels, the legislative powers of the Federation, a State of the Federation and a Local Government Council, doctrine of covering the field, and limits or checks on the exercise of legislative powers in Nigeria.

ESTABLISHMENT, STRUCTURE AND COMPOSITION OF THE LEGISLATIVE ARM OF GOVERNMENT IN NIGERIA

Section 4 of the 1999 Constitution establishes the Legislative arm of government in Nigeria. It provides as follows:

> 1. 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.
>
> 2. The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.
>
> 3. The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.
>
> 4. In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-
>
> a. any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
>
> b. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

Thus, the 1999 Constitution establishes a bicameral legislature comprising the Senate and the House of Representatives for the centre or Federal Government of Nigeria. This bicameral legislature is called the National Assembly.

The National Assembly is constitutionally empowered to make laws for the peace, order or good government of the Federation of Nigeria with respect to the following matters:

- **A**ny matter included in the Exclusive Legislative List contained in Part I of the Second Schedule to the 1999 Constitution;
- Any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the 1999 Constitution to the extent prescribed in the second column opposite thereto; and
- Any other matter with respect to which the National Assembly is empowered to make laws in accordance with the provisions of the 1999 Constitution.

ESTABLISHMENT OF THE LEGISLATIVE POWERS OF A STATE

Section 4(6) and (7) of the 1999 Constitution establishes the State legislature in Nigeria. It provides thus:

> 6. The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.
>
> 7. The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:-
>
> a. any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;
>
> b. any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
>
> c. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

From the foregoing, it can be seen that the 1999 Constitution establishes a unicameral (single chamber) legislature for each State of the Federation of Nigeria. The House of Assembly of a State is competent to enact laws for the

peace, order and good government of the State with respect to the following assigned matters:

- **A**ny matter **NOT** included in the Exclusive Legislative List contained in Part I of the Second Schedule to the 1999 Constitution;
- Any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the 1999 Constitution to the extent prescribed in the second column opposite thereto; and
- Any other matter with respect to which the State House of Assembly is empowered to make laws in accordance with the provisions of the 1999 Constitution.

Thus, the National Assembly lacks the legislative vires to make laws in respect of any matter not included in the Exclusive Legislative List and which matter is also not included in the Concurrent Legislative List. Such matter becomes a residual matter exclusively reserved for a State House of Assembly. In **Cocacola Nigeria Ltd v Akinsanya (2017) 17 NWLR (Pt 1593) 74,** the Court defined residual matter as any matter outside the Exclusive and Concurrent Legislative Lists.

It is for the same reason that the Court held in **FRN v Nwosu (2016) 17 NWLR (Pt. 1541) 226** that **s**tealing is within the legislative competence of a State House of Assembly (See **Ratio 10**).

In **National Conscience Party v National Assembly of the Federal Republic of Nigeria (2016)1 NWLR (Pt. 1492) 1, t**he Court of Appeal stated that the validity of a provision of a law will be tested by the following interconnected propositions:

(a) All powers, legislative, executive and judicial must ultimately be traced to the Constitution;
(b) The legislative power of the legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised, it is invalid to the extent of such inconsistency; See **President, FRN v Isa (2017) 3 NWLR (Pt. 1553) 347** where it was held that all laws made by the National Assembly must be consistent with the 1999 Constitution.
(c) 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 has enacted must show that it has derived the legislative authority to do so from the Constitution; See **Saraki v FRN (2016) 3 NWLR (Pt.1500) 531.**

Similarly, in **Governor of Ekiti State v Olubunmo (2017) 3 NWLR (Pt. 1551) 1,** the Supreme Court and the Court of Appeal invalidated Section 23B of the Local Government Administration (Amendment) Law of 2001 of Ekiti State which empowered the Governor to dissolve democratically elected Local Government Council and appoint caretaker committees in their stead on the ground that the said State Law is inconsistent with Section 7(1) of the 1999 Constitution which provides for the existence of

democratically elected Local Government Councils only. See also **APC v ESIEC (2021) 16 NWLR (Pt 1801) 1**; **Ajuwon v Governor of Oyo State (2021) 16 NWLR (Pt 1803) 485**.

(d) Where the Constitution sets the condition for doing a thing, no legislation of the National Assembly can alter those conditions in any way, directly or indirectly, unless the Constitution itself as an attribute of its supremacy expressly so authorises. **See National Assembly v President (2003) 9 NWLR (Pt. 824) I04 (Ratios 2 and 7). See also Agi v PDP (2017)17 NWLR (Pt. 1595) 386** where it was held that a provision in the PDP Constitution imposing on a candidate qualifications that are extraneous to the Constitution cannot override the Constitution. It was further held that no law, legislation, regulation, rules or guidelines can override the Constitution (**See Ratio 12).**

STRUCTURE AND COMPOSITION OF THE LEGISLTURE IN NIGERIA

It is worthy of note that the Nigeria operates different legislative structures at the federal and State levels**. Section 4(1)** of the 1999 CFRN provides for a bicameral legislature for the federation called a National Assembly with two chambers – the Senate and the House of Representatives. On the other hand, **Section 4(6)** of the 1999 CFRN establishes the structure for a State legislature which is a unicameral legislature called a House of Assembly.

COMPOSITION AND STRUCTURE OF NIGERIAN LEGISLATURE

1. THE NATIONAL ASSEMBLY (FEDERAL LEGISLATURE)

The National Assembly is composed of the Senate and House of Representatives (Section 47 of the 1999 CFRN). The Senate shall consist of three (3) senators from each state of the federation and one (1) from the F.C.T – 109 **(Section 48 of the 1999 CFRN)**. The House of Representatives shall consist of 360 members representing constituencies of nearly equal population, provided that no constituency shall fall within more than one State (Section 49 of the 1999 CFRN). The Senate is headed by the President and Deputy President who shall be elected from among the members of the Senate – S. 50(1)(a). The House of Representatives is headed by the Speaker and a Deputy speaker who shall also be elected from among themembers of the House – S. 50(1)(b).

ELECTION OF PRINCIPAL OFFICERS OF THE NATIONAL ASSEMBLY

Election of the President of the Senate, Deputy Senate President, Speaker of the House of Representatives and Deputy Speaker requires simple majority – S. 56(2). However, the removal of any of the presiding officers above requires a two-thirds majority vote – S. 50(2)(c).

PRESIDING OVER SITTINGS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES

By Section 53(1)(a) of the constitution, the President of the Senate shall preside and in his absence, the Deputy President shall preside over the sittings of the Senate – S. 53(1)(a). In the case of the House of Representatives, the Hpeaker of the house shall preside and in the absence of the Speaker, the Deputy Speaker shall preside – S. 53(1)(b).

In the case of a joint sitting of both houses of the National Assembly, the President of the Senate shall preside and in his absence the Speaker of the House of Representatives shall preside – S. 53(2)(a). In the absence of the President of the Senate and the Speaker of the House of Representatives, the Deputy Senate President shall preside and in his absence, the Deputy Speaker of the House of Representatives shall preside – S. 53(2)(b).

It is worthy of note that Section 53(3) of the 1999 CFRN answers the question as to what happens when all the above mentioned persons are not present. In the case of the Senate President, a temporary speaker shall be elected from among the members of the Senate to preside over the sitting of the Senate - S. 53(3). This also applies to the House of Representatives. The presiding officer in the case of the Senate is called 'Protem' or 'Protempore' President of the Senate and 'Speaker Pro tempore' or 'Protem Speaker', in the case of the House of Representatives. In the case of a joint sitting of both houses of the National Assembly, the Speaker pro tempore can be elected from among the members of both Houses sitting in a joint session.

QUORUM TO TRANSACT THE BUSINESS OF THE NATIONAL ASSEMBLY

This is provided for in Section 54(1) of the 1999 CFRN. The quorum of the Senate or of the House of Representatives shall be one-third of all the members of the legislative house concerned. Howbeit, in the case of an inaugural or first sitting of the Senate or House of Representatives, the requisite quorum shall be at least two-thirds majority of all the members-elect of each legislative House **(Section 54(1A) of the 1999 CFRN).** For a joint sitting, the quorum shall be one-third of all the members of both houses. Where the quorum for sitting is not met, the sitting of the affected House shall be adjourned to such a time that the quorum is formed.

LANGUAGE TO BE USED IN CONDUCTING PROCEEDINGS OF THE NATIONAL ASSEMBLY

Section 55 provides for the general language of the National Assembly which is the English Language. However, Hausa, Igbo and Yoruba may be adopted when adequate arrangements have been made.

VOTING IN THE NATIONAL ASSEMBLY

Any question proposed for determination in the Senate or House of Representatives shall be determined by the required majority of the members present and voting. The person presiding

shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case. [See Section 56(1)]

By Section 56(2) of the 1999 CFRN, the required majority for determining any question put forward for the determination of the National Assembly shall be a simple majority, except where the constitution stipulates otherwise. For example, a two-third majority is needed to override a presidential veto. Simply put, where the constitution does not outrightly stipulate the required majority, a simple majority is applicable.

UNQUALIFIED PERSONS SITTING/VOTING IN THE NATIONAL ASSEMBLY

Section 57 deals with unqualified persons sitting or voting in the national assembly; and stipulates that any person who sits or votes in the Senate or the House of Representatives knowing or having reasonable grounds for knowing that he is not entitled to do so, commits an offence and is liable on conviction to such punishment as shall be prescribed by an Act of the aNational Assembly.

POWER TO REGULATE PROCEEDINGS

Section 61 of the CFRN empowers the National Assembly to regulate its own proceedings and this power extends to the power to discipline erring legislators. However, it should be noted that this power is subject to the provisions of the CFRN.

VACANCY OR PARTICIPATION OF STRANGERS IN PROCEEDINGS OF THE NATIONAL ASSEMBLY

Section 61 of the 1999 CFRN deals with situations of vacancy and participation of strangers in the proceedings of the National Assembly. Where a stranger participates in the proceedings of a legislative House, it shall not invalidate the proceedings of the House. Where there is a vacancy, the National Assembly shall act notwithstandingthe vacancy, provided that a quorum is formed. It is pertinent to note at this point that even though the House can competently carry on its regular or ordinary businesses where it has formed the quorum, it can not carry on the extraordinary businesses which require a two-third majority if a quorum of two-third majority has not been formed.

In the case of **DAPIANLONG V. DARIYE (2007) 8 NWLR (Pt. 1036) 239**, the respondent was the Governor of Plateau State and the appellants were members of the Plateau State House of Assembly, a 24-member assembly. Hon. Lalong was the speaker of the House of Assembly at the time. On 5th and 13th of November 2005, the appellants who constituted only 8 members out of 24 members of the said house purported to have impeached the Governor. The 1st appellant was a 'Speaker Pro tempore'. The notice of impeachment was not served on the Governor. The respondent was dissatisfied with his impeachment. The court held, inter alia, that by Section 188(9) of the 1999 CFRN, the requisite quorum for impeachment is a two-third majority which

the house failed to meet. Furthermore, the court held that it was only a substantive speaker who could exercise the power vested by Section 188(5), and not a Speaker pro tempore. The import of this decision is that where the constitution expressly states that a certain duty shall be carried out by the substantive Speaker of the House of Representatives or President of the Senate, such duty is exclusively for the Speaker and shall not be performed by a Speaker pro tempore.

Section 63 of the 1999 CFRN provides that the Senate and House of Representatives shall each sit for a period of not less than one hundred and eighty-one (181) days in a year.

TENURE OF THE NATIONAL ASSEMBLY MEMBERS AND LOSS OF MEMBERSHIP

Section 68 provides for eight situations where a member of the National Assembly may vacate his seat. These are:

1. If he becomes a member of another legislative house.

2. Any other circumstances arises which if he were not a member of the Senate or House of Representatives would cause him to be disqualified for election as a member.

3. If he or she ceases to be a citizen of Nigeria.

4. If he becomes President, Vice president, Governor, Deputy Governor, Minister of the government of the federation, or a Commissioner of the government of the state or Special Adviser.

5. He or she becomes a member of a commission or other bodies established by the constitution or any other law.

6. Without just cause, he or she is absent from the meetings of the house which he is a member, for a period amounting in the aggregate to more than one-third of the total number of days during which the house meets in one year.

7. Being a person whose election was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that house was elected; provided that his membership of the latter political party was not as a result of the division of the political party for which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

8. Recall.

Section 68 (2) provides that the President of the Senate or Speaker of the House of Representative shall give effect to the provisions in Section 68 (1). They would first present evidence to the house that any of the above is applicable or has been done. The role of the courts is only to confirm what the Speaker has declared.

Section 68(2) empowers the President of the Senate or the Speaker of the House of Representatives, as the case may be, to declare vacant the seat of any member of the Senate or the House of Representatives who has vacated his seat as a consequence of the application of any of the situations mentioned in Section 68(1)(a)-(h). Note that before the President of the Senate or the Speaker of the House of Representatives, as the case may be, will give effect to any of Paragraphs (a)-(h) where such provision becomes applicable and therefore declare the seat of a member vacant, the President of the Senate or the Speaker of the House of Representatives, as the case may be, or a member of the affected House must first present evidence that is satisfactory to the House that any of the provisions of Section 68(1)(a)-(h) has become applicable in relation to a member. Note that it is the House that needs to be satisfied with the proof offered and not the President of the Senate or the Speaker of the House of Representatives, as the case may be. In other words, where such evidence is offered to a sitting in which quorum is not met, such gathering that lacks quorum cannot be taken as the House for purposes of giving effect to Section 68(1)(a)-(h). See the consolidated appeals in **Rivers State House of Assembly & Ors v. The Government of Rivers State & Ors (2025).**

2. COMPOSITION AND PROCEEDINGS OF A HOUSE OF ASSEMBLY OF A STATE

ESTABLISHMENT OF A HOUSE OF ASSEMBLY

Section 90 of the 1999 CFRN provides for the House of Assembly of each State of the federation.

COMPOSITION

Section 91 of the 1999 CFRN provides that the House of Assembly of a State shall consist of not less than 24 members and not more than 40 members.

ELECTION OF SPEAKER AND DEPUTY SPEAKER

Section 92(1) of the 1999 CFRN provides for the Speaker and Deputy Speaker of the of the House of Assembly of a State and stipulates that they shall be elected by the members of the House from among themselves. Section 92(2) provides for circumstances in which a Speaker or Deputy Speaker shall vacate his office.

PRESIDING AT SITTINGS OF THE HOUSE

Section 95 deals with presiding at sittings of the House and provides that the Speaker or in his absence, the Deputy Speaker, shall preside over the sittings of a House of Assembly. By Section 95(2), in the absence of the Speaker and the Deputy Speaker, such member of the House as the House may elect for that purpose shall preside. This member is known as the Speaker Protempore or Protem Speaker (which literally means ‘temporary Speaker’).

Note that a person elected as 'Speaker Pro tempore' in the absence of a substantive Speaker or Deputy Speaker is incompetent and without legal authority to preside over a proceeding or sitting in which he would perform or discharge constitutional responsibilities or exercise constitutional powers specifically vested in the substantive Speaker. See DAPIANLONG V. DARIYE (2007) 8 NWLR (Pt. 1036) 239.

QUORUM OF THE HOUSE OF ASSEMBLY

Section 96(1) of the 1999 CFRN provides for the quorum of a House of Assembly and stipulates that the quorum of a House of Assembly shall be one-third of all the members of the House. See INAKOJU V. ADELEKE (2007) 4 NWLR (Pt. 1025) 432

However, the quorum for the inaugural or first sitting of the House is at least two-thirds majority of all the members of the House. See Section 96(1A) of the 1999 CFRN. If the attention of the Speaker is drawn to the fact that quorum has not been formed, the Speaker is under a mandatory obligation to undertake a head-count and after being convinced that quorum is not formed after an interval, he/she shall adjourn the sitting of the House to such a time that quorum is formed – S. 96(2).

LANGUAGE TO BE USED IN CONDUCTING PROCEEDINGS OF A HOUSE OF ASSEMBLY

Section 97 provides for the general language of a House of Assembly which is the English Language. However, in addition to the English Language, one or more languages spoken in the State may be adopted by resolution of the House.

VOTING IN THE HOUSE OF ASSEMBLY

Section 98(1) of the 1999 CFRN stipulates that except as otherwise provided by the constitution, any question proposed for decision in the House of Assembly shall be determined by the required majority of the members present and voting. However, the person presiding shall cast a vote only for the purpose of breaking a tie in votes but shall not vote in any other case.

By Section 98(2) of the 1999 CFRN, the required majority for determining any question put forward for the determination of a House of Assembly shall be a simple majority, except where the constitution stipulates otherwise. For example, a two-third majority is needed to override a gubernatorial veto. Simply put, where the constitution does not outrightly stipulate the required majority, a simple majority is applicable.

UNQUALIFIED PERSONS SITTING/VOTING IN THE NATIONAL ASSEMBLY

Section 99 of the CFRN deals with unqualified persons sitting or voting in the national assembly; and stipulates that any person who sits or votes in a House of Assembly knowing or having

reasonable grounds for knowing that he is not entitled to do so, commits an offence and is liable on conviction to such punishment as shall be prescribed by a Law of the House of Assembly.

POWER TO REGULATE PROCEEDINGS

Section 101 of the CFRN empowers a House of Assembly to regulate its own proceedings and this power extends to the power to discipline erring legislators. However, it should be noted that this power is subject to the provisions of the CFRN.

VACANCY OR PARTICIPATION OF STRANGERS IN PROCEEDINGS OF THE NATIONAL ASSEMBLY

Section 102 of the 1999 CFRN deals with situations of vacancy and participation of strangers in the proceedings of a House of Assembly. Where a stranger participates in the proceedings of a House of Assembly, it shall not invalidate the proceedings of the House. Where there is a vacancy, a House of Assembly may act notwithstandingthe any vacancy in its membership, provided that a quorum is formed. However, where the requisite quorum of one-third is not formed, the House cannot rely on Section 102 of the CFRN to sit or transact any business of the House. See INAKOJU V. ADELEKE (2007) 4 NWLR (Pt. 1025) 432; DAPIANLONG V. DARIYE (2007) 8 NWLR (Pt. 1036) 239

It is pertinent to note at this point that even though the House can competently carry on its regular or ordinary businesses where it has formed the quorum, it can not carry on the extraordinary businesses which require a two-third majority if a quorum of two-third majority has not been formed. See INAKOJU V. ADELEKE (supra)

TENURE OF MEMBERS OF A HOUSE OF ASSEMBLY AND CIRCUMSTANCES UNDER WHICH MEMBERSHIP OF THE HOUSE MAY BE LOST

Section 109 of the 1999 CFRN provides for the circumstances where a member of the House of Assembly may vacate his seat, to wit:

a. If he becomes a member of another legislative house.

b. Any other circumstances arises which if he were not a member of the Senate or House of Representatives would cause him to be disqualified for election as a member.

c. If he or she ceases to be a citizen of Nigeria.

d. If he becomes President, Vice president, Governor, Deputy Governor, Minister of the government of the federation, or a Commissioner of the government of the state or Special Advisor.

e. He or she becomes a member of a commission or other bodies established by the constitution or any other law.

f. Without just cause, he or she is absent from the meetings of the House of Assembly, for a period amounting in the aggregate to more than one-third of the total number of days during which the house meets in one year.

g. Being a person whose election to the House of Assembly was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that house was elected; provided that his membership of the latter political party was not as a result of the division of the political party for which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

In the case of ABEGUNDE V. THE ONDO STATE HOUSE OF ASSEMBLY (2015) 8 NWLR (Pt. 1461) 314 SC, the appellant contested and won the Akure North/South federal constituency seat on the platform of the Labour Party. He abandoned the party and defected to the Action Congress of Nigeria. He asserted that the division in the Ondo State Chapter of the Labour Party accounts for his defection to the A.C.N. He filed an originating motion seeking the interpretation of Section 68(1) (a) and (g) of the 1999 CFRN. The court held that by the proviso to Section 68(1)(g), for a member of a legislative house to retain his seat after a defection, it must be shown that such defection was as a result of division in the political party and such division must span from the head of the political party at the national level and not a division in the state. Sequel to this, the seat of the appellant was declared vacant.

h. Recall.

A question often suffices whether or not a member of a House of Assembly or National Assembly can be suspended from the house? See the cases of DINO MELAYE V. HOUSE OF REPRESENTATIVES, OMO-AGEGE V. THE SENATE, ALI NDUME V. THE SENATE

In **Rivers State House of Assembly & Ors v. The Government of Rivers State & Ors (2025), the Supreme Court held that the provisions of Section 109(1)(a)-(h) are not self-executing and that the provisions require the pronouncement of the Speaker before any of them can be activated.** Section 109(2) empowers the Speaker of a House Assembly to declare vacant the seat of any member of the House of Assembly who has vacated his seat as a consequence of the application of any of the situations mentioned in Section 109(1)(a)-(h). Note that before the Speaker of the House of Assembly will give effect to any of Paragraphs (a)-(h) where such provision becomes applicable and therefore declare the seat of a member vacant, such Speaker or a member of the affected House must first present evidence that is satisfactory to the House that any of the provisions of Section 109(1)(a)-(h) has become applicable in relation to a member. Note that it is the House that needs to be satisfied with the proof offered and not the Speaker of the House of Assembly. In other words, where such evidence is offered to a sitting in which quorum is not met, such gathering that lacks quorum cannot be taken as the House for purposes of giving effect to Section 109(1)(a)-(h). See the consolidated appeals in **Rivers State House of Assembly & Ors v. The Government of Rivers State & Ors (2025).**

EXTENT OF ALLOCATION OF CONCURRENT LEGISLATIVE POWERS BETWEEN THE NATIONAL ASSEMBLY AND A STATE HOUSE OF ASSEMBLY

The legislative powers included in the Concurrent Legislative List are open to both the National Assembly and a State House of Assembly. See **Ss. 4(4)(a) and 4(7)(b).** This means both the Federal and State legislatures have the vires to make laws on all the items contained on the List to the extent indicated therein.

What happens where both the National Assembly (Federal Legislature) and a State House of Assembly (State legislature) make laws on the same item or subject-matter on the Concurrent Legislative List with the result that there are two identical laws in operation? Which of the laws will be operative or regulate the transaction in question? The 1999 Constitution has resolved this possibility of conflicting laws by entrenching the doctrine of covering the field into the Constitution.

DOCTRINE OF COVERING THE FIELD

The doctrine of covering the field is a constitutional law principle which applies in a federal system of government specifically to the determination of the question of which law prevails in the event of conflicting or duplicated laws made by both the federal and a State legislature in relation to a matter in the Concurrent Legislative List. The doctrine is also known as the doctrine of complete pre-emption in American constitutional law. The concept is of Australian Law origin and was borrowed into the US constitutional jurisprudence. In Constitutional Law, the doctrine of covering the field arises and is applicable in two situations, viz: (a) where the Constitution has enacted exhaustively on a matter, an issue or a subject-matter; and (b) where both the federal legislature (National Assembly) and the State legislature (State House of Assembly) make laws on the same issue, matter or subject-matter that is within the Concurrent Legislative List. See **Saraki v FRN (2016) 3 NWLR (Pt 1500) 531** (**See especially, Ratio 22).**

The doctrine, in its clearest signification, states that where both the federal legislature and the State legislature enact laws on the same matter on the Concurrent Legislative List, the law enacted by the federal legislature will prevail over the law enacted by the State legislature. In other words, the law made by the federal legislature is the applicable law on that subject matter. In this case, the federal legislature is deemed to have covered the field on that subject. It would seem that an aspect of this doctrine has been codified in **Section 4(5)** of the 1999 Constitution which provides that, ***"If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void".***

See **Attorney-General of Lagos State v Eko Hotels Ltd (2017) LPELR-43713 SC**. In that case, the Lagos State House of Assembly enacted the Sales Tax Law which was inconsistent

with Value Added Tax Act (a federal law on valued added tax). It was held that not only was the field covered by the federal law on the subject of consumption tax but that allowing two laws to cohabit *pari pasu* would result to double taxation on the part of consumers of goods and services.

The doctrine also States that where the Constitution has made exhaustive provisions in relation to an issue, a matter or subject, whether or not contained in the Exclusive Legislative List or the Concurrent Legislative List, the constitutional provision is supreme and both the federal and State legislatures will lack any competence to legislate in addition to or in subtraction from the constitutional provisions. In this case, the Constitution is deemed to have covered the field on that subject. The 1999 Constitution restated this doctrine in Section 1(3) when it provides to the effect that, ***"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void".***

See Attorney-General of the Federation v Alhaji Atiku Abubakar (2007) 10 NWLR (Pt 1041) 1, where the Supreme Court held that the 1999 Constitution has provided exhaustively on qualifications of candidates for election in Nigeria, and that the National Assembly cannot through the Electoral Act 2006 make provision empowering INEC to disqualify candidates submitted to it by their political parties. See also **National Conscience Party v National Assembly of the Federal Republic of Nigeria (supra)** where the Court of Appeal held that Section 78(7)(ii) of the Electoral Act 2010 which empowers the INEC to deregister or derecognise a duly registered political party in Nigeria is contrary to Sections 222-229 of the 1999 Constitution and is accordingly void as the Constitution has provided exhaustively for the existence of political parties..

The doctrine of covering the field is against duplication of laws or the proliferation of laws with inconsistent results within a polity. If two conflicting laws are allowed to operate on the same subject-matter or issue, there would be confusion in the administration of the two laws. For instance, the citizens would find it difficult to know which of the two conflicting laws to obey or to abide by in their transactions. In addition, the courts would be confused as to which of the conflicting sets of laws to apply in a given case. Thus, the purposes of the doctrine is to eliminate confusion and entrench certainty into the application of laws and also the resolve competition for supremacy that may ensue between the federal and State legislatures in the exercise of their respective legislative powers in respect of matters on the Concurrent Legislative List.

Requirements/Conditions for the Application of the Doctrine

For the doctrine to apply, the following conditions must be met:

- The subject-matter of legislation must be an item or matter on the Concurrent Legislative List and not an item on the Exclusive Legislative List or a residual matter. See **Adetona v Attorney-General of Ogun State (1984) 5 NCLR 299, 308-309,** where the Court held that the doctrine applies to matters in the concurrent list and not those in the residual list.

See also **Attorney-General of the Federation v Attorney-General of Lagos State (2013) 16 NWLR (Pt 1380) 249,** where the Lagos House of Assembly enacted the Hotel Licensing Law, Cap H6, Law of Lagos State 2003. The appellant challenged the validity of the said Lagos State Law on the ground that it conflicted with the Nigerian Tourism Development Corporation Act (a federal law on licensing and regulation of the hospitality industry) which the appellant claimed has covered the field. It was held that hotel licensing is a residual and not a concurrent matter, hence, the Lagos State House of Assembly is competent to enact the said Law.

- The National Assembly (federal legislature) must have enacted a law on the item or subject-matter.
- The law enacted by the National Assembly must completely cover every aspect of the subject-matter or item so as to leave no room for the State House of assembly to make laws on the subject
- Where the law enacted by the National Assembly restricts the operation of the subject-matter at the Federal level or purports to enhance a federal purpose on a matter in the Concurrent Legislative List without equally advancing a State purpose, a State House of assembly can validly make laws that would advance such State purpose. See **Adetona v Attorney-General of Ogun State (supra)**
- Where a federal law limits its application to the federal level, the State is competent to make a law to apply to the State. See **AG Lagos State v Eko Hotels (supra)**

Implications of the Successful Invocation of the Doctrine

Where the doctrine is successfully invoked and applied, the legal implication that will flow from the application of the doctrine and its impact on a State law will depend on whether or not the State law is consistent with the federal law.

- Thus, where the affected State law did not conflict with an Act of the National Assembly (which has exhaustively covered the field), the State law **WILL NOT BE VOID** but will be in abeyance, or remain inchoate, ineffective, or inoperative during the subsistence of the federal law until such a time that the federal law is no longer in existence. The affected State law may still operate where the overriding federal law has ceased to exist or operate.
- On the other hand, where the affected State law conflicts directly or indirectly with an Act of the National Assembly (which has exhaustively covered the field), the affected State law **WILL BE VOID** to the extent of its inconsistency with the federal law. **See S. 4(5)**

FUNCTIONS AND RESPONSIBILITIES OF THE LEGISLATURE IN NIGERIA

The major functions of the legislature in Nigeria are:

1. Law Making: The main function of the legislature, be it the Federal Legislature (National Assembly), the State Legislature (State House of Assembly) or the Local Government Area Legislature (Local Government Legislative Assembly), is to make laws for the peace, order and good government of the Federation, State or Local Government Area, as the case may be.

The National Assembly exercises this function through initiation of bills into any of the Senate or the House of Representatives. **See Section 58(1)**

A bill can be defined as a written proposal embodying policies of government or the will of the people in regard to a matter of public importance awaiting parliamentary consideration and passage.

A bill can originate from a member of the legislature (ie, the Senate, the House of Representatives or the State House of Assembly) in which case such bill is known as a private member bill. On the other hand, the executive arm of government (ie, the President or the Governor of a State or any of the Ministries, Departments and Agencies under the executive arm) may also propose a bill to any Chamber of the National Assembly (in the case of the Federal Executive) or the State House of Assembly (in the case of a State Executive) for consideration and passage. Such bills emanating from the executive is known as executive bill.

The procedures or stages for passing a bill are outlined below:

- **Stage 1:** Introduction of the bill into a House of the National Assembly by a member of the House (private member bill) or by the executive (executive bill), whichever is the case.
- **Stage 2:** First Reading – the bill is read for the first time. No debates are allowed at this stage. The sponsor of the bill is called upon to argue the general principles of the bill.
- **Stage 3:** Second Reading: At this stage, members of the House are allowed to debate on the bill.
- **Stage 4:** If the bill scales through the Second Reading, it is committed to a Committee of the House that has responsibility for the subject matter of the bill. The purpose is to allow for technical inputs into the bill by stakeholders who would be affected by the bill. The Committee may conduct public hearing into the bill.
- **5th Stage:** This is the Report Stage. When the Committee has concluded its work on the bill, it will report to the plenary (that is, the whole House) either recommending that the bill should be passed with or without amendments; or that it should not be passed.
- **6th Stage:** Third Reading: If the report of the Committee is accepted, then, the bill is read for the third time. At this stage extensive amendments may be made to the bill through a clause by clause consideration in order to put the bill in a final shape ready for passage.
- **7th Stage:** This is the passage stage. After the clause by clause consideration of the bill, if it scales through the third reading, the bill is then passed by the originating House or Chamber. In the case of the State House of Assembly which is unicameral legislature, the

bill is at this stage transmitted to the Governor for his assent. However, in the case of the National Assembly which is a bicameral legislature, the cycle continues and is replicated in the second Chamber where the bill may be passed or die a natural death.

- **8th Stage:** The bill as passed by the originating House or Chamber is then sent to the corresponding House or Chamber for concurrent passage. If for instance, the bill originated from the House of Representatives, after passage, the House of Representatives (originating House) will transmit the bill to the Senate (ie, corresponding House or Chamber) for the Senate to carry out similar legislative processes on the bill from stages 1-7, and vice versa if the bill originated from the Senate.

  For stages a bill will pass through before it becomes a law**, see National Assembly v Accord (2021) 18 NWLR (Pt 1808) 193**

PLEASE NOTE THE FOLLOWING POINTS:

- Note that it is only when both Houses or Chambers have passed the bill that it can be said that the National Assembly has passed such bill. **See S. 58((1)-(3).**
- Note also that it is at that point that the bill as passed by the National Assembly will be transmitted to the President for his assent in terms of S.58(4) of the 1999 Constitution.
- Where a bill is presented to the President for assent, he shall within 30 days of the presentation of the bill to him signify that he assents or that he withholds assent - **S. 58(4)**
- Where the President withholds his assent and the bill is again passed by two-thirds majority of **EACH HOUSE** of the National Assembly, the bill shall become law and the assent of the President shall not be required - **S.58(5). See National Assembly v President** (supra) where the Court of Appeal held that the President's veto cannot be overridden by a mere 'motion of veto override' passed at a joint sitting of the National Assembly in which the two-thirds requirement was not met.

- For the law making procedure of a State House of Assembly, See **S. 100(1)-(3).**

2. Passing or Approval of Money Bill (Appropriation Bill or Supplementary Appropriation Bill)

Section 59(1)(a) of the 1999 Constitution vests in the National Assembly the power to approve and pass the following money bills:

(i) Appropriation bill
(ii) Supplementary appropriation bill
(iii) Issuance or withdrawal of any money changed on the Consolidated Revenue Fund (CRF) or any other public fund of the Federation from the CRF
(iv) Any alteration in the amount of payment issued or withdrawn from the CRF or any other public fund of the Federation

(v) Bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof- s. 59(1)(b).

The procedure for passing a money bill is slightly different from the procedure for passing a non-money bill. The procedures outlined by the 1999 Constitution are as follows:

- The President (in the case of the National Assembly) or the Governor (in the case of a State House of Assembly) presents an already prepared budget (money bill) to a Joint Session of the National Assembly or the State House of Assembly, as the case may be.
- Each House of the National Assembly passes the bill following the processes and procedures used in passing a non-money bill.
- Where the bill is passed by one House of the National Assembly but is not passed by the other House within a period of two months from the commencement of a financial year, the Senate President shall within fourteen days after the expiration of the two months mentioned above, arrange for and convene a meeting of the Joint Finance Committee (JFC) to examine the bill with a view to resolving the differences between the two Houses - **S. 59(2).**
- Where the JFC fails to resolve such differences, then the bill will be presented to the National Assembly sitting at a joint meeting, and if the bill is passed at the joint meeting, it shall be presented to the President for assent - **S. 59(3)**
- Where the President, within 30 days after the presentation of the bill to him, fails to signify his assent or where he withholds assent, the bill shall again be presented to the National Assembly sitting at the joint meeting - **S. 59(4)**
- If the National Assembly sitting at a joint meeting passes the bill by two/thirds majority of members of both Houses, the bill shall become law and the assent of the President shall not be required - **S. 59(4)**

In **Attorney-General of Bendel State v Attorney-General of the Federation and 22 Ors (1982) 3 NCLR 1,** the Attorney-General of Bendel State challenged the constitutionality and validity of the Allocation of Revenue (Federal Account, Etc) Bill 1980 on the grounds that:

(1) Certain sections of the Act conflicted with Sections 7(6), 149(4) and (5) of the 1979 Constitution (substantive defect); and

(2) The Act was not passed in accordance with the provisions of the Constitution (procedural defect) in that the Senate and the House of Representatives passed different versions of the bill and that though a Joint Conference Committee of both Houses met and approved the Senate version by majority votes, the bill was not sent back to each House to be passed again by EACH HOUSE of the National Assembly as required by the 1979 Constitution. The Supreme Court invalidated the entire Act on that ground.

- For the power of the State House of Assembly with respect to money bills as well as the procedure required to pass such bills (which are the same as above), see **S. 121(1) and (2)**

3. Confirmation/Approval of Certain Appointments

The 1999 Constitution vests on the Senate the power and responsibility of vetting/screening and confirmation/approval of the following appointments:

(i) Ministers of the Government of the Federation – See **S. 147(2).**

Note that where no return is received by the Senate within 21 working days of the receipt of nomination, the nominee will be deemed as having been appointed and shall proceed to enter upon the duties of his/her office - **S.147(6)**

(ii) Chairman and members of the Code of Conduct Bureau; Council of State; Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission; National Defence Council; National Economic Council; National Judicial Council; National Population Commission; National Security Council; Nigeria Police Council; Police Service Commission; and Revenue Mobilisation Allocation and Fiscal Commission – See **S. 153(1) and 154(1)**

(iii) Ambassador, High Commissioner or other principal representative of Nigeria abroad- **S. 171(4)**

- For similar power of the House of Assembly, See **S. 192(5)** (for Commissioners) and **S. 198** (for State Bodies)

4. Removal of Members of Certain Federal Bodies and Public Officers

The removal of the following persons from office must be by an address supported by two-thirds majority of the Senate:

(i) Chairman and members of the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Council, the Federal Judicial Service Commission, the Federal Character Commission, the Nigeria Police Council, the National Population Commission, the Revenue Mobilisation Allocation and Fiscal Commission and the Police Service Commission – See **S. 157(1) and (2).**

(ii) Judicial officers – **S. 292(a)(i)**

- For similar powers of the State House of Assembly, See **S. 292(i)(a)(ii)** (for judicial officers) and **S. 201(1)** (for State bodies)

5. Domestication of Treaties

Section 12(1) of the 1999 Constitution vests upon the National Assembly power to domesticate treaties entered into between Nigeria and another country in order to make such treaties enforceable in Nigeria - **S. 12(1)-(3)**.

For this purpose, the National Assembly may make laws on matters outside Exclusive Legislative List and even on a residual matter. However, such bill to domesticate a treaty on a residual matter if passed by the National Assembly shall not be presented to the President for assent unless it is ratified by a majority of all the Houses of Assembly in Nigeria – See **S. 12(3)**

6. Power to Make Laws for the Federation on Matters outside the Exclusive Legislative List

Section 11(3) vests on the National Assembly the power to make laws for the peace, order and good government of the Federation or any part of the Federation with respect to matters outside the Exclusive Legislative List as may appear to it to be necessary or expedient for the defence of the Federation. Note that this power can only be exercised during a period in which the Federation is at war.

7. Power to Take over the Functions of a State House of Assembly

Section 11(4) gives the National Assembly power to take over and perform the functions of a State House of Assembly at any time the situation prevailing in a State makes it impossible for the House of Assembly to perform its functions. Note that the laws made by the National Assembly pursuant to this power will have effect as if they were enacted by the affected House of Assembly- **S. 11(4)**

Note that this power has two limitations:

(i) The power is to last only as long as the prevailing situation in the affected State makes it difficult for the affected House of Assembly to function.

Note that Section 11(5) provides that a House of Assembly shall not be deemed to be unable to perform its functions so long as the House of Assembly can hold a meeting and transact business.

(ii) The power does not extend to removal of the Governor or Deputy-Governor of the State from office - **S.11(4)**

8. Sanctioning the Declaration of War between the Federation of Nigeria and another Country

Section 5(4)(a) of the 1999 Constitution declares that the President shall not declare a state of war between the Federation and another country except with the sanction of a resolution passed by both Houses of the National Assembly sitting in a joint session.

9. Approval of Deployment of Members of the Armed Forces of the Federation on Combat Duty Abroad

Except upon the prior approval of the Senate, no member of the armed forces of the Federation shall be deployed on combat duty outside Nigeria - **S. 5(4)(b)**

Note however that the President may in consultation with the National Defence Council, deploy members of the armed forces of the Federation on a limited combat duty outside Nigeria where the President is satisfied that the national security of Nigeria is under imminent threat or danger, without Senate approval - **S. 5(5)**

Note also that where the President proceeds to deploy the armed forces for limited combat duty abroad without Senate approval, he must within 7 days after the actual combat engagement, seek the consent of the Senate which shall reserve the right to either give or refuse the said consent within fourteen days - See **Proviso to S. 5(5)**

10. Passing of Resolution Approving Proclamation of State of Emergency

The national Assembly is conferred with the power to pass a resolution approving or disapproving a proclamation of a state of emergency in the Federation or any part of the Federation - **S. 305(3)**

11. Power to Mandate the Vice President to Act as Acting President during the President's Absence/Vacation

Under Section 145(2) of the 1999 Constitution, the National Assembly by a resolution passed by a simple majority vote of each House of the National Assembly is empowered to mandate the Vice President to act as President where the President is unable or fails to transmit a written declaration to each House within 21 days of his proceeding on vacation or being unable to discharge the functions of his office - **S. 145(1)-(2)**

- On similar powers of a State House of Assembly, See **S.190(1) and(2)**

12. Removal of President or Vice President from Office

The most important weapon of control conferred on the National Assembly is the power to remove the President or Vice President from office on ground of gross misconduct. This is what is known in the Nigerian parlance as impeachment - **S.143(1)-(10).**

Note that the court has power to vitiate impeachment that is not done in accordance with the 1999 Constitution.

- On Similar power of the House of Assembly to impeach the Governor or Deputy-Governor, See **S. 188(1)-(10)**

See **Abaribe v The Speaker, Abia State House of Assembly (2002)14 NWLR (Pt 788) 466; Ebebi v Speaker, Bayelsa State House of Assembly (2010) 5 NWLR (Pt 1292) 1; Inakoju v Adeleke (2007) 4 NWLR (Pt 1025) 423; Nyako v Adamawa State House of Assembly (2017) 6 NWLR (Pt 1562) 347**

13. Power to Conduct Investigations

The National Assembly is also conferred with investigatory powers. This refers to the power to conduct investigations into the administration of a law. Section 88 of the Constitution specifies the matters into which investigations can be conducted and the purpose of such investigation. See **Tony Momoh v Senate of the National Assembly (1982) NCLR 105**

Note that before the National Assembly or State House of Assembly can exercise this power, it must do the following:

(i) Pass a resolution to that effect

(ii) Publish the resolution as passed in its Journal or in the Official Gazette of the Government of the Federation or State, as the case may be – See Ss. **88(1) and 128(1)**

Note also that the National Assembly or State House of Assembly does not have a general and blanket power to invite any person it deems fit for investigation. Not every person is under the investigative power of the National Assembly or House of Assembly. The subject-matters of investigation are:

a. any matter or thing with respect to which it has power to make laws; and
b. the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for -
    i. executing or administering laws enacted by the National Assembly, and
    ii. disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

The National Assembly or House of Assembly, as the case may be, is also circumscribed by the purpose for which such investigation must be conducted. The power of investigation must be exercised only for the purpose of enabling the House to:

i. Make laws with respect to any matter within its legislative competence and to correct any defects in existing laws; and
ii. Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

See The Shell Petroleum Development Company of Nigeria Limited v Ajuwa (2015)14 NWLR (Pt. 1480) 403, where the Court of Appeal held that the investigatory power of the National Assembly under Section 88(1) of the 1999 Constitution is limited in scope and purpose.

It was also held that the powers conferred on the legislature are not adjudicatory in nature as adjudicatory powers are vested in the courts exclusively.

- On similar powers of a State House of Assembly, See **S. 128(1) and (2)**

See also **Agbaso v Iwunze (2015)11 NWLR (Pt1471) 527,** where it was held that the House of Assembly of a State has the power to conduct an inquiry or investigation as part of its oversight functions.

14. Power to Receive the Report and Publish Notice of the President's or the Vice President's Incapacity to Hold Office on Ground of Health

On the power of the National Assembly in regard to receipt of report of the medical incapacity of the President or the Vice President to function in office and the power to publish such medical report, **See s. 144(1) and (2)**

- **For similar powers of the Speaker of a State House of Assembly, See S. 189(2)**

15. Power to Extend the Tenure of the President and Governor

Section 135(3) gives the National Assembly power to extend the tenure of the President and Governor where the territory of Nigeria is physically involved in a war and the President considers that it is not practicable to hold elections. See S. 180(3) for power of the National Assembly to extend the tenure of office of a Governor.

Note however that this extension can be done from time to time as the prevailing situation warrants but must not exceed a period of six months at any one extension – See **Ss. 135(3) and 180(3).**

CONTROL AND LIMITATIONS ON THE EXERCISE OF LEGISLATIVE POWERS WITHIN THE CONTEXT OF CHECKS AND BALANCES IN NIGERIA

In the spirit of checks and balances and to ensure that the legislative arm (whether State or federal) does not gravitate towards absolutism and legislative recklessness, and in order to protect the freedoms and liberties of the common man, certain restrictions or measures of control are imposed on the exercise of the legislative powers of the Federation and those of a State. Below are some of the control measures:

1. **Constitutional Control:** All laws made by the federal and State legislatures must trace their paternity (ie, their source and authority) to the 1999 Constitution. Any exercise of legislative powers not traceable to or founded on the 1999 Constitution is void. See **Okungbowa v Governor of Edo State (2015) 10 NWLR (Pt. 1467) 257**

In **National Conscience Party v National Assembly of the Federal Republic of Nigeria (supra), t**he Court of Appeal stated that the validity of a provision of a law will be tested by the following interconnected propositions:

(a) All powers, legislative, executive and judicial must ultimately be traced to the Constitution;

(b) The legislative power of the legislature cannot be exercised inconsistently with the Constitution. Where it is so exercised, it is invalid to the extent of such inconsistency; See **President, FRN v Isa (2017) 3 NWLR (Pt. 1553) 347** where it was held that all laws made by the National Assembly must be consistent with the 1999 Constitution.

(c) 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 has enacted must show that it has derived the legislative authority to do so from the Constitution; See **Saraki v FRN (2016) 3 NWLR (Pt.1500) 531.**

Similarly, in **Governor of Ekiti State v Olubunmo (2017) 3 NWLR (Pt. 1551) 1,** the Supreme Court and the Court of Appeal invalidated Section 23B of the Local Government Administration (Amendment) Law of 2001 of Ekiti State which empowered the Governor to dissolve democratically elected Local Government Council and appoint caretaker committees in their stead on the ground that the said State Law is inconsistent with Section 7(1) of the 1999 Constitution which provides for the existence of democratically elected Local Government Councils only.

(d) Where the Constitution sets the condition for doing a thing, no legislation of the National Assembly can alter those conditions in any way, directly or indirectly, unless the Constitution itself as an attribute of its supremacy expressly so authorises. **See National Assembly v President (2003) 9 NWLR (Pt. 824) I04 (Ratios 2 and 7). See also Agi v PDP (2017)17 NWLR (Pt. 1595) 386** where it was held that a provision in the PDP Constitution imposing on a candidate qualifications that are extraneous to the Constitution cannot override the Constitution. It was further held that No law, legislation, regulation, rules or guidelines can override the Constitution (**See Ratio 12).**

2. Legislative Purpose Control: All the legislative powers donated by the 1999 Constitution to the respective federal and State legislatures are to be exercised strictly for the ***peace, order and good government*** of the Federal Republic of Nigeria or of a State of the Federation of Nigeria (in the case of a State legislature). Therefore, it is not in the interest of the peace, order and good government of Nigeria for the National Assembly or a State House of Assembly to enact laws that give the legislators bogus pensions and gratuities.

3. Judicial Control: This is perhaps the most potent control on the vast powers of the legislature in Nigeria, as indeed is the case in any part of the world. Section 4(8) of the 1999 Constitution provides that, ***"Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the***

jurisdiction of courts of law and of judicial tribunals established by law…" It is therefore within the constitutional remit and province of the courts of law or tribunals established by law in Nigeria to inquire into, question and supervise how the legislative powers donated to any legislative house was exercised. Where such exercise of legislative power is found to be defective substantively (*ultra vires* – without power regarding the subject-matter of legislation) or procedurally (where due process of law is not followed in the exercise of legislative power), the courts are clothed with jurisdiction to step in and nullify the entire law, a portion of it, or set aside a resolution passed, or invalidate any action taken in violation of the 1999 Constitution.

See The Shell Petroleum Development Company of Nigeria Limited v Ajuwa (supra) where the Court of Appeal set aside an award of damages in the sum of ₦1.5 billion made by a resolution of the Senate and the House of Representatives in favour of the respondents on the ground that the National Assembly lacked adjudicatory power which is vested exclusively in the courts. The Court in coming to this conclusion took the view that under the doctrine of separation of powers, it is the courts that have the power to award damages and that the National Assembly encroached into the territorial powers of the judiciary.

See National Assembly v President (supra) where the exercise of the legislative power by the National Assembly to override the President's veto of the Electoral Bill 2002 was nullified by the Court of Appeal as being violative of the 1999 Constitution.

See also Attorney-General of Bendel State v Attorney-General of the Federal and 22 Ors (supra) where the Supreme Court invalidated the Allocation of Revenue (Federal Account, Etc) Act 1980 on grounds of substantive and procedural non-compliance with the 1979 Constitution.

In **Attorney-General of Abia State & 2 Ors v Attorney-General of the Federal & Ors (2006) 16 NWLR (Pt. 1005) 265, t**he National Assembly enacted the Monitoring of Revenue Allocation to Local Government Act 2005 which established a State Joint Local Government Account Allocation Committee and purported to prescribe the terms and manner in which the amount standing to credit of Local Government Councils (LGCs) in a State would be allocated to such LGCs. The Plaintiffs (Attorneys-General of Abia, Delta and Lagos States) challenged the constitutionality and validity of the Act on the grounds that:

(1) Except as regards the prescription of the terms on which the amount standing to the credit of the Federation will be distributed among the Federal Government, the States and the Local Government Councils, prescription of the terms upon which any amount standing to the credit of LGCs in the Federation Account is to be allocated to the States for the benefit of the LGCs; and
(2) Except as regards the establishment of the FCT Joint Area Council Allocation Committee and the FCT Joint Area Council Committee, it is the State House of Assembly and not the National Assembly that has power to make a law prescribing the terms and manner in which the amount standing to the credit of LGCs in a State shall be distributed.

The Supreme Court held that certain sections of the Act are *ultra vires* the powers of the National Assembly in that it is a State House of Assembly and not the National Assembly that has the legislative *vires* to make laws prescribing the terms and manner in which the amount standing to the credit of LGCs in a State shall be distributed.

But note that before the court will be seised with jurisdiction to review the legislative action of the legislature, the bill in question must have transmogrified from a mere bill into law. In other words, the court has no jurisdiction to review a bill as there is nothing to complain about a bill. A bill neither confers rights nor imposes any obligations on any person or authority but is a mere legislative proposal. Therefore, it is only at the point after the bill has been signed into law by the executive, or where it has become law without the executive's assent in circumstances where the executive's veto is overriden in accordance with the provisions of the 1999 Constitution that the court can validly exercise its power of judicial review. **see National Assembly v Accord (supra).**

4. The Rule against Emasculating the Judiciary or Ousting the Jurisdiction of Courts: Another restriction on the legislative powers of the legislature is provided in Section 4(8) of the 1999 Constitution which states that, ***"…the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law".*** **See Abuah v Okosi (2015)16 NWLR (Pt 1484) 147,** where it was held that Section 49(8) of the Nigerian Co-operative Societies Act No. 90 of 1993 to the extent that it makes the decision of the Minister or Commissioner final and conclusive is inconsistent with the Constitution as it purports to oust the jurisdiction of a court of law and right of access of an aggrieved person to court.

5. The Rule against Retrospective Criminal Legislation: Another restriction on the exercise of legislative powers of the legislature is that it cannot enact retrospective or *ex post facto* criminal laws. Section 4(9) of the 1999 Constitution provides that, ***"Notwithstanding the foregoing provisions of this section, the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect".*** Note that this prohibition is is against criminal legislation only and does not apply to legislation that create civil rights, obligations, duties and liabilities. See **Toyin v PDP (2019) 9 NWLR (Pt 1676) 50**. See also **Toyin v Musa (2019) 9 NWLR (Pt 1676) 22**.

6. Instrument of Recall: The electorate can control and indeed tame the excesses of their representatives in the legislative houses whether at the federal level or at the State level through the instrument of recall. See **S. 69(a) and (b)** for the procedure for recall of a member of the National Assembly and **S. 110(a) and (b)** for the procedure for recall of a member of a State House of Assembly. It must, however, be stressed that no legislator has been successfully recalled under the 1999 Constitution.