

# **NATIONAL OPEN UNIVERSITY OF NIGERIA**

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**COURSE CODE:** JIL 100

**COURSE TITLE:** INTRODUCTION TO NIGERIA LAW

## ***COURSE GUIDE***



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## **INTRODUCTION**

JIL 100, Introduction to Law, intends to acquaint the students with the tradition of law in Nigeria, a multi cultural society and the suitability of a federal constitution for Nigeria. It also intends to make them familiar with nature, scope, and significance of law. In addition, it endeavors to make them aware of the development of law and legal institutions of the country in general. With these

objectives, the course addresses the nature, sources and classification of law . It focuses on the Nigerian legal system and Judicial Precedent. The course strives to instill in students basic knowledge and understanding of criminal law, law of torts, contract and principal and agent relationship.

## **2.0 Justification**

Law does not operate in a vacuum. It has to reflect social values, attitudes and behavior. Societal values and norms, directly or indirectly, influence law. Law also endeavors to mould and control these values, attitudes and behavioral patterns so that they flow in a proper channel. It attempts either to support the social system or to change the prevalent social situation or relationship by its formal processes. Law also influences other parts of the social system. Law, therefore, can be perceived as symbolizing the public affirmation of social facts and norms as well as means of social control and an instrument of social change.

All collective human life is directly or indirectly shaped by law. Law is, like knowledge, an essential and all pervasive fact of the social condition. No area of life-whether it is the family or the religious community, scientific research is the internal network of political parties-can find a lasting social order that is not based on law. A minimum amount of legal orientation is indispensable everywhere. Law is not, nor can any discipline be, an insular one. Each rule postulates a factual situation of life to which the rule is to be applied to produce a certain outcome.

Law, in essence, is a normative and prescriptive science. It lays down norms and standards for human behavior in a set of specified situation(s). It is a 'rule of conduct or action' prescribed or formally recognized as binding or enforced by a 'controlling authority'. It operates in a formal fashion. It enforces these prescribed norms through state's coercive powers. However, the societal values and patterns are dynamic and complex. These changing societal values and ethos obviously make the discipline of law dynamic and complex. Law, therefore, has to be dynamic. Law has acquired a paramount significance in a modern welfare state as an effective instrumentality of socio-economic transformation. It indeed operates as a catalyst for such a transformation. Such a complex nature of law and its

operation require systematic approach to the 'understanding' of 'law' and its 'operational facets'. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, and their social relevance. It also enables to assess efficacy of law as an instrument of socio-economic changes and to identify bottlenecks, if any.

### **3.0 COURSE OBJECTIVES**

The aim and objective of this course is to give NOUN students a theoretical basis for the understanding of Law as members of society and Nigeria Citizens, thereby preparing them for a larger society. NOUN Students should be able to have a basic understanding of the relation of law to society, both in terms of its nature, dynamics and purpose: have a theorisation of law and social change, with specific reference to Nigeria, be able to decipher the elements that make law more efficient and understand its attributes as a social control .

### **4.0 WORKING THROUGH THE COURSE**

To complete this course you are required to read the study units, recommended text books and other materials. Each unit contains self –assessment exercises and at a tutor decided time in the course, you are required to submit assignment for assessment purposes. At the end of the course is a final extermination. The course should take you 14 weeks (Revision and examination inclusive) in total to complete. Bellow you will find list of all the components of the course, what you have to do and how you should allocate you time to each unit in order to complete the course successfully.

## **5.0 COURSE MATERIAL**

The major materials to be used for the course are:

- This Course Guide;
- Study Units;
- Text Books;
- Assignment Files; and
- Presentation Schedule

In addition, you must obtain the textbooks as they are not provided by NOUN. You are required to obtain them in your own responsibility. You may purchase your own copies.

## **6.0 STUDY UNITS**

There will be 4 Modules in this Course which are sub-divided into 18 units, and they will be distributed as follows;

### **MODULE ONE: DEFINITION SOURCES AND NATURE OF LAW**

Unit 1: Definition of Law

Unit 2: The Nature of Law

Unit 3: Sources of Law

Unit 4: Historical Development of Nigerian Law

Unit 5: The Impact of Law in the Society

Unit 6: The Judicial process in Nigeria

## **MODULE TWO: THE PURPOSE, FUNCTIONS AND CLASSIFICATION OF LAW**

Unit 1: The Functions of Law in Society

Unit 2: Classification of Law

Unit 3: The Nigeria Legal System

Unit 4: The Doctrine of Separation of Power

Unit 5: The Rule of Law

## **MODULE THREE: MULTIPLE LEGAL SYSTEM**

Unit 1: Customary Law

Unit 2: Criminal Law and civil procedure

Unit 3: Law of contract and commercial Law

Unit 4: family law

## **MODULE FOUR: THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA**

Unit 1: The Nigerian Police

Unit 2: The Federal/ State Ministry of Justice

Unit 3: The Nigerian Judiciary

Unit 4: The Nigerian Prisons

Note; Most units contains a number of self test questions. These questions generally test your understanding of the topics you have just covered by requiring you to apply what you have read in some practical ways. This will definitely help you to gauge you progress and to reinforce your understanding of the materials. Together with the TMAs, these exercises will assist you in achieving the stated leaning objectives of the individual units and of the course in general.



## **COURSE MARKING SCHEME**

The following table shows how the examination will be graded for the guidance of the student.

Continuous Assessment -	30%
Final Examination -	70%
Total -	100%

## **7.0 REFERENCES**

**Some of the important materials that will be used throughout the course are listed below:**

Ahmad, Ahmad Atif. "Lawyers: Islamic Law" (PDF). Oxford Encyclopedia of Legal History. Oxford University Press. Archived from the original (PDF) on 26 March 2009.

Akhlaghi, Behrooz (2005). "Iranian Commercial Law and the New Investment Law FIPPA". In Yassari, Nadjma. *The Sharī‘a in the Constitutions of Afghanistan, Iran, and Egypt*. Mohr Siebeck. ISBN 3-16-148787-7.

Albrow, Martin (1970). *Bureaucracy (Key Concepts in Political Science)*. London: Palgrave Macmillan. ISBN 0-333-11262-8.

Anderson, J.N.D. (January 1956). "Law Reform in the Middle East". *International Affairs (Royal Institute of International Affairs 1944—)*. **32** (1): 43–51. JSTOR 2607811. doi:10.2307/2607811.

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Auby, Jean-Bernard (2002). "Administrative Law in France". In Stroink, F.A.M.; Seerden, René. Administrative Law of the European Union, its Member States and the United States. Intersentia. ISBN 90-5095-251-8.

## **8.0 ASSIGNMENT FILE**

In this file you will find the details of the work you submit to your tutor for marking. The mark you obtain for these assignments will count towards the final mark you obtain for this course. Further, information on the assignments will be found in the assignment file itself.

## **9.0 Assessment**

There are two aspects of the assessment of this course; the Tutor-Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge must have acquired from the Course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

### **Tutor-Marked Assignment**

There is a Tutor-Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each. When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor. Before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

## **Final Examination and Grading**

The duration of the final examination for JIL 100 is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of Self Assessment Exercises and the Tutor- Marked Assignment you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self Assessment Exercises and Tutor-Marked Assignments before the examination.

## **Course Marking Scheme**

The following table lays out how the actual course marking is broken down.

### **Assessment Marks**

Assignments 1-4 (the best three of all the assignments submitted)

Four assignments, marked out of 10% Totaling 30%

Final examination 70% of overall course score

Total 100% of course score.

## **10.0 SUMMARY**

By trying out all of the above, we are quite confident that you will not only have a sound understanding of Introduction to Nigerian Law, you will also be able to pass your exams with ease.

We wish you success with the course and hope that you will find it both interesting and useful.

**COURSE CONTENT**

**MODULE ONE: DEFINITION SOURCES AND NATURE OF LAW**

Unit 1: Definition of Law

Unit 2: The Nature of Law

Unit 3: Sources of Law

Unit 4: Historical Development of Nigerian Law

Unit 5: The Impact of Law in the Society

Unit 6: The Judicial process in Nigeria

**MODULE TWO: THE PURPOSE, FUNTIONS AND CLASSIFICATION OF LAW**

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Unit 4: family law

**MODULE FOUR: THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA**

Unit 1: The Nigerian Police

Unit 2: The Federal/ State Ministry of Justice

Unit 3: The Nigerian Judiciary

Unit 4: The Nigerian Prisons

### **An overview of the course**

This course gives you a glimpse into six different areas of Nigerian law: Law of Tort, law of Contract, Property law, Constitutional Law, Criminal Law, family law, cooperative and Civil Procedure. You will gain insight into the complexities and dilemmas that arise from the application of law in different settings, and what is distinctive about Nigerian Law.

The introduction to Law course from National Open University of Nigeria is the foundation and good programme for any student considering future studies or a career in Law. The course is one semester course. During the semester students would have interactive lectures and discussion with a lecturer who is an expert in this field of study. Students on the course will be introduced to a variety of different fields within the discipline. A group discussion will enable participants to develop key skills for success in this highly competitive area, and students will also be given an early insight into life as a Law student at university. The overall aim of this new programme is to provide students with an initial advantage as they start their journey towards becoming a lawyer or in other discipline that requires basic knowledge of law.

The focus of this course for novis and old students is on assessing and evaluating the role of law in society, interlinking core theoretical values and case-studies with the philosophical and ethical principles that underlie the way the law operates in modern society.

Students will be introduced to multiple legal disciplines including jurisprudence, constitutional law, criminal law, tort law and other areas besides. They will also explore the skills and tasks most required of multiple legal professions, in order to assess whether they themselves would be suited to such a career in the future. The course promotes an interactive and engaging approach, using classroom debates, group tasks, and role-play exercises to engage students all aspects of the legal

landscape and their impact on society. Students also have the chance to observe a real criminal trial at Oxford Magistrate's Court, as well as participate in a mock classroom-based trial of their own.

The Introduction to Law course will cover a wide range of theory and concepts, including:

- The interrelation of a society's values and the laws which it supports, including social, Political, economic, and environmental factors;
- The core principles to the formation of laws, legislature and legal systems;
- The application and interpretation of law in the courtroom;
- The application of morality and philosophy to criminal law;
- The progression of international law and its scope in the modern world;
- The importance of contracts, contract and tort law to the daily interactions of citizens in a society and the world of commerce;
- The role of the law in the family unit, including issues such as divorce, custody rights, and medical treatment;
- The rise of the Internet and the evolution of its use and regulation.

## **MODULE ONE: DEFINITION, SOURCES AND NATURE OF LAW**

### **UNIT 1.DEFINITION OF LAW**

#### **1.0 INTRODUCTION**

The law affects every aspect of our lives; it governs our conduct from the cradle to the grave and its influence even extends from before our birth to after our death. We live in a society which has developed a complex body of rules to control the activities of its members. There are laws which govern working conditions by laying down minimum standards of health and safety, laws which regulate leisure pursuits, e.g. by banning alcohol on coaches and trains travelling to football matches, and laws which control personal relationships e.g. by prohibiting marriage between close relatives. Law regulating the conduct of human activities generally whether on land, sea and air.

#### **2.0 OBJECTIVES**

- At the end of this module you should be able to understand the following:
- the meaning of law and nature of law;

- The ways in which the law may be classified, including the differences between public and private law, civil and criminal law and common law and equity;
- The development of English law including the emergence of the common law and equity;
- The basic principles of legal liability, such as the distinction between civil and criminal liability.

### **3.0 MAIN CONTENT**

The Concept of Law is the most famous work of the legal philosopher H. L. A. Hart. It was first published in 1961 and develops Hart's theory of legal positivism the view that laws are rules made by human beings and that there is no inherent or necessary connection between law and morality within the framework of analytic philosophy. In this work, Hart sets out to write an essay of descriptive sociology and analytical jurisprudence. The Concept of Law provides an explanation to a number of traditional jurisprudential questions such as what is law? must laws be rules? and what is the relation between law and morality?. Hart answers these by placing law into a social context while at the same time leaving the capability for rigorous analysis of legal terms, which in effect awakened English jurisprudence from its comfortable slumbers. As a result Hart's book has remained one of the most influential text of analytical legal philosophy as well as the most successful work of analytical jurisprudence ever to appear in the common law world.

There is no universal definition of what is law. Different authors have provided different definition of law.

So, what is law and how is it different from other kinds of rules? The law is a set of rules, enforceable by the courts, which regulate the government of the state and govern the relationship between the state and its citizens and between one citizen and another. As individuals will encounter many rules. The rules of a particular sport, such as the off-side rule in football, or the rules of a club, are designed to bring order to a particular activity. Other kinds of rule may really be social conventions, such as not speaking ill of the dead. In this case, the rule is merely a reflection of what a community regards to be appropriate behaviour. In neither

situation would we expect the rule to have the force of law and to be enforced by the court,

Numerous definitions of *law* have been put forward over the centuries. The Third New International Dictionary from Merriam-Webster defines law as a binding custom or practice of a community; a rule or mode of conduct or action that is prescribed or formally recognized as binding by a supreme controlling authority or is made obligatory by a sanctions an edict, decree, rescript, order, ordinance, statute, resolution, rule, judicial decision, or usage made, recognized, or enforced by the controlling authority.

### **Austin's Command theory**

The starting point for the discussion is Hart's dissatisfaction with John Austin's command theory: a jurisprudential concept that holds that law is command backed by threat and is meant to be ubiquitous in its application. Hart likens Austin's theory to the role of a gunman in a bank and tries to establish the differences between the gunman's orders and those made by law. For instance, the gunman forces us to obey but we may not feel inclined to obey him. Presumably, obedience to the law comes with a different feeling. Hart identifies three such important differences: content, origin, and range. In terms of content, not all laws are imperative or coercive. Some are facilitative, allowing us to create contracts and other legal relations.

Austin believed that every legal system had to have **a sovereign** who creates the law origin while remaining unaffected by it range, such as the bank scene's gunman, who is the only source of commands and who is not subject to other's commands. Hart argues that this is an inaccurate description of law, noting that laws may have several sources and legislators are very often subject to the laws they create.

Glanville Williams said that the meaning of the word law depends on the context in which that word is used. He said that, for example, early customary law and municipal law were contexts where the word law had two different and irreconcilable meanings. Thurman Arnold said that it is obvious that it is impossible to define the word law and that it is also equally obvious that the struggle to define that word should not ever be abandoned. It is possible to take the view that



## **Laws, rules and social habits**

Hart draws a distinction between a social habit which people follow habitually but where breaking the habit does not bring about opprobrium, going to the cinema on Thursday for example and a social rule where breaking the rule is seen as wrong neglecting to take off one's hat upon entering a church, for example. We feel in some sense bound by social rules and laws frequently appear to be types of social rule.

There are two perspectives to this: the external aspect, which is the independently observable fact that people do tend to obey the rule with regularity, and the internal aspect which is the feeling by an individual of being in some sense obligated to follow the rule, otherwise known as the critical reflective attitude. It is from this internal sense that the law acquires its normative quality. The obedience by the populace of a rule is called efficacy. No law can be said to be efficacious unless followed by the majority of the populace. Though an average citizen in a modern state with a developed legal system may feel the internal aspect and be compelled to follow the laws, it is more important for the officials of the society/peoples to have the internal aspect since it is up to them to follow the constitutional provisions which, if they wish, could ignore without accountability. Yet, the officials must use the internal aspect and accept the standards as guiding their behaviour in addition to also guiding the behaviour of other officials.

But laws are more than rules of conduct. Laws can be divided up into two sorts: primary rules rules of conduct and secondary rules, rules addressed to officials and which set out to affect the operation of primary rules. Secondary rules deal with three problems: first the problem of uncertainty about what the law is the secondary rule for this dilemma is called the rule of recognition and states the criteria of validity of a law, secondly, the problem of rigidity of rules which requires rules of change allowing laws to be varied, and thirdly, the problem of how to resolve legal disputes from which rules of adjudication arise. A legal system is the union of primary and secondary rules.

Lastly, Hart lets us know that laws are much broader in scope than coercive orders, contrary to the command theory of Austin. Frequently laws are enabling and so allow citizens to carry out authoritative acts such as the making of wills or contracts which have legal effect.

## **What is the Relationship between law and morality?**

Law is a system of rules that are created and enforced through social or governmental institutions to regulate behaviour. Law as a system helps regulate and ensure that a community show respect, and equality amongst themselves. State-enforced laws can be made by a collective legislature or by a single legislator, resulting in statutes, by the executive through decrees and regulations, or established by judges through precedent, normally in common law jurisdictions. Morality derived from the Latin word *moralis* which means, manner, character, proper behavior is the differentiation of intentions, decisions and actions between those that are distinguished as proper and those that are improper. Morality can be a body of standards or principles derived from a code of conduct from a particular philosophy, religion or culture, or it can derive from a standard that a person believes should be universal. Morality may also be specifically synonymous with goodness or rightness.

Moral philosophy includes moral ontology, or the origin of morals, as well as moral epistemology, or knowledge of morals. Different systems of expressing morality have been proposed, including deontological ethical systems which adhere to a set of established rules, and normative ethical systems which consider the merits of actions themselves. An example of normative ethical philosophy is the Golden Rule, which states that: One should treat others as one would like others to treat oneself. Immorality is the active opposition to morality i.e. opposition to that which is good or right, while amorality is variously defined as an unawareness of, indifference toward, or disbelief in any set of moral standards or principles.

Morality consists in what is naturally the right thing to do, whereas law is the civil codification of public conceptions of morality. People make laws according to their beliefs of good and evil, right and wrong. Laws either have the goal of promoting good behavior or punishing undesirable behavior. Thus, morality informs the law.

Nevertheless, law and morality are not identical. Many philosophers and scholars of ethics posit that morality is objective. Moral standards do not change. Law, on the other hand, is changeable according to the desires of lawmakers. The laws of a state do not necessarily conform to the moral law. Throughout history, for example, there have been laws sanctioning practices like slavery, spousal abuse and murder. The important role of public morality in preserving lawfulness among citizens. Enforcement of the law depends upon the threat of physical force. People obey the law out of fear of being deprived of their life or property. However, people who only obey out of fear of punishment look for ways to break the law without being caught. The best way to achieve obedience to the law is for people to

internalize the moral principles that underlie the law. When people do so, they obey the law even when no one is watching.

The relationship between law and morality has become increasingly relevant as social liberals advance issues like homosexual marriage and abortion rights. Since at least *Roe v. Wade*, social liberalism has also revealed a division within the Republican Party. The relationship has provoked heated discussion here at RedState. The most recent being a discussion over homosexual marriage about a month ago *Gay Marriage: Left vs. Right*. After some reflection, I would like to take the opportunity to enlarge on some of the points raised in that discussion.

**Some points of distinction are as follows:**

(a) Laws regulate external human conduct whereas morality mainly regulates internal conduct.

(b) Laws are universal; morality is variable.

(c) Laws are definite and precise while morality is variable.

(d) Laws are upheld by the coercive power of the state; morality simply enjoys the support of public opinion or individual conscience.

(e) Laws are studied under Jurisprudence but morality is studied under Ethics.

## **4.0 SUMMARY**

Ever since the revival of the scientific study of jurisprudence the connection of law and morality has much discussed, but the question is not yet, and perhaps never will be settled. Every variety of opinion has been entertained, from the extreme doctrine held by Austin that for the purpose of the jurist, law is absolutely independent of morality, almost to the opposite positions, held by every Oriental *cadi*, that morality and law are one. The question is an important one, and upon the answer which is given to it depends upon the answer which is consequences.

The popular conception of the connection between law and morality is that in some way the law exists to promote morality, to preserve those conditions which make the moral life possible, and than to enable men to lead sober and industrious lives. The average man regards law as justice systematized, and justice itself as a somewhat chaotic mass of moral principles. On this view, the positive law is

conceived of as a code of rules, corresponding to the code of moral laws, deriving its authority from the obligatory character of those moral laws, and being just or unjust according as it agrees with, or differs from them. This, like all other popular conceptions, is inadequate for scientific purposes, and the jurist, so far at least as he is also a scientist, is compelled to abandon it. For it is contradicted by the fact's. positive laws do not rest upon moral laws and common notions of justice furnish no court of appeal from the decrees of the State. The average man confounds law and morality, and identifies the rules of law with the principles of abstract justice.

## **5.0 CONCLUSION**

Generally, legal rules are composite and are derived from heterogeneous source. In Nigeria, if we examine all the legal perspective, we shall find that some of them have come from personal laws and local custom, a good number of them are based on foreign rules and principles mainly English, some are based on the logic or political ideology and so on. Secondly, public opinion which greatly influences law is made up of a number of things political ideas, economic theory, ethical philosophy etc. These directly and indirectly influence law. Therefore, when so many elements work in shaping the legal precepts, the matter cannot be put in such a simple way as the 'relation between law and morals', because a number of factors join hands in influencing law, and morals is only one of them. However, some observations can be made about the relationship between law and morals.

Law and Morals, act and react upon and mould each other. In the name of justice, equity, good faith, and 'conscience' morals have in-filtered into the fabrics of law. In judicial law making, in the interpretation of legal precepts, in exercising judicial discretion as in awarding punishment moral considerations play a very important role. Morals work as a restraint upon the power of the legislature because the legislature cannot venture to make a law which is completely against the morals of the society. Secondly, all human conduct and social relations cannot be regulated and governed by law alone. A considerable number of them are regulated by morals. A number of action and relations in the life of the community go on very smoothly without any intervention by law. Their observance is secured by morals. So far as the legal rules are concerned, it is not the legal sanction alone that ensure their obedience but morals also help in it. Thus, morals perfect the law. 'In marriage, so long as love persist, there is little need of law to rule the relations of the husband and wife but the solicitor comes in through the door, as love flies out of the window.

Now, sociological approach has got its impact upon the modern age. This approach is more concerned with the ends that law has to pursue. Thus, recognized values, or, in other words, morals of course the morals of the modern age have become a very important subject of study for good law making. On international law also morals are exercising a great influence. The brutalities and inhuman acts in World Wars made the people to turn back to morals and efforts are being made to establish standards and values which the nations must follow. Perhaps there is no other so forceful ground to justify the Nuremberg Trials as morals. If the law is to remain closer to the life of the people and effective, it must not ignore morals.

## **6.0 TUTOR -MARKED ASSIGNMENT:**

1. What do you understand the word law, give at least two definition of law and distinguish law from morality.

## **7.0 REFERENCES/FURTHER READING**

Ahmad, Ahmad Atif. "Lawyers: Islamic Law" (PDF). Oxford Encyclopedia of Legal History. Oxford University Press. Archived from the original (PDF) on 26 March 2009.

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## **UNIT 2: THE NATURE OF LAW IN SOCIETY**

### **1.0 INTRODUCTION**

There are two kinds of law. One is based on Justice. The other is based on control. The predominant form in use today, and which has the greater ancient heritage, is the latter. Basically, what the vast majority of individuals view as law today is a bastardization of the Golden Rule: It is the law of control, of raw power, of "might making right". It is retribution, instead of restoration.

Consider our current body of laws. They define what is permissible and what isn't. If there is no law on the books for a particular act, then no matter how damaging or hurtful it is to others, then there is no crime. But if there is a law which defines a crime for an action which harms no one, a crime has indeed been committed. In the latter case, the State then claims injury to "the peace and dignity" of the State. Barn carpeting! Such a State has no "peace and dignity" when they would enforce victimless crimes.

### **2.0 OBJECTIVE**

**At the end of this unit you will be able to understand:**

\*the nature of law

\*universal in character of law

\*know the natural and sociological schools

### **3.0 MAIN CONTENT**

This general question about the nature of law presupposes that law is a unique social-political phenomenon, with more or less universal characteristics that can be discerned through philosophical analysis. General jurisprudence, as this philosophical inquiry about the nature of law, is meant to be universal. It assumes that law possesses certain features, and it possesses them by its very nature, or essence, as law, whenever and wherever it happens to exist. However, even if there are such universal characteristics of law which is controversial, as we will later discuss the reasons for a philosophical interest in elucidating them remain to be explained.

First, there is the sheer intellectual interest in understanding such a complex social phenomenon which is, after all, one of the most intricate aspects of human culture. Law, however, is also a normative social practice: it purports to guide human behaviour, giving rise to reasons for action. An attempt to explain this normative, reason-giving aspect of law is one of the main challenges of general jurisprudence. These two sources of interest in the nature of law are closely linked. Law is not the only normative domain in our culture; morality, religion, social conventions, etiquette, and so on, also guide human conduct in many ways which are similar to law. Therefore, part of what is involved in the understanding of the nature of law consists in an explanation of how law differs from these similar normative domains, how it interacts with them, and whether its intelligibility depends on other normative orders, like morality or social conventions.

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.

This then is the general signification of law, a rule of action dictated by some superior being: and, in those creatures that have neither the power to think, nor to will, such laws must be invariably obeyed, so long as the creature itself subsists, for its existence depends on that obedience. But laws, in their more confined sense, and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct: that is, the precepts by which

man, the noblest of all sublunary beings, a creature endowed with both reason and freewill, is commanded to make use of those faculties in the general regulation of his behavior.

Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: not indeed in every particular, but in all those points wherein his dependence consists. This principle therefore has more or less extent and effect, in proportion as the superiority of the one and the dependence of the other is greater or less, absolute or limited. And consequently, as man depends absolutely upon his maker for everything, it is necessary that he should in all points conform to his maker's will.

The law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this: and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason; whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life: by considering, what method will tend the most effectually to our own substantial happiness. And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. There are, it is true a great number of indifferent points, in which both the divine law and the natural leave a man at his own liberty; but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficacy; for, with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to, the former. To instance in the case of murder; this is expressly forbidden by the



divine, and demonstrably by the natural law; and from these prohibitions arises the true unlawfulness of this crime. Those human laws that annex a punishment to it, do not at all increase its moral guilt, or superadd any fresh obligation *in foro conscientiae* [in the court of conscience] to abstain from its perpetration.

Municipal law, thus understood, is properly defined to be a rule of civil conduct prescribed by the Supreme power in a state commanding what is right, and prohibiting what is wrong. Let us endeavor to explain its several properties, as they arise out of this definition.

Municipal law is also a rule of civil conduct. This distinguishes municipal law from the natural, or revealed; the former of which is the rule of moral conduct, and the latter not only the rule of moral conduct, but also the rule of faith. These regard man as a creature, and point out his duty to God, to himself, and to his neighbor, considered in the light of an individual. But municipal or civil law regards him also as a citizen, and bound to other duties towards his neighbor, than those of mere nature and religion: duties, which he has engaged in by enjoying the benefits of the common union: and which amount to no more, than that he do contribute, on his part, to the subsistence and peace of the society.

But farther: municipal law is a rule of civil conduct prescribed by the supreme power in a state. For legislature, as was before observed, is the greatest act of superiority that can be exercised by one being over another. Wherefore it is requisite to the very essence of a law, that it be made by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other. This will naturally lead us into a short inquiry concerning the nature of society and civil government; and the natural, inherent right that belongs to the sovereignty of a state, wherever that sovereignty be lodged, of making and enforcing laws.

For when civil society is once formed, government at the same time results of course, as necessary to preserve and to keep that society in order. Unless some superior be constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature, without any judge upon earth to define their several rights, and redress their several wrongs. But, as all the members which compose this society were naturally equal, it may be asked, in whose hands are the reins of government to be entrusted? To this the general answer is easy; but the application of it to particular cases has occasioned one half of those mischiefs, which are apt to proceed from misguided political zeal. In general, all mankind will agree that government should be reposed in such persons,

in whom those qualities are most likely to be found, the perfection of which is among the attributes of him who is emphatically styled the supreme being; the three grand requisites, I mean, of wisdom, of goodness, and of power: wisdom, to discern the real interest of the community: goodness, to endeavor always to pursue that real interest; and strength, or power, to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well-constituted frame of government.

By the sovereign power, as was before observed, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one, or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the discharge of their several functions, or else the constitution is at an end.

Thus far as to the right of the supreme power to make laws; but farther, it is its duty likewise. For since the respective members are bound to conform themselves to the will of the state, it is expedient that they receive directions from the state declaratory of that its will

For this purpose every law may be said to consist of several parts: one, declaratory; whereby the rights to be observed, and the wrongs to be eschewed, are clearly defined and laid down: another, directory: whereby the subject is instructed and enjoined to observe those rights, and to abstain from the commission of those wrongs: a third, remedial: whereby a method is pointed out to recover a man's private rights, or redress his private wrongs; to which may be added a fourth, usually termed the sanction, or vindicatory branch of the law; whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty.

With regard to the sanction of laws, or the evil that may attend the breach of public duties; it is observed, that human legislators have for the most part chosen to make the sanction of their laws rather vindicatory than remunerator, or to consist rather in punishments, than in actual particular rewards

## **Natural Law Theory**

Natural law is a philosophy asserting that certain rights are inherent by virtue of human nature endowed by nature; traditionally God or a transcendent source, and

can be understood universally through human reason. As determined by nature, the law of nature is implied to be universal, existing independently of the positive law of a given political order, society or nation-state. Natural law theory is strongly associated with classical and medieval thought, especially Aristotle, Roman jurisprudence, and St. Thomas Aquinas. There are several challenges associated with the task of explicating natural law theory, and one of the most important tasks of this introductory entry is simply to identify these challenges.

First, there are two interrelated but distinct views that are called natural law theory. One is a view about the nature of morality: this view asserts that there are natural moral laws, and it is not essential to this view that it take any particular stand on the What is law? debate. A second view that is called natural law theory is a theory about law as an institution or practice--that is the view that is implicated in the What is law controversy.

Second, contemporary understandings of natural law theory have been strongly influenced by the legal positivists critique. When the positivists articulated the theory they were criticizing, their articulations of natural law theory were neither charitable nor true to the natural law tradition. When Holmes referred to a brooding omnipresence in the sky he was not offering a sympathetic or charitable reading of the natural law tradition. For the purposes of this broad overview, we might use the latin phrase *lex injusta est non lex* as a starting point. Natural law theory could be understood as affirming something like the following:

An unjust law is not a true law.

This formulation differs from a literal translation--an unjust law is not a law. Formulated in that way, natural law theory seems to be committed to a contradiction: something which is a law but also is unjust is not a law. The quotation marks around Law and the phrase *true law* make it clear that natural law theory is asserting something else, that something which might be called a law is not in fact a law if it is unjust. Usually, this notion is accompanied by some explication of the characteristics that are required for status as a true law, a focal case of law, or perhaps valid law.

### **Moral Facts, Social Facts, and Legal Content**

The contemporary approach to these issues is the product of almost sixty years of thinking within the tradition that is sometimes called analytic jurisprudence. Beginning with the work of H.L.A. Hart in the 1950s, through is publication of *The Concept of Law* in 1961, and extending through Ronald

Dworkin's critique of Hart, and the reformulation of the positivist tradition by both Joseph Raz and Jules Coleman, the basic issues and questions have gone through several transformations.

One useful way to get at the heart of these developments is to conceive of the debate about the nature of law as centrally concerned with the relationship between social facts, moral facts, and legal content. Our question is What determines legal content? where legal content is simply understood as the content of the legal norms.

By framing the What is law? debate in terms of the relationship between social facts, moral facts, and legal content, the conceptual space we get precise mapping of the conceptual space. In the rest of this *Lexicon* entry, we will take a somewhat less shallow look at the three options.

### **The sociological school of law**

The roots of the sociology of law can be traced back to the works of sociologists and jurists of the turn of the previous century. The relationship between law and society was sociologically explored in the seminal works of both Max Weber and Émile Durkheim. The writings on law by these classical sociologists are foundational to the entire sociology of law today. A number of other scholars, mainly jurists, also employed social scientific theories and methods in an attempt to develop sociological theories of law. Notably among these were Leon Petrazycki, Eugen Ehrlich and Georges Gurvitch.

In *Fundamental Principles of the Sociology of Law*, Eugen Ehrlich developed a sociological approach to the study of law by focusing on how social networks and groups organized social life. He explored the relationship between law and general social norms and distinguished between positive law, consisting of the compulsive norms of state requiring official enforcement, and living law, consisting of the rules of conduct that people in fact obeyed and which dominated social life. The latter emerged spontaneously as people interacted with each other to form social associations.

### **Contemporary Natural Law Theory**

The positivist critique of classical natural law theory resulted in a major restatement by John Finnis. Finnis's theory is subtle and complex and no thumbnail sketch can do it full justice, but for the purpose of the *Lexicon*, one of his ideas can serve to illustrate the flavor of his theory. Finnis argues that the

natural-law claim that an unjust law is not a true law can be explicated via the idea of the focal meaning of law. This argument that concedes that unjust enactments are laws in a sense, but that the focal sense of law is limited to laws that are not unjust. Finnis's position has both critics and defenders, but his magisterial book *Natural Law and Natural Rights* is must reading for anyone interested in contemporary natural law theory.

There are two kinds of law. One is based on Justice. The other is based on control. The predominant form in use today, and which has the greater ancient heritage, is the latter. Basically, what the vast majority of individuals view as law today is a bastardization of the Golden Rule: *Dem wid de gold, makes de rules*. It is the law of control, of raw power, of might making right. It is retribution, instead of restoration.

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.

The fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. Let us take a short view of them all.

1. Words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use. Thus the law mentioned by Pufendorf, which forbade a layman to lay hands on a priest, was adjudged to extend to him, who had hurt a priest with a weapon. Again; terms of art, or technical terms, must be taken according to the acceptation of the learned in each art, trade, and science

2. If words happen to be still dubious, we may establish their meaning from the context; with which it may be of singular use to compare a word, or a sentence, whenever they are ambiguous, equivocal, or intricate. Thus the preamble, is often called in to help the construction of an act of parliament

3. As to the subject-matter, words are always to be understood as having a regard thereto; for that is always supposed to be in the eye of the legislator, and all his expressions directed to that end. Thus, when a law of our Edward III. forbids all ecclesiastical persons to purchase provisions at Rome, it might seem to prohibit the buying of grain and other victuals.

4. As to the effects and consequence, the rule is, that where words bear either none, or a very absurd signification, if literally understood, we must a little deviate from the received sense of them. Therefore the Bolognian law, mentioned by Pufendorf, which enacted “that whoever drew blood in the streets should be punished with the utmost severity, was held after a long debate not to extend to the surgeon, who opened the vein of a person that fell down in the street with a fit.

5. lastly, the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it. For when this reason ceases, the law itself ought likewise to cease with it.

#### **4.0 SUMMARY**

Laws of Nature are to be distinguished both from Scientific Laws and from Natural Laws. Neither Natural Laws, as invoked in legal or ethical theories, nor Scientific Laws, which some researchers consider to be scientists' attempts to state or approximate the Laws of Nature, will be discussed in this article. Instead, it explores issues in contemporary metaphysics. Within metaphysics, there are two competing theories of Laws of Nature. On one account, the Regularity Theory, Laws of Nature are statements of the uniformities or regularities in the world; they are mere descriptions of the way the world is. On the other account, the Necessitarian Theory, Laws of Nature are the principles which govern the natural phenomena of the world. That is, the natural world obeys the Laws of Nature. This seemingly innocuous difference marks one of the most profound gulfs within contemporary philosophy, and has quite unexpected, and wide-ranging, implications.

Some of these implications involve accidental truths, false existential, the correspondence theory of truth, and the concept of free will. Perhaps the most important implication of each theory is whether the universe is a cosmic coincidence or driven by specific, eternal laws of nature. Each side takes a different stance on each of these issues, and to adopt either theory is to give up one or more strong beliefs about the nature of the world.

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.

Thus when the supreme being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all movable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes at his own pleasure certain arbitrary laws for its direction; as that the hand shall describe a given space in a given time; to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation.

## **5.0 CONCLUSION**

Natural law is a philosophy asserting that certain rights are inherent by virtue of human nature endowed by nature; traditionally God or a transcendent source, and can be understood universally through human reason. As determined by nature, the **law of nature** is implied to be universal, existing independently of the positive law of a given political order, society or nation-state.

## **6.0 TUTOR-MARKED ASSIGNMENT :**

1. Discuss five nature of law in a democratic society today.
2. Discuss natural law theory and the sociological school of law.

## **7.0 REFERENCES/FURTHER READING**

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## **UNIT 3: THE SOURCES OF NIGERIAN LAW**

### **1.0 INTRODUCTION**

The law is an abstract term. In order to know what comprises the law, you have to derive it from various places. These places from which the law is derived are aptly described as the sources of law. Sources of law can be defined as the places to which a legal practitioner or a judge turns to in order to answer a legal problem. They can be regarded as springboards from which law emanates. They are the various vehicles through which the law is carried. The sources of Nigerian law can be divided into primary and secondary.

### **2.0 OBJECTIVE**

At the end of this unit you will be able to:

- \*Understand the sources of law
- \*Know what are the primary and secondary sources of law

### **3.0 MAIN CONTENT**



Primary sources of Nigerian law can simply be regarded as those sources whose provisions are binding on all courts throughout Nigeria. They include:

1. Received English law
2. Case law
3. Nigerian legislation
4. Customary laws.
5. International laws.

On the other hand, the secondary sources of Nigerian law are the indirect ways through which we get our law. Save for law reports, secondary sources of Nigerian law are of persuasive authority in the law courts. Law reports are only authoritative due to the fact that they serve as the vehicle through which judicial precedent is carried. Examples of secondary sources of law are:

1. Law Reports
2. Text Books and Treatises
3. Periodicals, Journals, and Legal Digests
4. Casebooks
5. Legal Dictionaries
6. Newspapers

The distinction between primary and secondary sources of law is very useful in determining authorities to follow in the law courts. If a case is brought before a court and one party uses a primary source of law as his authority while the other makes use of secondary sources, the scale of justice would tilt in favour of the person who presents primary sources of law.

Secondary sources of law are only made use of whenever there are no primary sources of law to fall back on.

The sources of Nigerian Law are as follows:

## **1. The Constitution**

The Nigerian Constitution is a Federal one. A federal constitution is one which provides for division of powers between the constituents of the Federal Government.

The Nigerian Constitution is supreme. Constitutional supremacy relates to the supremacy of authority of the constitution over other laws. Section 1(1) provides,

this Constitution and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. In addition to this, Section 1(3) provides, 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*. The current Constitution is the 1999 Constitution. It came into operations on 29th May, 1999.

By virtue of section 13(2)(b), the security and welfare of the people is the primary purpose of the government. Sections 15-21 set out the various ways in ensuring that this purpose is fulfilled without violating the fundamental rights of the citizens which are set out in Chapter 4 of the Constitution. These rights include, the right to life, right to dignity of persons, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination and the right to acquire and own immovable property anywhere in Nigeria.

## **2. Legislation**

The Constitution regulates the distribution of legislative business between the National Assembly which has power to make laws for the Federation and the House of Assembly of each state of the federation. The current legislation in force at the Federal level is largely contained in the Laws of the Federation of Nigeria 2004 (LFN). Laws made subsequently are found in the annual volumes of the laws of the Federal Republic Nigeria. Federal laws enacted under the military regime known as Decrees and state laws known as Edicts form the bulk of primary legislations.

## **3. English Law**

This consists of:

- a. The received English Law comprising of the following, the common law, the doctrine of equity, statutes of general application in force in England on January 1, 1900, Statutes and subsidiary legislation on specified matters, and
- b. English statutes made before 1st October, 1960 and extending to Nigeria which are not yet repealed. Laws made by the local colonial legislature are treated as part of the Nigerian legislation.

Despite the influence of English law, the Nigerian legal system is very complex because of legal pluralism. Legal pluralism is the existence of multiple legal

systems within one geographic area. It occurs when different laws govern different groups within a country or where, to an extent, the legal systems of the indigenous population have been given some recognition. Legal pluralism is prevalent in former colonies, where the law of a former colonial authority may exist alongside traditional legal systems. This is evident in the Nigerian Legal system where the customary law exists side by side with the inherited English Legal System.

#### **4. Customary Law**

This emanated from the usage and practices of the people. The traditional classification of customary law is into the following categories:

**Ethnic/ Non – Muslim:** is the indigenous law that applies to the members of the different ethnic groups. Nigeria is made up of several ethnic groups each with its own variety of customary law. Ethnic Customary law is unwritten, uncertain and difficult to ascertain. Ethnic Customary law is enforced in customary courts. These courts are at the lowest rung of the hierarchy of courts and in most cases are presided over by non- legally trained personnel.

**Muslim Law / Sharia:** In the southern part of the country, Muslim/ Islamic law, where it exists, is integrated into and has always been treated as an aspect of the customary law. Islamic law has however been in use in the Northern part of the country since 1959. Islamic/Sharia/Muslim Law is written with clearly defined and articulated principles. It is based on the Islamic religion and was introduced in Nigeria as a consequence of a successful process of Islamization. It is based on the Holy Koran and the teachings of the Prophet Mohammad. The Muslim laws, also known as the Sharia are found in the Holy Koran and the Hadith, teachings of the Prophet Mohammad.

#### **5. Judicial Precedent**

This is an earlier happening, decision, etc, taken as an example or rule for what comes up later. The doctrine of precedent is founded on the objective of law that ensures that like cases are decided alike. The operation of the doctrine is tied to the hierarchy of the courts. A court is bound by the decisions of any court above it in the hierarchy and usually by a court of co-ordinate or equivalent jurisdiction. The Supreme Court is the highest court of the land. The Court of Appeal is the penultimate court to entertain appeals from the High Courts, which are the trial courts of general jurisdiction. The Court of Appeal and all lower courts are bound by the decision of the Supreme Court. The judicial precedent does not apply to certain courts like the customary/area courts and the sharia courts. The Federal and

State courts are not in two parallel lines. It is only to a limited extent that it may be asserted that each state has its own legal system.

## **6. International Law**

Nigeria is a member of the United Nations, the Commonwealth of Nations, African Union and many others. Although Nigeria is a signatory to various international conventions and covenants, these are not enforceable in Nigeria unless they are enacted into law by the National Assembly.

## **7. Government Bodies**

The system of Government in the FRN is modelled after the American presidential system with three arms of government, namely, the legislature, the executive and the judiciary. This is known as separation of powers. The legislature makes the law, the executive implements the law, while the judiciary interprets the law.

### **Legislature**

Section 4 (1) of the Constitution provides that the legislative powers of the country shall be vested in the National Assembly. By virtue of sub section (2), the National Assembly has powers to make laws for the peace, order and good government of the federation, to the exclusion of the state House of Assembly. It follows law making procedures as specified in sections 58 and 59 of the 1999 Constitution. It is bicameral and is made up of the Senate and the House of Representatives. The powers of the National Assembly to legislate refer to:

Any matter included in the Exclusive Legislative list, to the exclusion of the State House of Assembly.

Any matter in the concurrent legislature list set out in the 1st column of Part II of the 2nd Schedule of the Constitution to the extent prescribed in the 2nd Column opposite; and

Any other matter with respect to which the National Assembly is empowered to make laws in accordance with the provisions of the Constitution.

Each state has its own law making organ known as the House of Assembly. State House of Assemblies have powers to legislate on any matter in the concurrent legislative list and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

By virtue of S.4 (5), where there is inconsistency between the laws made by the State House of Assembly and the National Assembly, the latter prevails and the former, to the extent of the inconsistency becomes void. It pertinent to note that scientific and technological research, this includes health research, falls within items on the concurrent list. Consequently, both the National Assembly and the State House of Assembly may make laws governing research ethics in Nigeria.

## **Executive**

The executive power of the Federation is vested in the President by virtue of section 5(1) of the 1999 Constitution. Such powers can be administered directly or through the Vice President or Ministers or officers of the government. In the states the executive power of a state is vested in the Governor and may through the Deputy Governor or Commissioners or other public officers.

## **Judiciary**

By virtue of section 6(1) of the 1999 Constitution, the following courts are established in the Federal Republic of Nigeria, Supreme Court, Court of Appeal, Federal High Court, High Court, Abuja, High Court of a State, the Sharia Court of Appeal of the FCT, Abuja, a Sharia Court of Appeal of a state, the Customary Court of Appeal of the FCT, Abuja and the Customary Court of Appeal. The courts established by the Constitution are the only superior courts of record in Nigeria. The Constitution empowers the National Assembly and the House of Assembly to establish courts with subordinate jurisdiction to the High Court. These courts are invariably inferior courts of record notwithstanding the status of the officer presiding in the courts.

## **Statutory Institutions**

Apart from the arms of government set up by the Constitution, there are institutions/ governmental bodies which are creation of statutes. These institutions such as the National Health Research Committee, and National Agency for Food and Drugs Administration and Control, are allowed to make rules, regulations, directives and bylaws pursuant to their enabling Acts and consequently are binding. These institutions are also empowered to institute various committees as necessary in carrying out their duties. Procedures devised for these committees have binding effects on all parties concerned.

The legal basis for research ethics in Nigeria as with all other area of laws is created either through legislation which are called statutory law or by opinions

written by judges in court cases which is called case law. Statutory laws influencing research ethics in Nigeria can be found in the Constitution; state and local government legislations; federal enactments regulations, codes, directives and international treaties. Some of these legislations have their basis in customary law and practices.

Case law comprises of decisions of the various courts on matters brought under different heads of the common law such as contract and Torts. These decisions determine the outcome of individual cases thereby providing precedents to be followed in the interpretation of statutory laws and the Constitution.

#### **4.0 SUMMARY**

There are numerous sources of law, including constitutions, legislatures, executives, judiciaries, administrative agencies, and international organizations. The first source of law is constitutional law. one constitutions is applicable in every state: the federal or state government, which is in force throughout Nigeria, and the state's constitution. The nigeria Constitution created our legal system. States' constitutions typically focus on issues of local concern. The purpose of a constitutions is to regulate government action. Private individuals are protected by the Constitution, but they do not have to follow it themselves. The origins from which particular positive laws derive their authority and coercive force. Such are constitutions, treaties, statutes, usages, and customs. In another sense, the authoritative or reliable works, records, documents, edicts, etc. to which we are to look for an understanding of what constitutes the law. Such, for example, with reference to the Boman law, are the compilations of Justinian and the treatise of Gains; and such, with reference to the common law, are especially the ancient reports and the works of such writers as Bracton, Littleton, Coke, Fleta, and others.

#### **5.0 CONCLUSION**

The power of making all laws is in the people or their representatives, and none can have any force whatever, which is derived from any other source. But it is not required that the legislator shall expressly pass upon all laws, and give the sanction of his seal, before they can have life or existence. The laws are therefore such as have received ala express sanction, and such as derive their force and effect from implication. The first, or express, are the constitution, Acts and Laws and the treaties and acts of the legislature which have been made by virtue of the authority vested by the constitution. To these must be added the constitution of the state and the laws made by the state legislature, or by other subordinate legislative bodies,

by virtue of the authority conveyed by such constitution. The latter, or tacit, received their effect by the general use of them by the people, when they assume the name of customs by the adoption of rules by the courts from systems of foreign laws.

## **6.0 TUTOR-MARKED ASSIGNMENT:**

Discuss the sources of Nigerian law and gives examples of each.

## **7.0 REFERENCES/FURTHER READING**

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Slapper & Kelly - English Legal System - Routledge-Cavendish - 2008 - page 65

Dualist jurisdictions require ratification of treaties; "monist" jurisdictions do not.

For instance the Maritime Labour Convention entered into force on 20 August 2013, one year after registering 30 ratifications of countries representing over 33 per cent of the world gross tonnage of ships

Brussels is the Commission, the Council of Ministers & the European Parliament acting in concert

The Judicature Acts 1873-75 abolished the Courts of Chancery. Chancery Division of the High Court succeeds the old Courts of Chancery

Edward Coke's *Institutes of the Lawes of England*, William Blackstone's *Commentaries on the Laws of England*, and similar texts.

## **UNIT 4: HISTORICAL DEVELOPMENT OF NIGERIAN CONSTITUTION**

### **1.0 INTRODUCTION**

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a *codified* constitution. Some constitutions such as the constitution of the United Kingdom are *uncodified*, but written in numerous fundamental Acts of a legislature, court cases or treaties.

### **2.0 OBJECTIVE**

**At the end of the unit you will be able to explain:**

- \*The constitution as a source of law
- \*How constitution regulating government organs and states
- \*Constitutional development of Nigeria
- \*Military influence and the impact of law in the society
- \*the doctrine of separation of powers.

### **3.0 MAIN CONTENT**



Nigeria is an internationally recognized sovereign nation made up of 36 states and a Federal Capital Territory, Abuja. Each of those 36 states is empowered by Nigeria's Constitution to establish and maintain a legal system that would assure justice within the assigned territory so as to enable every citizen and other persons resident in it carry on their legitimate everyday pursuits. Together, the Constitution, the individual legal system of Nigeria's 36 States,- coupled with laws made by the Federal Legislature for the entire nation or for the Federal Capital Territory as well as Nigeria's treaty obligations, make up the Nigerian legal complex.

As a legal complex with varying legal standards, the Constitution provides the ultimate principles, rules and doctrines from which the legitimacy and hierarchy of all other legal norms in Nigeria are validated.

### **Nigeria Constitutional historical Development**

Nigeria is a creation of the Constitution. Nigeria grew into an internationally recognised independent nation, in 1960, after a period of colonialism under the British government which spanned about a century beginning with the formal annexation of Lagos in 1861. Nigeria's constitutional development history can be divided into two epochs or generations: the colonial or pre-independence epoch – which covers 6 constitutional instruments (1914, 1922, 1946, 1951, 1954 and 1960) and the post-independence constitutional epochs (encompassing 3 instruments - 1963, 1979 and 1999. While each successive pre-independence constitutional instrument was enacted through an order-in-council of the British monarch, their post-independence counterparts were enacted in two ways: an Act of parliament 1963 Constitution and military decree..

The one Nigeria constitution began in 1914 with the Frederick Lugard Constitution. The 1914 Constitution amalgamated the Colony and Protectorate of Southern Nigeria with the Protectorate of Northern Nigeria under the colonial authority of the British Monarch. The emergent entity was administered under the authority of the British monarch through her appointed agent: a Governor-General. Lord Frederick Lugard was the 1st Governor-General of amalgamated Nigeria. The 1914 Constitution created a Legislative Council of the Colony which was however restricted to making laws for the Colony of Lagos alone, whilst the Governor General made laws for the rest of the country.

Eight years later, the 1914 Constitution was replaced by the 1922 Sir Clifford Constitution. Notably, the latter Constitution established a 46 member Legislative

Council which was given law making responsibilities for the Colony of Lagos and the southern provinces. The Council had 27 members including the Governor, the Lieutenant-Governors, other elected and nominated members including three representing Lagos as the administrative and commercial capital and one representing Calabar as a big commercial centre. Notably, the 1922 Constitution introduced, for the first time in any British African territory, the elective principle with Lagos and Calabar being granted the franchise to elect their representatives to the Legislative Council.

1946 saw the adoption of the Arthur Richards Constitution which defined Nigeria, for the first time, in terms of regions - thus dividing the still colonised country into three main regions: the Northern, Western and Eastern regions. This constitution came into effect after the Second World War – an event which had a significant effect on constitutional reforms relating to the governance of colonial Nigeria, and indeed Africa as a whole, as returning African heroes of the war who were conscripted to fight on the side of the British returned with a deeper understanding of national freedom and international sovereignty. In addition, the charter of the United Nations which was adopted after the war made strong reference to the freedom of colonised people under the principle of respect for self-determination.

The chain of events culminated in the formation of the National Council for Nigeria and Cameroons, which later became the National Council of Nigerian Citizens, (N.C.N.C), an organization which engaged in the active mobilization of the indigenous peoples of Nigeria to harness the global tide in favour of self-determination and political independence from the shackles of colonialism. The 1946 Constitution was thus a compromise instrument on the part of the British colonialist designed to establish a constitutional framework in which all sections of Nigeria could be represented on the Legislative Council and which guarantees an unofficial majority both in the House of Assembly and in the legislative council for indigenous Nigerians.

Five years later, the 1946 Richards Constitution was again ditched in favour of the 1951 Sir John Macpherson Constitution. Whereas its successor suffered from the charge of being an imposition of the British colonialists without any input from the indigenous people of Nigeria, the 1951 Macpherson Constitution came into being after an unprecedented process of consultation with the peoples of Nigeria. According to Dikemgba no other constitution so widely reached out to the people than the Macpherson constitution of 1951. Instructively, meetings and consultations leading down to its making were held at 5 levels – Village, District, Divisional, Provincial and Regional levels before the national conference. The

regional conferences were held at Ibadan, Enugu and Kaduna, respectively and produced a general consensus in favour of a federal system of government with a few differences as to its format. The emergent Constitution represented a major advancement on the old constitutional order by introducing African elected majorities in the Central Legislature and in the Regional Houses of Assembly; endowing the legislative houses with independent legislative power in many area of state activity; and establishing a federal system for Nigeria for the first time.

Nonetheless, within three years of its operation, it soon became clear that the expansion of the political space and regional identities fostered by the 1951 Constitution were not backed up by the requisite institutional framework or insightful national leadership for the management of inherent and other tensions or conflict, at the national and regional levels, which followed its enactment. In the wake of reports of violent eruptions in the northern city of Kano which pitched northerners against southerners leading to massive loss of lives and property, the then British Secretary of State for the Colonies, Oliver Lyttleton stepped in by inviting the leaders of various political parties in Nigeria to attend a conference in London, in 1953. The outcome of that conference and another cycle of conference and consultations which followed was the:

The 1954 Constitution, among others, made regional governments independent of the central government in respect of subjects and legislative powers allocated to them. It also established a unicameral legislature for the federal government and each of the 3 regional governments. In addition, Lagos was taken out of the control of any regional government and made the Federal Capital Territory; regional public services were established for each of the 3 regions; the judiciary was reorganised so as to establish regional judiciaries while autonomy was granted to the Southern Cameroons which was up till that time part of a larger Nigeria and Northern Cameroons. Specifically, for the first time, Ministers were given specific portfolios. Thus, the Lyttleton Constitution could best be described as the transition instrument towards Nigeria's independence in 1960 under a federal structure with democratically elected federal and regional legislature.

In 1960, Nigeria was granted political independence as a sovereign state under the 1960 Constitution which provided for a parliamentary system of government, 3 regions Northern, Eastern and Western Regions, a bicameral legislative framework at the federal Senate and House of Representatives and regional levels House of Assembly and House of Chiefs with the legislative powers of government delineated into three categories or lists - exclusive, concurrent and residual. The parliamentary system designed under the 1960 constitution recognized the British

monarch as the Head of State with powers to appoint a resident agent- the Governor-General- to exercise executive powers on her behalf while a Prime Minister elected by the federal parliament acted as the Head of the federal Executive Council. The Constitution also took steps to define ‘Nigerian citizenship’ while outlining constitutionally protected rights for citizens and persons in Nigeria.

However, by designating the Governor-General as a representative and agent of the British Queen or Monarch – instead of the People of the independent and sovereign state of Nigeria, the effect was to render Nigeria a dominion territory – a status which contradicted the very nature and basis of the independence claimed in 1960. In addition, the 1960 Constitution denied Nigeria an effective dominion over its judicial powers as it gave final appellate authority over Nigeria to the Privy Council established by the British Queen instead of the Federal Supreme Court and its judges. Those fundamental derogations from Nigeria’s sovereignty and other observed challenges in implementing the Independence Constitution led to the enactment of the 1963 Constitution.

Thus, the key features of the 1963 Constitution included the establishment of Nigeria’s 1st republic under a parliamentary system of government by replacing the Governor-General appointed by the British monarch with a President elected directly by members of the Nigerian federal legislature. In addition, in place of the Privy Council, the Federal Supreme Court became designated as the final appellate judicial authority over any person or matter in Nigeria while steps were taken to strengthen the independence of the judiciary even further.

In 1966, that Constitution was, however, set aside by a violent military coup d’etat which supplanted the 1st Republic with military dictatorship which was to last for about 13 years including the civil war period 1966-1969, under 4 military Heads of State, ending only in 1979 when the General Olusegun Obasanjo military administration ushered in the 2nd Republic with the promulgation of a new Constitution.

The 1979 Constitution set up Nigeria under a presidential system of government with a federal government, 19 state governments, a federal capital territory, 3 arms and 3 levels of government. Like the 1963 Constitution, the life-span of the 1979 Constitution was abruptly terminated on 31st December, 1983 when the civilian administration of President Shehu Shagari and Vice President Alex Ekwueme was toppled and replaced by the military dictatorship of Generals Muhammed Buhari and Tunde Idiagbon. That regime seeded 3 other extra-constitutional regimes the

General Ibrahim Babangida military dictatorship 1985-1993, Mr. Ernest Shonekan interim civilian-led regime, General Sani Abacha military dictatorship 1993-1998 and General Abdulsalami Abubakar military administration which successfully ushered in the 3rd Republic on the 27th of May, 1999 with the introduction of the 1999 Constitution.

**Nigerian Courts could generally be classified as:**

1. Tribunals for the Federation: These include all Courts which original or appellate jurisdictions extend to persons or matters throughout the entire federation. For instance, apart from their original jurisdictions, the Appeal Court and the Supreme Court, in that order, act as the last two appellate authorities over decisions emanating from any of the courts of the 36 States of Nigeria/FCT as well as the Federal High Court, the National Industrial Court, the Code of Conduct Bureau, Investment and Securities Tribunal, Disciplinary Tribunals of Professional bodies and generally, the Election Tribunal.

Some federation courts are not chiefly concerned with appeals. Rather, they are given, within their establishment statutes, original and review jurisdiction over matters vested in the Federal Government. These include:

- i. The Federal High Court, which except where stated otherwise through a federal legislation, is usually the court of first instance for all objects vested in the Federal Government and the Federal Capital Territory, Abuja under the Constitution;
- ii. National Industrial Courts: Under the Third Amendment to the 1999 Constitution, the National Industrial Court is designated a specialized court of record with powers and jurisdiction encompassing full civil and criminal jurisdiction over labour, employment and industrial disputes in Nigeria. Apart from the traditional jurisdiction over trade disputes and trade union disputes. The Court also has jurisdiction to hear and determine cases of child abuse, child labour and human trafficking. Equally, cases relating to payment or non-payment of entitlements of judicial officers and political office holders in Nigeria can only be commenced at the National Industrial Court.
- iii. Investment and Securities Tribunal, (IST): was established under Section 224 of the Investments and Securities Act (ISA), 1999 and inaugurated on the 19th of December 2002 as a dedicated, specialized and fast-track civil court for the resolution of disputes arising from

investments and securities transactions in an accessible, flexible, transparent, efficient and cost-effective manner. Additionally, Section 93 of Pensions Reform Act, 2004, empowers the IST to adjudicate on pensions disputes in Nigeria. It is a major component of the reform of the Legal framework for the capital market and pensions administration in Nigeria;

- iv. Legally recognized Disciplinary Tribunals for various leading professions which jurisdiction are not restricted to any State but to members of the given profession throughout the Federation.
2. State Tribunals: These are Courts established by each State for the adjudication of matters constitutionally within the powers of every State government. State Courts include:
- i. State High Courts;
  - ii. Magistrate Courts;
  - iii. Customary/Area/Native/Sharia Courts;
  - iv. Customary/Sharia Court of Appeal; and
  - iv. Specialized tribunals set up by States for various purposes like rent, traffic, land disputes etc.
3. Election Petitions Tribunals: are specialized tribunals set up to adjudicate over disputes arising from elections into political offices in the executive and legislative arms of government at the Federal, State and Local Government levels. Usually, these courts are generally ad-hoc in nature as they are established to adjudicate over disputes arising from any election in the country to fill elective positions into the executive and legislative arms of government at the Federal, State and Local government levels. Members are usually serving judges pooled from various levels of the Judiciary, except the Supreme Court, depending on the level of the election being adjudicated over.

Under the Nigerian legal complex, Superior Courts of records refer to all the courts presided over by judges trained in law where there is duty to record and publish for public access proceedings leading down to a judicial pronouncement.

Inferior courts, on the other hand, may or may not have legal practitioners as presiding officers and are often not obliged to record all proceedings in any matter.

Superior Courts of records include the Supreme Court, the Court of Appeal, the Federal High Court, State High Courts, National Industrial Court, Customary Courts of Appeal and Sharia Courts of Appeal. Inferior courts, tribunals and special courts include Magistrates' and District Courts, Juvenile Courts, Customary and Area Courts, Courts Martial and Public Complaints Commission.

### **The doctrine of separation of powers under the constitution**

The separation of powers, often imprecisely and metonymically used interchangeably with the trias politica principle, is a model for the governance of a state or who controls the state. Under this model, the state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches. The typical division is into three branches: a legislature, an executive, and a judiciary, which is the trias politica model. It can be contrasted with the fusion of powers in some parliamentary systems where the executive and legislature (and sometimes parts of the judiciary are unified. Separation of powers, therefore, refers to the division of responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

### **Montesquieu's doctrine of separation of powers**

The term tripartite system is ascribed to French Enlightenment political philosopher Baron de Montesquieu in *The Spirit of the Laws* 1748, Montesquieu described the separation of political power among a legislature, an executive, and a judiciary. Montesquieu's approach was to present and defend a form of government which was not excessively centralized in all its powers to a single monarch or similar ruler. He based this model on the Constitution of the Roman Republic and the British constitutional system. Montesquieu took the view that the Roman Republic had powers separated so that no one could usurp complete power. In the

British constitutional system, Montesquieu discerned a separation of powers among the monarch, Parliament, and the courts of law. Montesquieu did actually specify that "the independence of the judiciary has to be real, and not apparent merely. The judiciary was generally seen as the most important of powers, independent and unchecked, and also was considered dangerous.

### **Checks and balances**

To prevent one branch from becoming supreme, protect the opulent minority from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers need a way to balance each of the branches. Typically this was accomplished through a system of **checks and balances**, the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Checks and balances allow for a system-based regulation that allows one branch to limit another, such as the power of the United States Congress to alter the composition and jurisdiction of the federal courts. Both bipartite and tripartite governmental systems apply the principles of the separation of powers to allow for the branches represented by the separate powers to hold each other reciprocally responsible to the assertion of powers as apportioned by law. The following example of the separation of powers and their mutual checks and balances for the experience of the United States Constitution is presented as illustrative of the general principles applied in similar forms of government as well.

Legal practitioners in Nigeria are trained as barristers and solicitors within a unified training scheme at the university level and thereafter at the Nigerian Law School. They are then admitted to the Nigerian bar as solicitors and advocates of the Supreme Court of Nigeria, thereby combining the duties of both callings and making the legal profession in Nigeria to be under the overall control of the Bar Council.

### **The Practice of the Accusatorial System**

The Nigerian legal process, especially at the level of recognized courts of records, is accusatorial in nature. It is a feature that diminishes as one goes towards the more informal tribunals, especially customary courts. However, in recent years, the practice of a multi-door system that allows for the formal integration of alternative dispute resolution processes and litigious ones is fast gaining acceptability.

### **The impact of law in the society**



The impact of law examines the impact that law and social policy has on our lives, both nationally and globally. How do law and society relate to, and change, each other? How does law actually work in the real world? Is the law the same thing as justice? You will explore a variety of fascinating issues while developing skills in understanding, applying and critiquing socio-legal concepts and issues. With its focus on the social dimensions of law, this major perfectly complements a wide range of studies, including politics, communications, sociology, culture, economics or anthropology.

In theory, the laws created within a society reflect the needs and values of that society and will work for the best interests of the citizens, but laws can also strongly influence the society that created them. The New York Times cites the *Brown v. Board of Education* case of 1954 as proof that a law can change society, saying that without the school integration reforms during the Civil Rights Movement; schools would be very different today. Because desegregation laws were put into place, people began to view discrimination differently. These changes may have bolstered white supremacy advocates initially, but probably paved the way for greater tolerance in the long run.

Similarly, the recent legislation regarding marriage equality legislation continues to change the role and perception of homosexuality in society. Nevertheless, studies by ProCon.org indicate that resistance to same-sex marriage has not stopped, even in societies that legally endorse it. This shows how difficult it can be to determine how exactly a law affects society, especially when the law is recent.

Globalisation challenges many of the traditional assumptions about International law, its relationship to domestic law, the ways in which it is created and the methods of its enforcement. The Law Department is engaged in cutting edge research and study of the normative and institutional implications of this challenge and of its theoretical and practical ramifications in a variety of fields ranging from the regulation of trade and investments, the protection of human rights and the international criminal responsibility of individuals, security and environmental governance, and the safeguarding of the diversity of cultural heritage.

Human rights law has always had central role in the international law profile of the EUI. In recent years and currently this involves areas such as cultural rights, environmental rights, indigenous and minority rights, privacy and data protection, human rights while countering terrorism, access to justice, international mechanisms for the protection of human rights, and the interface between human

rights law and international humanitarian law, particularly in the context of the changing nature of armed conflicts. Increasingly, issues of international criminal law are integrated into the research conducted. The impact of new technologies upon the enjoyment of human rights receives careful attention, including biotechnologies and detection and surveillance technologies.

### **The legal reasoning and judicial process in Nigeria**

Legal reasoning in judicial process has been defined by A.O Sanni as, the process of careful thinking by a judicial officer in the course of resolving legal issues presented by a party to a legal action before his court for determination. The judicial process is a set of interrelated procedures and roles for deciding disputes by an authoritative person or persons whose decisions are regularly obeyed. The disputes are to be decided according to a previously agreed upon set of procedures and in conformity with prescribed rules. As an incident, or consequence, of their dispute-deciding function, those who decide make authoritative statements of how the rules are to be applied, and these statements have a prospective generalized impact on the behavior of many besides the immediate parties to the dispute. Hence the judicial process is both a means of resolving disputes between identifiable and specified persons and a process for making public policies.

For centuries hundreds of writers in thousands of articles and books have tried to determine what is the essence of the judicial or adjudicatory process, what distinguishes it from the legislative and administrative processes. During the last several centuries this exercise in political taxonomy has taken on special urgency and normative concerns. For under the doctrine of separation of powers it became improper for legislatures to engage in the judicial process issuance of bills of attainder, for example or for judges to assume functions that are thought to be within the scope of the legislative process.

The classic doctrine of separation of powers divided the world of political activity into the three familiar divisions based both on what was thought to be the behavior of political actors and on what were thought to be the requirements for the maintenance of liberty. The judiciary was assigned the function of applying the laws that the constitution makers and the legislatures had created and that the administrators enforced.

The Judiciary arm of government is responsible for interpreting the law of the land, while applying it in situations where they are necessary; this makes the job of the Judiciary a very critical one. The law of the land constitutes the bases upon which

judgments are ruled; it is therefore fundamental that its interpretation and application be carried out with absolute alacrity and meticulousness. The Nigerian Judicial System comprises of 'the Body of Benchers' and 'the Bar' itself. The Body of Benchers is a collection of the highest ranking legal practitioners in the country which is headed by the Chief Justice of the Federation. It also has as its members the respective Chief Judges of the States of the Federation and certain very reputable lawyers in the country, whereas the Bar is a body of all the barristers in the country. These together constitute the Nigerian Legal Class. The Nigerian Judicial System has come a long way, taking its origin from the colonial era. It was saddled with the responsibility of checking the activities of the Executive and Legislative arms of government. The Judiciary as a matter of fact, plays a very vital role in the development of the country considering the fact it is the mechanism that oversees to the usage and management of power in the country. If the power that is vested on the Executive and Legislative offices is not checked, the bulk of the citizenry will have lots of troubles and challenges to contend with.

The primary responsibility of the Judiciary is to ensure that the Executive and Legislative arms of government function within the ambits of the constitutional provisions made available to them. The Judiciary ought to stand isolated while performing its constitutional duty. It does not need any interference from the Executive or Legislature in carrying out its primary assignment. It operates independent of any external disturbances and functions with the constitutional power vested in its office. The Nigerian Judicial System has had lots of challenges to contend with. During the shambolic military era, the Judiciary was subjected to abject emasculation to the extent that it lost the substance to its name and only existed as a nomenclatural entity. To say the least, 'the Judiciary sank into oblivion'. But with the advent of democracy came an organized political façade that accorded the Judiciary its rightful place as the watchdog of the polity. The importance of the Judiciary in any political system cannot be over-emphasized, hence the constitution provides for its absolute independence to enable it perform its sacred constitutional function without sentiments and reservations.

Personnel problems constitute by far the most daunting challenge facing the judiciary and is the single most important problem threatening the sanctity of the judiciary as the bastion of justice. The judiciary comprise of judicial officers who are human beings and therefore subject to the vagaries of human nature in its insidious form. While there are good, intellectually sound and upright judicial officers of impeccable character and integrity in Nigeria, it is sad to say that a sizeable percentage of judicial officers in Nigeria fall below the standard expected

of judicial officers in the area of intellectual capability, uprightness, character and integrity and this reflects in the poor quality of judgments delivered by the various courts in Nigeria and the growing problem of conflicting judgments and the attendant confusion it brings in the legal system in Nigeria

The judicial system in Nigeria is beset with several deficiencies in its procedural set up that make it very difficult to obtain justice and quick resolution of disputes in courts. Most of the procedural rules of the various courts in Nigeria are in dire need of reform and review to make it accord with the need to discard technicalities and uphold substantive justice. A situation where many cases in Nigerian courts take years to be resolved does not bode well for the judicial system and encourages resort to self-help by disgruntled litigants.

#### **4.0 SUMMARY**

In theory, the laws created within a society reflect the needs and values of that society and will work for the best interests of the citizens, but laws can also strongly influence the society that created them. The New York Times cites the *Brown v. Board of Education* case of 1954 as proof that a law can change society, saying that without the school integration reforms during the Civil Rights Movement, schools would be very different today. Because desegregation laws were put into place, people began to view discrimination differently. These changes may have bolstered white supremacy advocates initially, but probably paved the way for greater tolerance in the long run. Similarly, the recent legislation regarding marriage equality legislation continues to change the role and perception of homosexuality in society. Nevertheless, studies by ProCon.org indicate that resistance to same-sex marriage has not stopped, even in societies that legally endorse it. This shows how difficult it can be to determine how exactly a law affects society, especially when the law is recent.

The name Nigeria was coined by Lady Shaw Lugard, a journalist who later became the wife of amalgamated Nigeria's 1st Governor-General, Frederick Lugard. She also wrote Nigeria's 1st National Anthem.

#### **5.0 CONCLUSION**

The Federal Republic of Nigeria is a Constitutional Republic. At independence, Nigeria consisted of three regions, namely, the Northern Region, the Eastern Region and the Western Region. Presently, Nigeria is made up of 36 states and a federal capital territory, located in Abuja. These states are, as a matter of

convenience and political expediency grouped into 6 geopolitical zones of North East, North West, North Central, South East, South West, and South South. This grouping has however not been accorded any constitutional recognition. There are close to 400 linguistic groups in Nigeria, but the 3 major languages are Hausa, Igbo and Yoruba, while English is the official language. The Nigerian Legal System is based on the English Common Law and legal tradition by virtue of colonization and the attendant incidence of reception of English law through the process of legal transplant. English law has a tremendous influence on the Nigerian legal system, and it forms a substantial part of Nigerian law. Section 45 (1) of the Interpretation Act provides that, *the common law of England and the doctrines of equity and the statutes of general application which were in force in England on 1st January, 1900 are applicable in Nigeria, only in so far as local jurisdiction and circumstances shall permit. Consequently, legal issues evolving from common law in England* and codes of conduct of the medical profession and professional ethics as a whole, such as confidentiality, consent, maleficence, beneficence, duty of care are applicable in Nigeria even though they have not been legislated upon.

## **6.0 TUTOR-MARKED ASSIGNMENT:**

1. Baron De Montesquie was a renowned philosopher advocating against the concentration of power on one person or agency. Discuss his doctrine of separation of powers under the Nigerian constitution.

## **7.0 REFERENCES/FURTHER READING**

The Constitution of the Federal Republic of Nigeria *as amended*

Border Communities Development Agency Act, 2003".

Public Procurement Act"2003

Federal Capital Territory Internal Revenue Service Act, 2015.

The constitution of the Federal Republic of Nigeria, 1999 as amended

Nigerian Legal system by Obilade

## **MODULE TWO: THE PURPOSE,FUNCTIONS AND CLSSIFICATION OF LAW**

### **UNIT 1: THE FUNCTIONS OF LAW IN THE SOCIETY**

#### **1.0 INTRODUCTION**

According to Oxford English Dictionary, law is defined as the body of enacted or customary rules recognized by a community as a binding. In short, law may be defined as a body of rules which are enforced by the state. They are also enforced by the police, supported by the court and prison systems. Laws are written by legislators, such as senators or congressmen. In most countries, laws must preserve and not contradict to the Constitution, a document outlining the most basic rules of the country.

#### **2.0 OBJECTIVE**

**At the end of the unit should be able to understand:**

- \* The purpose of law in a society
- \*The functions of law
- \*Various classification of law

#### **3.0 MAIN CONTENT**

The purpose of law as well as what exactly deems something lawful does have its contrasting reasoning's since each may vary depending on the region you reside within. In general law serves five main functions: it cultivates and ensures the existence of adequate order, provides resolutions to conflicts, provides a safe haven for individuals and their assets, maintains the structured operation of the civilization, and protects civil liberties as set forth in each nation's constitution.

There are six main functions of laws in a country. They are to keep the peace in a country, shaping moral standards, promoting social justice, facilitating orderly

change, providing a basis for compromise and lastly to help in facilitating a plan. Besides that there are two types of law. One is the written law which is the most important source of law and which is enacted by certain bodies while the second law is the unwritten law. It does not mean that the unwritten law is not written. Basically it refers to those laws which are not enacted by the legislature and which are not found in the written Federal and States Constitution.

The law serves many purposes and functions in society. Four principal purposes and functions are establishing standards, maintaining order, resolving disputes, and protecting liberties and rights.

\*The law is a guidepost for minimally acceptable behavior in society. Some activities, for instance, are crimes because society through a legislative body has determined that it will not tolerate certain behaviors that injure or damage persons or their property. For example, under a typical state law, it is a crime to cause physical injury to another person without justification—doing so generally constitutes the crime of assault.

\*This is an offshoot of establishing standards. Some semblance of order is necessary in a civil society and is therefore reflected in the law. The law when enforced provides order consistent with society's guidelines.

\*Disputes are unavoidable in a society made of persons with different needs, wants, values, and views. The law provides a formal means for resolving disputes the court system. There is a federal court system and each state has its own separate court system. There are also various less formal means for resolving disputes collectively called alternative dispute resolution.

\*The constitutions and statutes of the Nigeria and its constituent states provide for various liberties and rights. A purpose and function of the law is to protect these various liberties and rights from violations or unreasonable intrusions by persons, organizations, or government. For example, subject to certain exceptions, the first Amendment to the Constitution prohibits the government from making a law that prohibits the freedom of speech. Someone who believes that his free speech rights

have been prohibited by the government may pursue a remedy by bringing a case in the courts.

\*In reference to its maintenance of order, law must decide exactly what is lawful and what is not. In this same way, the purpose of law remains to provide a basis for which one may lead a lawful life, with the well being of others as a consequence of such a function. Law is, therefore, existent to maintain the safety of lawful citizens from those who are unlawful. In order to proceed as doing justice for all, it must then be employed equally amongst all, and not just a select few. Law exists as a rigid yet stable force by which people are to follow. It serves as a means to prevent the arbitrary rule of lackluster leaders who may decide to take over whole nations. The purpose of law is to maintain the order of the country despite changes in leadership.

It helps to remind all those who may have assumed new power that what is and isn't lawful remains the same despite their advent into the head of the ruling party. Regulation of power is also what law takes into account as no one, not even the president, possesses full reign over the country due to the existence and practice of law. The purpose of law is to maintain individual freedoms, while still keeping in mind what is moral and right.

In terms of the judicial system, the purpose of law is attached to the way in which judges may rule over cases brought forward for their specific attention. Without the presence of law, there could never be judgment over what is or is not lawful. Therefore, judges would be left to decide based on frivolous beliefs that may have no basis whatsoever. Law is in existence to further the progress of societies as absence of it would only have whole nations revert back. Law functions to ensure that its citizens have the opportunity to exercise the rights provided to them. It seemingly regulates a lot of what we think and do, though some may not be as obvious as others. It is assumed that, each act we partake in is accompanied by the express consideration of a law or societal rule, and as so, we proceed accordingly. You have probably realized that laws may serve more than one principal function and there are obviously more principal functions than the four that we have identified.

## **4.0 SUMMARY**

The purpose of law as well as what exactly deems something lawful does have its contrasting reasoning's since each may vary depending on the region you reside within. In general law serves five main functions: it cultivates and ensures the



existence of adequate order, provides resolutions to conflicts, provides a safe haven for individuals and their assets, maintains the structured operation of the civilization, and protects civil liberties as set forth in each nation's constitution.

1. Regulates conduct- acts as a deterrent i.e. if you do “x” you face punishment “y”.

2. Avoids or Settles disputes – Contract law sets out rules for making & enforcing agreements.

3. Set out rights and obligations- for example the Charter of Rights limits the government’s authority over citizens.

4. Provides remedies- if your rights have been violated under the law, the law provides a system of recourse.

5. Maintains Order & provides protection- prohibits certain acts & provides for an authority-(police) to protect us.

6. Sets up the structure of government- The Constitution Act assigns power & duties to the various levels of government.

7. Directs how to make laws- The Parliament.

## **5.0 CONCLUSION**

The concept of the functions of law is of major importance. It is needed to explain the nature of law, to explain disciplines associated with law, to correctly interpret and apply law, to pinpoint the interaction of law with social norms and institutions, to determine which general principles to which the law should conform or deviate, and to explain the law within the context of normative philosophy. This chapter aims to contribute to the elaboration of the comprehensive reasoned scheme of the functions of the law. In it, the questions of the social functions of law are distinguished from the question of classifying legal norms into distinct normative types. The four primary functions of law – preventing undesirable behaviour and securing desirable behaviour which is performed in criminal law and torts; providing facilities for private arrangements between individuals, which is found in private law, criminal, and tort law; provisions of services and the redistribution of

goods found in legal systems; and settling unregulated disputes found in courts and tribunals are discussed in the chapter. It also tackles the secondary and indirect functions of the law. The secondary functions of the law include the determination of procedures for changing the law and the regulation of the operation of law-applying organs. The chapter concludes with the discussion of H.L.A. Hart's classification of law.

## **6.0 TUTOR-MARKED ASSIGNMENT:**

What are the functions of law in a contemporary society?

## **7.0 REFERENCES/FURTHER READING**

The Constitution of the Federal Republic of Nigeria *as amended*

Border Communities Development Agency Act, 2003".

Public Procurement Act"2003

Federal Capital Territory Internal Revenue Service Act, 2015.

The constitution of the Federal Republic of Nigeria, 1999 as amended

Nigerian Legal system by Obilade

## **UNIT 2: CLASSIFICATION OF LAW**

### **1.0 INTRODUCTION**

There are many ways to classify laws. We will discuss two of them. To classify means to put types of law into distinct categories. The burdens of proof are also different for civil law and criminal law. A burden of proof is a party's duty to

prove a claim or defense to a certain standard. In a typical civil case, the burden of proof that the plaintiff must satisfy is preponderance of the evidence. There are other ways of expressing this standard, including more likely than not, by greater than 50% weight, and by the greater weight of the evidence. If the plaintiff does not satisfy its burden during trial, the fact-finder i.e., the judge or jury, depending on the case will decide the case in favor of the defendant.

In a criminal case, the burden of proof that the prosecution must satisfy is “beyond a reasonable doubt.” The defendant is presumed to be not guilty unless the prosecution proves the defendant’s guilt to the reasonable doubt standard. While this standard is impossible to quantify in mathematical terms unlike in civil law, it does not require the absence of doubt in the minds of the judge or jury. But the judge or jury should find the defendant guilty only if firmly persuaded of the defendant’s guilt based on a fair and full consideration of the evidence presented; there is no reasonable doubt if this is the case

## **2.0 OBJECTIVE**

At the end of the unit you should be able to

- Know the different classification of law
- Able to distinguish the distinguish each and explain each of them.
- identify six different sets of criteria commonly used as criteria for classifying laws; and
- define, and explain in a general way, all the categories of law that you encounter in this Unit

## **3.0 MAIN CONTENT**

There are many ways to classify laws. To classify means to put types of law into distinct categories or buckets. Envision two buckets side by side. A law may be the type that goes in the first bucket or the second. Let’s look at some classification buckets. The law serves many roles in business and society. Where this is most apparent is in its three classifications:

The following are the major classifications of law:

1. Public and Private Law
2. Civil Law and Criminal Law

3. Substantive and Procedural Law
4. Municipal and International Law
5. Written and Unwritten Law
6. Common Law and Equity

**Public and Private Law:** Public Law can be defined as that aspect of Law that deals with the relationship between the state, its citizens, and other states. It is one that governs the relationship between a higher party the state and a lower one, the citizens. Examples of public law include Constitutional Law, Administrative Law, Criminal Law, International Law and so on. Private law, on the other hand, is that category of the law that concerns itself with the relationship amongst private citizens. Examples include the Law of Torts, the Law of Contract, the Law of Trust and so on.

**Civil Law and Criminal Law:** Civil law in this regard can be defined as the aspect of Law that deals with the relationship between citizens and provides means for remedies if the right of a citizen is breached. Examples of civil law include the Law of Contract, the Law of Torts, Family Law etc.

Criminal Law, on the other hand, can be referred to as that aspect of Law that regulates crime in the society. It punishes acts which are considered harmful to the society at large. An example of criminal law is the **Criminal Code Act** which is applicable in the Southern part of Nigeria.

When treating a criminal case, the standard of proof to be used is proof beyond reasonable doubt; **S.135 Evidence Act 2011**. Also, the burden of proof does not shift from the prosecution. What this means is that before a conviction can be gotten, the state has to prove the commission of the crime to be beyond reasonable doubt.

On the other hand, in civil cases, the standard of proof is on the balance of probabilities; **S.134 Evidence Act 2011**. Also, the burden of proof shifts between both parties when they need to establish their case. Judgement normally goes in favour of the particular party that has been able to prove its case more successfully.

**Substantive and Procedural Law:** Substantive Law is the main body of the law dealing with a particular area of law. For example, the substantive law in relation to Criminal Law includes the **Criminal Code Act** and the **Penal Code Act**.

Procedural law, on the other hand, is law in that deals with the process which the courts must follow in order to enforce the substantive law. Examples include the

rules of the various courts and the **Administration of Criminal Justice Act 2015**, which is the procedural law in relation to the **Criminal Code Act** and the **Penal Code Act**.

**Municipal/Domestic and International Law:** Municipal/Domestic law is the aspect of law which emanates from and has effect on members of a specific state. An example of a municipal Nigerian law is the **Constitution of the Federal Republic of Nigeria 1999(as amended)** which applies in only Nigeria.

International law, on the other hand, is the law between countries. It regulates the relationship between different independent countries and is usually in the form of treaties, international customs etc. Examples of International law include the **Universal Declaration of Human Rights** and the **African Charter on Human and People's Rights**. It should be noted that according to the provision of **S.12** of the **1999 Constitution (as amended)** International treaties cannot have the force of law in Nigeria except they are enacted by the Nigerian National Assembly.

**Written and Unwritten Law:** A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country.

Unwritten laws, on the other hand, are those laws that are not enacted by the legislature. They include both customary and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature. An example of this is the good neighbour principle established in the case of *Donoghue vs. Stevenson*. The principle posits that manufacturers of products should take utmost care in their manufacturing activities to ensure that the consumption of their product doesn't result in harm to the consumer. This principle is not enacted in a statute but is a case law which is applicable in Nigerian Courts.

**Common Law and Equity:** In the legal sense, the term common law means the law developed by the old common law courts of the King's Bench, the Courts of Common Pleas and the Courts of Exchequer. The English common law is regarded as such because it is law common to all parts of England. It grew over time from the practices, customs and way of life of the people. It is largely unwritten. The first common law judge was the King himself. People who had disputes usually brought them to the King to settle them.

**Overlap between civil law and criminal law.**

You have likely recognized that there is overlap between civil law and criminal law. That is, sometimes a wrongful act can be a violation of civil law and criminal law. Let's look an example. You may remember or have heard of the O. J. Simpson cases from the 1990s as opposed to the 2008 case arising out of the infamous Las Vegas hotel-casino room break-in incident. In October 1995, after a lengthy criminal trial, a jury acquitted O. J. Simpson on two charges of murder for causing the deaths of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman. In February 1997 after a civil trial, however, a different jury found O. J. Simpson liable for wrongfully causing the deaths of Ronald Goldman and Nicole Brown Simpson. Based on its findings of wrongful death, the jury awarded \$8.5 million in compensatory damages and \$25 million in punitive damages to the victims' families.

How is it possible for O. J. Simpson to be found not guilty in the criminal case, but found liable in the civil case? The reason is because the burdens of proof are different. Recall that the burden in a criminal case is beyond a reasonable doubt, while the burden in a civil case is only preponderance of the evidence. Also, there is no violation of double jeopardy under the Fifth Amendment to the Constitution, because a civil case following a criminal case is not considered a second prosecution for the same offense.

### **Common law and equity**

Common law originated from England and has been inherited by almost every country once tied to the British Empire except Malta, Scotland, the U.S. state of Louisiana, and the Canadian province of Quebec. In medieval England, the Norman conquest the law varied-shire-to-shire, based on disparate tribal customs. The concept of a common law developed during the reign of Henry II during the late 12th century, when Henry appointed judges that had authority to create an institutionalized and unified system of law common to the country. The next major step in the evolution of the common law came when King John was forced by his barons to sign a document limiting his authority to pass laws. This great charter or *Magna Carta* of 1215 also required that the King's entourage of judges hold their courts and judgments at a certain place rather than dispensing autocratic justice in unpredictable places about the country'

Equity is a body of rules that developed in England separately from the common law. The common law was administered by judges and barristers . The Lord Chancellor on the other hand, as the King's keeper of conscience, could overrule the judge-made law if he thought it equitable to do so. This meant equity came to

operate more through principles than rigid rules. For instance, whereas neither the common law nor civil law systems allow people to split the ownership from the control of one piece of property, equity allows this through an arrangement known as a trust. Trustees control property, whereas the beneficial or equitable ownership of trust property is held by people known as beneficiaries. Trustees owe duties to their beneficiaries to take good care of the entrusted property. In the early case of *Keech v Sandford* 1722 a child had inherited the lease on a market in Romford, London. Mr Sandford was entrusted to look after this property until the child matured. But before then, the lease expired. The landlord had apparently told Mr Sandford that he did not want the child to have the renewed lease. Yet the landlord was happy apparently to give Mr Sandford the opportunity of the lease instead. Mr Sandford took it. When the child now grew up, he sued Mr Sandford for the profit that he had been making by getting the market's lease. Mr Sandford was meant to be trusted, but he put himself in a position of conflict of interest. The Lord Chancellor, Lord King, agreed and ordered Mr Sandford should disgorge his profits. He wrote,

## **International law and domestic law**

International law can refer to three things: public international law, private international law or conflict of laws and the law of supranational organisations.

Public international law concerns relationships between sovereign nations. The sources for public international law development are custom, practice and treaties between sovereign nations, such as the Geneva Conventions. Public international law can be formed by international organisations, such as the United Nations (which was established after the failure of the League of Nations to prevent World War II, the International Labour Organisation, the World Trade Organisation, or the International Monetary Fund. Public international law has a special status as law because there is no international police force, and courts e.g. the International Court of Justice as the primary UN judicial organ lack the capacity to penalise disobedience.<sup>[145]</sup> However, a few bodies, such as the WTO, have effective systems of binding arbitration and dispute resolution backed up by trade sanctions.

Conflict of laws or private international law in civil law countries concerns which jurisdiction a legal dispute between private parties should be heard in and which jurisdiction's law should be applied. Today, businesses are increasingly capable of shifting capital and labour supply chains across borders, as well as trading with overseas businesses, making the question of which country has jurisdiction even

more pressing. Increasing numbers of businesses opt for commercial arbitration under the New York Convention 1958.

## **Constitutional and administrative law**

Constitutional and administrative law govern the affairs of the state. Constitutional law concerns both the relationships between the executive, legislature and judiciary and the human rights or civil liberties of individuals against the state. Most jurisdictions, like the United States and France, have a single codified constitution with a bill of rights. A few, like the United Kingdom, have no such document. A constitution is simply those laws which constitute the body politic, from statute, case law and convention.

The fundamental constitutional principle, inspired by John Locke, holds that the individual can do anything except that which is forbidden by law, and the state may do nothing except that which is authorised by law. Administrative law is the chief method for people to hold state bodies to account. People can sue an agency, local council, public service, or government ministry for judicial review of actions or decisions, to ensure that they comply with the law, and that the government entity observed required procedure. The first specialist administrative court was the *Conseil d'État* set up in 1799, as Napoleon assumed power in France.

Administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (for example, tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environment, taxation, broadcasting, immigration and transport. Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more government agencies to regulate the social, economic and political spheres of human interaction. Civil law countries often have specialized courts, administrative courts, that review these decisions.

## **In common law countries**

Generally speaking, most countries like Nigeria and other common law countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies.



Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking. Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process United States or fundamental justice Canada. Judicial review of administrative decisions is different from an administrative appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in an administrative appeal the correctness of the decision itself will be examined, usually by a higher body in the agency. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is *ultra vires*. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is unreasonable under Canadian law, following the rejection of the Patently Unreasonable standard by the Supreme Court in *Dunsmuir v. New Brunswick*, *Wednesbury* unreasonable under British law, or arbitrary and capricious under U.S. Administrative Procedure Act and New York State law. Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts, namely legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain Common Law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary.

#### **4.0 SUMMARY**

Constitutional Law, Public law. Criminal Law, Public law, International Law, Private law Private Contract Private Law Tort Trust.

Refers to the body of law based on custom and general principles and that embodied in case law, serve as precedent or is applied to situations not covered by status. Judges are not free to decide cases on the basis of fairness but only on the basis of the application of the law can lead to an unfair or harsh result. The common law became rigid and unresponsive to the needs of certain situation.

Equity. The name given "Equity" is the set of legal principles in countries following the English common law tradition, which supplement strict rules of law where their application would operate harshly, so as to achieve what is sometimes referred to as natural justice. It also means "fairness". Equity has been described as "a gloss [meaning a supplement] on the common law, filling in the gaps and making the English legal system more complete. In English Law, equity means that body of rules originally enforced only by the court of chancery.

Govern the All law passed in relationships Malaysia are between the national law citizens in a country Can be divided Known as into two part: municipal • Public law/state law • Private law National Law

International law Body of law which is composed of the principles and rules of conduct which states feel themselves bound to observe May be subdivided into two categories: Public International Law Private International Law Public international law the law prevails between states and govern mutual relationships of states inter se, particularly rules of war Examples: Dispute revolving ligitan islands in Sabah. Private International Law Its rules are primarily concerned with determining what systems of state law should properly be applied by our courts in cases which contain some 'foreign' element Example: family matter

Crime is defined as Function of criminal an act of law is to punish the disobedience of offender by way of the law forbidden imprisonment, fine under pain of and/ or caning punishment Law that characterized The police are the public certain kinds of servants whose duty is the wrongdoings against prevention and detection of the state, not crime and prosecution of necessarily violating offenders before the courts any right and Criminal of lawpunishable by the state Law

It includes law of contracts,Civil law of tort, law of property, law of succession and family Law law Concerns with rights and duties of individuals towards each

other Function is to provide remedies to the aggrieved party, in the form of damages, specific performance, injunction and quantum meruit

Public Law that governs there lationship between individuals and the state• Two categories of the public law: • Constitutional law= lays down the rights of individuals in the state. Regulates the functioning of organs of the central governments • Criminal law= codifies the various offences committed by individuals against the state.

Private LawConcerned with matters that affect the rights and duties of individuals amongst themselves Also known as civil law The branches of law which govern private obligationsLaw of contracts Law of torts Law of property

Written Law It is the most important source of law in Malaysia • Federal • Law constitution enacted by • State parliament legislation or state assemblies • Legislation • Subsidiary legislation

Unwritten law is found in cases decided by the courts, local customs Law which is not being enacted by the parliament or state assemblies and which is unwritten not found in the written federal and state Law constitutions The unwritten law comprises of the following: -Principles of English law applicable to the local circumstances -Judicial decisions on Malaysian law -customs of the local inhabitants, which have been accepted as law by the courts

Procedural law• Lays down the rules governing the manner in which a right is enforced under civil law, or a crime prosecuted under criminal law• Concerns with the procedures & evidences in the enforcement or rights & duties• Procedural law governs the steps in the progress of the civil legal action or criminal prosecution• Example: the criminal procedure code and the civil procedure code

## **5.0 CONCLUSION**

We have looked at six different possibilities of frameworks to adopt as ways of classifying laws. Make sure you understand what these six organising frameworks are, and what general picture each framework gives to our understanding of 'the law. The questions that follow here can be used either as an aid to learning and revision, or as a self-test when you feel confident that you have understood and mastered the material. See if you can write down in your

own words, more or less the six different frames of reference used in this Unit for setting up different classifications of laws.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Name the appropriate category of law to fit each of the following descriptions:

- a) law that regulates relationships between two or more different countries
- b) law that operates within a single country
- c) law, within a newly independent country, that derives from the legal system of its former colonial ruler
- d) law deriving from the body of custom that is traditional within a newly independent country
  
- e) law deriving from the English legal system and operating in a Commonwealth country.

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## **Unit 3: The Nigerian Legal system**

### **1.0 INTRODUCTION**

Law can be described as a system of rules a society sets to maintain order and protect harm to persons and property. Law is a set of rules established by a

governing authority to institute and maintain orderly co-existence. The law establishes restrictions and requirements for behaviour and represents a general consensus of what is or is not ethical. Consequently, law acts as a guide for solving research ethics problems. Laws are created through legislations which are called statutory laws, or by judges in court cases which are called **case laws**. Statutory laws comprises of written laws enacted by either a state legislature or national assembly. Statutory laws are either civil or criminal. Case law comprises of decisions of the various courts. These decisions determine the outcome of individual court cases by providing precedents to be followed in the interpretation of statutory laws and the Constitution.

The law of Nigeria consists of courts, offences, and various types of laws. Nigeria has its own constitution which was established on 29th of May 1999. The Constitution of Nigeria is the supreme law of the country. There are four distinct legal systems in Nigeria, which include English law, Common law, Customary law, and *Sharia Islamic Law*. *English law in Nigeria is derived from the colonial Nigeria, while common law is a development from its post colonial independence*. Customary law is derived from indigenous traditional norms and practices, including the dispute resolution meetings of pre-colonial Yorubaland secret societies and the Èkpè and Okónkò of Igboland and Ibibioland. Sharia Law *also known as Islamic Law* is used only in Northern Nigeria, where Islam is the predominant religion. The country has a judicial branch, the highest court of which is the Supreme Court of Nigeria.

## **2.0 OBJECTIVE**

The objective is to provide an overview of the various laws regulating human activities in Nigeria with a view to compiling and codifying them.

Secondly, the module is aimed at increasing knowledge in respect of the laws relating to management and conduct of ethics.

Thirdly, it will be a resource for stakeholders in research and development.

Lastly, it is hoped that it will strengthen research ethics evaluation capacities.

## **3.0 MAIN CONTENT**

The Federal Republic of Nigeria is a Constitutional Republic. At independence, Nigeria consisted of three regions, namely, the Northern Region, the Eastern Region and the Western Region. Presently, Nigeria is made up of 36 states and a

federal capital territory, located in Abuja. These states are, as a matter of convenience and political expediency grouped into 6 geopolitical zones of North East, North West, North Central, South East, South West, and South South. This grouping has however not been accorded any constitutional recognition. There are close to 400 linguistic groups in Nigeria, but the 3 major languages are Hausa, Igbo and Yoruba, while English is the official language.

The Nigerian Legal System is based on the English Common Law and legal tradition by virtue of colonization and the attendant incidence of reception of English law through the process of legal transplant. English law has a tremendous influence on the Nigerian legal system, and it forms a substantial part of Nigerian law. Section 45 (1) of the Interpretation Act provides that, the common law of England and the doctrines of equity and the statutes of general application which were in force in England on 1st January, 1900 are applicable in Nigeria, only in so far as local jurisdiction and circumstances shall permit. Consequently, legal issues evolving from common law in England and codes of conduct of the medical profession and professional ethics as a whole, such as confidentiality, consent, maleficence, beneficence, duty of care are applicable in Nigeria even though they have not been legislated upon.

The Nigerian Legal system covered branches and institutes of the system, functions, classifications, sources, English law, doctrines of equity, statutes in England and those extended to Nigeria, Nigerian legislation, judicial precedent, hierarchy of Courts, customary law, application of State decisions in Customary and Sharia Law, conflicts between English and Customary Law. Also covered are applicable law between the different provenances, conflicts between Islamic and Customary Law, types of Courts in Nigeria and their jurisdiction, and legal aid. Essential documents are provided: Protocol to the African Charter on Human & People's Rights of Women in Africa; Universal Declaration of Human Rights; and African Charter on Human and People's Rights. A valuable explanation is given of words and maxims used in the Nigerian legal system, and an index. Olong Adefi is a barrister and solicitor of the Supreme Court of Nigeria; and lecturer at the Faculty of Law at Kogi State University where he teaches administrative law, commercial law, land law, legal research method, human rights and the Nigerian legal system.

### **Common law system**

A common law system is a legal system that gives great precedential weight to common law, and to the style of reasoning inherited from the English legal system.

Common law systems originated during the Middle Ages in England, and from there propagated to the colonies of the British Empire. Today, one third of the world's population live in common law jurisdictions or in systems mixed with civil law, including India, the United States (both the federal system and 49 of its 50 states), Pakistan, Nigeria, Bangladesh, Canada (both the federal system and all its provinces except Quebec, Malaysia, Ghana, Australia, Sri Lanka, Hong Kong, Singapore, Burma, Ireland, Israel, New Zealand, Papua New Guinea, Jamaica, Trinidad and Tobago, Cyprus, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Marshall Islands, Micronesia, Nauru, Palau, South Africa, Zimbabwe, Cameroon, Namibia, Liberia, Sierra Leone, Botswana, Guyana, and Fiji. Many of these countries have interesting variants on common law systems,

Civil law, civilian law or Roman law is a legal system originating in Europe, intellectualized within the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system which serves as the primary source of law. This can be contrasted with common law systems whose intellectual framework comes from judge-made decisional law which gives precedential authority to prior court decisions on the principle that it is unfair to treat similar facts differently on different occasions doctrine of judicial precedent, or *stare decisis*. Historically, a civil law is the group of legal ideas and systems ultimately derived from the *Corpus Juris Civilis*, but heavily overlaid by Napoleonic, Germanic, canonical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legal positivism.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law to be secondary and subordinate to statutory law. When discussing civil law, one should keep in mind the conceptual difference between a statute and a codal article. The marked feature of civilian systems is that they use codes with brief text that tend to avoid factually specific scenarios. Code articles deal in generalities and thus stand at odds with statutory schemes which are often very long and very detailed.

## **Customary law**

Custom in law is the established pattern of behavior that can be objectively verified within a particular social setting. A claim can be carried out in defense of what has always been done and accepted by law. Related is the idea of **prescription**; a right enjoyed through long custom rather than positive law.

Customary law also, consuetudinary or unofficial law exists where:

1. a certain legal practice is observed and
2. the relevant actors consider it to be law *opinio juris*.

Most customary laws deal with *standards of community* that have been long-established in a given locale. However the term can also apply to areas of international law where certain standards have been nearly universal in their acceptance as correct bases of action - in example, laws against piracy or slavery (see *hostis humani generis*). In many, though not all instances, customary laws will have supportive court rulings and case law that has evolved over time to give additional weight to their rule as law and also to demonstrate the trajectory of evolution (if any) in the interpretation of such law by relevant courts.

### **Islamic law**

Islamic law represents one of the world's great legal systems. Like Judaic law, which influenced western legal systems, Islamic law originated as an important part of the religion. Sharia, an Arabic word meaning "the right path," refers to traditional Islamic law. The Sharia comes from the Koran, the sacred book of Islam, which Muslims consider the actual word of God. The Sharia also stems from the Prophet Muhammad's teachings and interpretations of those teachings by certain Muslim legal scholars. Muslims believe that Allah (God) revealed his true will to Muhammad, who then passed on Allah's commands to humans in the Koran.

Since the Sharia originated with Allah, Muslims consider it sacred. Between the seventh century when Muhammad died and the 10th century, many Islamic legal scholars attempted to interpret the Sharia and to adapt it to the expanding Muslim Empire. The classic Sharia of the 10th century represented an important part of Islam's golden age. From that time, the Sharia has continued to be reinterpreted and adapted to changing circumstances and new issues. In the modern era, the influences of Western colonialism generated efforts to codify it.

Islamic law is known as Shari'ah Law, which is derived from the Qur'an and Hadith and applied to the public and private lives of Muslims within Islamic states. *Shari'ah law* governs many aspects of day-to-day. The foremost source of *Shari'ah* is the Qur'an, which records prohibitions on certain foods (pork, carrion, wine, animals slaughtered in pagan ceremonies), a number of legal rules concerning family law (marriage, divorce, and inheritance, criminal law the *hudud* crimes, including penalties of highway robbery, illicit sexual activity, slander, and



wine-drinking, rules about witnesses, and commercial regulation including the ban on *riba* usury and forms of contracts. Yet several difficulties result from depending exclusively on the Qur'an: it simply does not speak to all (or even many) legal issues.<sup>8</sup>

In addition, many of its statements are ambiguous and addressed to specific historical situations. Ruthven comments, "As for the specific injunctions about the Muslims' struggles against and relationship with the non-Muslims, these varied according to situations and were too specific to be termed 'laws' in the strict sense."<sup>9</sup> While Ruthven may want to limit the applicability of these specific commands, throughout Islamic history many Muslims have read such commands as normative throughout time, for example those passages regarding aggression against non-Muslims. Modern Muslims, especially those educated in the West, perceive the difficulty inherent in failing to acknowledge the historically specific nature of such interactions and responses. ay life—politics, economics, banking, business, contracts, social issues.

### **Socialist legal system**

Socialist law or Soviet law denotes a general type of legal system which has been used in communist and formerly communist states. It is based on the civil law system, with major modifications and additions from Marxist-Leninist ideology. There is controversy as to whether socialist law ever constituted a separate legal system or not. If so, prior to the end of the Cold War, *socialist law* would be ranked among the major legal systems of the world.

While civil law systems have traditionally put great pains in defining the notion of private property, how it may be acquired, transferred, or lost, socialist law systems provide for most property to be owned by the state or by agricultural co-operatives, and having special courts and laws for state enterprises.

Many scholars argue that socialist law was not a separate legal classification. Although the command economy approach of the communist states meant that most types of property could not be owned, the Soviet Union always had a civil code, courts that interpreted this civil code, and a civil law approach to legal reasoning thus, both legal process and legal reasoning were largely analogous to the French or German civil code system. Legal systems in all socialist states preserved formal criteria of the Romano-Germanic civil law; for this reason, law theorists in post-socialist states usually consider the Socialist law as a particular case of the Romano-Germanic civil law. Cases of development of common law

into Socialist law are unknown because of incompatibility of basic principles of these two systems common law presumes influential rule-making role of courts while courts in socialist states play a dependent role.

#### **4.0 SUMMARY**

To a fresh law student hearing the word ‘common law’ would read ambiguous meaning. It is only those that have been a little knowledgeable in the legal field that would understand the meaning of the phrase common law. The pertinent question then is how do we arrive at the legal meaning of common law. This question and many others are what would be put to rest in this paper. This paper would make us understand what a legal system is, five types of legal system would be listed and two will be expatiated upon. procedures for the classification of laws, matters or procedure relating to them. It can also be defined as a body of rules including the principles, rules or doctrines associated with them that have the force of law in a given society.

It should be noted that from a technical standpoint, there are as much legal systems as there are sovereign independent countries. For example, Nigeria has its own legal system which has been said to ‘consist of each totality of laws or the legal rules and machinery which operate within Nigeria as a sovereign and independent African country. However, on a larger scale sovereign countries are grouped into larger legal system classifications due to them sharing similar fundamental characteristics.

The grouping of countries into legal system doesn’t necessarily mean that all their laws are identical. These individual systems are grouped into larger classifications because they share similar fundamental principles. For example, one similar characteristic of common law legal system is the doctrine of judicial precedent. Now that the concept of legal system has been expatiated. There are five legal systems in the world today: Common law, Civil law, Customary law, Islamic law and Socialist legal system.

#### **5.0 CONCLUSION**

The period of the historical development of common law can be traced to the Norman conquest of the British isles in 1066 AD. Before the Norman conquest, the indigenous British peoples had their indigenous customary laws. In 1154 Henry II became king. He had the practice of sending Judges from his central court to hear

disputes throughout the realm. When these judges returned from their tour, they would discuss the various customary laws they had encountered in their journeys. The judges would then agree on which of these customs were more reasonable and they would then be applied in subsequent disputes throughout the realm. This is why the common law is usually described as having judge made laws. Judges made law operated as the primary source of law until parliament acquired the powers to make statutes. It should however be noted that most of these statutes are in line with the fundamental tenets of the judge made laws. The common law legal system was transferred by England to her colonies. This they did with the aid of reception laws. One of the reception statutes in Nigeria is S.32 of the Interpretation Act which provides that the rules of common law, doctrines of equity and statutes of general application that were applicable before 1st January 1900 shall be applicable in Nigeria. Countries that practise common law include: Nigeria, United states of America, excluding Louisiana, Canada(excluding Quebec), India and most other former British colonies.

### **Features of The Common Law Legal System**

1. It operates the doctrine of judicial precedent. In the case of Global transport vs free enterprises Nig ltd, judicial precedent was described as meaning that decisions of courts of superior record are binding and the decisions of courts of coordinate jurisdiction are for all intents and purposes binding between them.
2. The method of adjudication is adversarial in contrast to inquisitorial. This means that judges are not expected to leave the bench and come into the field.
3. Unlike civil law, most of the laws in common law legal system are not codified.
4. Also, the jury system originated in common law. It is however not practised in Nigeria.
5. Unlike the civil law its judges are not career judges. Before a person can be a judge in a common law legal system he has to have been a practising lawyer for a while. This can be seen in the provisions of S.250(3) CFRN 1999 provides that for a person to be judge of the high court, he must have been a legal practitioner for not less than 10 years.
6. In the common law, judges make law through their various decisions.

### **6.0 TUTOR-MARKED ASSIGNMENT:**

What do you understand the world legal system of a country and briefly discuss the Nigerian legal system.

## **7.0 REFERENCES/ FURTHER READINGS**

□ *Stuchka, P.I. (1988). Selected Writings on Soviet Law and Marxism. Robert Sharlet, Peter B. Maggs, and Piers Beirne (eds.). Armonk, N.Y.: M.E. Sharpe. ISBN 0-87332-473-0. OCLC 17353762.*

□ *Evenson, Debra (2003). Law and Society in Contemporary Cuba (2nd ed.). The Hague: Kluwer Law International*

## **UNIT 4: THE DOCTRINE OF SEPARATION OF POWERS**

### **1.0 INTRODUCTION**

Separation of Powers means that the three branches of government are separated.

The three branches are

- the Legislative- the part that makes laws
- the Executive - the part that carries out (*executes*) the laws, and
- the Judicial Branch - the courts that decide if the law has been broken.

Separation of Powers helps to make sure people are safe. The executive branch carries out the laws but cannot make laws to make themselves powerful. Also the judiciary is responsible for making sure that criminals are punished so that members of the government or legislature cannot ignore the law as the judiciary can check on them. Separation of powers is also called a system of *checks and*

*balances* because the branches can check up on each other and if any of the branches get too strong, that branch will be balanced by the others.

In the United States the three branches of government are completely separate except for the Vice President who is President of the Senate. In the United Kingdom the three branches of Government are mixed but the checks and balances are provided by history and *custom* the rule that says something should happen because that is how it has been done for a long time. The Queen is Head of State the executive, but is also part of Parliament the legislative branch and is the Fountain of Justice the head of the judicial branch. But by convention she does not do anything without the advice of Ministers and never refuses to pass an Act of Parliament. The Queen has a lot of power but the power is controlled and balanced by the need to act in certain ways or only use the power at certain times.

In some countries the leaders of the executive branch are members of the legislature. This system is called responsible government. The first to talk about separation of powers in the modern age was Charles-Louis Montesquieu.

## **2.0 OBJECTIVE**

At the end of the unit you should be able to

- what is the doctrine of separation of powers
- the organs of government that operate separation of powers
- the importance of checks and balances

## **3.0 MAIN CONTENT**

The separation of powers, often imprecisely and metonymically used interchangeably with the *trias politica* principle, is a model for the governance of a state or who controls the state. Under this model, the state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches. The typical division is into three branches: a legislature, an executive, and a judiciary, which is the *trias politica* model. It can be contrasted with the fusion of powers in some parliamentary systems where the executive and legislature and sometimes parts of the judiciary are unified. Separation of powers, therefore, refers to the division of responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

Separation of powers is a political doctrine originating in the writings of Charles de Secondat, Baron de Montesquieu in *The Spirit of the Laws*, in which he argued for a constitutional government with three separate branches, each of which would have defined abilities to check the powers of the others. This philosophy heavily influenced the writing of the United States Constitution, according to which the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power. This United States form of separation of powers is associated with a system of checks and balances.

During the Age of Enlightenment, philosophers such as Montesquieu advocated the principle in their writings, whereas others, such as Thomas Hobbes, strongly opposed it. Montesquieu was one of the foremost supporters of separating the legislature, the executive, and the judiciary. His writings considerably influenced the opinions of the framers of the United States Constitution.

Strict separation of powers did not operate in the United Kingdom, the political structure of which served in most instances as a model for the government created by the U.S. Constitution. Under the UK Westminster system, based on parliamentary sovereignty and responsible government, Parliament consisting of the Sovereign King-in-Parliament, House of Lords and House of Commons was the supreme lawmaking authority. The executive branch acted in the name of the King His Majesty's Government, as did the judiciary. The King's Ministers were in most cases members of one of the two Houses of Parliament, and the Government needed to sustain the support of a majority in the House of Commons. One minister, the Lord Chancellor, was at the same time the sole judge in the Court of Chancery and the presiding officer in the House of Lords. Therefore, it may be seen that the three branches of British government often violated the strict principle of separation of powers, even though there were many occasions when the different branches of the government disagreed with each other.

Some U.S. states did not observe a strict separation of powers in the 18th century. In New Jersey, the Governor also functioned as a member of the state's highest court and as the presiding officer of one house of the New Jersey Legislature. The President of Delaware was a member of the Court of Appeals; the presiding officers of the two houses of the state legislature also served in the executive department as Vice Presidents. In both Delaware and Pennsylvania, members of the executive council served at the same time as judges. On the other hand, many southern states explicitly required separation of powers. Maryland, Virginia, North Carolina and Georgia all kept the branches of government separate and distinct.

## **Legislative power**

Congress has the sole power to legislate for the United States. Under the nondelegation doctrine, Congress may not delegate its lawmaking responsibilities to any other agency. In this vein, the Supreme Court held in the 1998 case *Clinton v. City of New York* that Congress could not delegate a line-item veto to the President, by powers vested in the government by the Constitution.

Where Congress does not make great and sweeping delegations of its authority, the Supreme Court has been less stringent. One of the earliest cases involving the exact limits of non-delegation was *Wayman v. Southard* 23 U.S. (10 Wet.) 1, 42 1825. Congress had delegated to the courts the power to prescribe judicial procedure; it was contended that Congress had thereby unconstitutionally clothed the judiciary with legislative powers. While Chief Justice John Marshall conceded that the determination of rules of procedure was a legislative function, he distinguished between important subjects and mere details. Marshall wrote that a general provision may be made, and power given to those who are to act under such general provisions, to fill up the details.

Marshall's words and future court decisions gave Congress much latitude in delegating powers. It was not until the 1930s that the Supreme Court held a delegation of authority unconstitutional. In a case involving the creation of the National Recovery Administration called *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 1935, Congress could not authorize the president to formulate codes of fair competition. It was held that Congress must set some standards governing the actions of executive officers. The Court, however, has deemed that phrases such as just and reasonable, public interest and public convenience suffice.

## **Executive power**

Executive power is vested, with exceptions and qualifications, in the President. By law the president becomes the Commander in Chief of the Army and Navy, Militia of several states when called into service, has power to make treaties and appointments to office with the Advice and Consent of the Senate, receive Ambassadors and Public Ministers, and take care that the laws be faithfully executed Section 3. By using these words, the Constitution does not require the president to personally enforce the law; rather, officers subordinate to the president may perform such duties. The Constitution empowers the president to ensure the faithful execution of the laws made by Congress and approved by the President. Congress may itself terminate such appointments, by impeachment, and restrict the

president. Bodies such as the War Claims Commission, the Interstate Commerce Commission and the Federal Trade Commission all quasi-judicial often have direct Congressional oversight.

Congress often writes legislation to restrain executive officials to the performance of their duties, as laid out by the laws Congress passes. In *INS v. Chadha* 1983, the Supreme Court decided (a) The prescription for legislative action requiring all legislative powers to be vested in a Congress consisting of a Senate and a House of Representatives and requiring every bill passed by the House and Senate, before becoming law, to be presented to the president, and, if he disapproves, to be repassed by two-thirds of the Senate and House represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered procedure. This procedure is an integral part of the constitutional design for the separation of powers. Further rulings clarified the case; even both Houses acting together cannot override Executive vetoes without a  $\frac{2}{3}$  majority. Legislation may always prescribe regulations governing executive officers.

## **Judicial power**

Judicial power the power to decide cases and controversies is vested in the Supreme Court and inferior courts established by Congress. The judges must be appointed by the president with the advice and consent of the Senate, hold office during good behavior and receive compensations that may not be diminished during their continuance in office. If a court's judges do not have such attributes, the court may not exercise the judicial power of the United States. Courts exercising the judicial power are called constitutional courts.

Congress may establish legislative courts, which do not take the form of judicial agencies or commissions, whose members do not have the same security of tenure or compensation as the constitutional court judges. Legislative courts may not exercise the judicial power of the United States. In *Murray's Lessee v. Hoboken Land & Improvement Co.* 1856, the Supreme Court held that a legislative court may not decide a suit at the common law, or in equity, or admiralty, as such a suit is inherently judicial. Legislative courts may only adjudicate public rights questions cases between the government and an individual and political determinations.

To prevent one branch from becoming supreme, protect the opulent minority from the majority, and to induce the branches to cooperate, government systems that



employ a separation of powers need a way to balance each of the branches. Typically this was accomplished through a system of checks and balances, the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Checks and balances allow for a system-based regulation that allows one branch to limit another, such as the power of the United States Congress to alter the composition and jurisdiction of the federal courts. Both bipartite and tripartite governmental systems apply the principles of the separation of powers to allow for the branches represented by the separate powers to hold each other reciprocally responsible to the assertion of powers as apportioned by law. The following example of the separation of powers and their mutual checks and balances for the experience of the United States Constitution is presented as illustrative of the general principles applied in similar forms of government as well;

#### **4.0 SUMMARY**

The constitutional allocation of the legislative, executive, and judicial powers among the three branches of government The doctrine under which the legislative, executive, and judicial branches of government are not to infringe upon each other's constitutionally vested powers Political doctrine of constitutional law under which the three branches of government executive, legislative, and judicial are kept separate to prevent abuse of power. Also known as the system of checks and balances, each branch is given certain powers so as to check and balance the other branches.

#### **5.0 CONCLUSION**

In the United States the three branches of government are completely separate except for the Vice President who is President of the Senate. In the United Kingdom the three branches of Government are mixed but the checks and balances are provided by history and *custom* the rule that says something should happen because that is how it has been done for a long time. The Queen is Head of State the executive, but is also part of Parliament (the legislative branch and is the Fountain of Justice the head of the judicial branch. But by convention she does not do anything without the advice of Ministers and never refuses to pass an Act of Parliament. The Queen has a lot of power but the power is controlled and balanced by the need to act in certain ways or only use the power at certain times. In some countries the leaders of the executive branch are members of the legislature. This system is called responsible government.

## 6.0 TUTOR-MARKED ASSIGNMENT:

Discuss the doctrine of separation of powers by Montesquieu

## REFERENCE/FURTHER READINGS

This latter refers specifically to the separation of powers into three branches of government: legislative, executive and judicial.

Quoted in Jan Weerda, *Calvin*, in *Evangelisches Soziallexikon*, Third Edition (1960), Stuttgart (Germany), col. 210

*Ward, Lee (2014). Modern Democracy and the Theological-Political Problem in Spinoza, Rousseau, and Jefferson. Recovering Political Philosophy. Palgrave Macmillan. pp. 25–26. ISBN 9781137475053. Retrieved 2015-11-03. Calvin's republican sympathies derived from his view of human nature as deeply flawed. Compound or mixed governments reflect the reality that human frailty justifies and necessitates institutional checks and balances to the magistrate's presumed propensity to abuse power. It was this commitment to checks and balances that became the basis of Calvin's resistance theory, according to which inferior magistrates have a duty to resist or restrain a tyrannical sovereign.*

Clifton E. Olmstead (1960), *History of Religion in the United States*, Prentice-Hall, Englewood Cliffs, N.J., pp. 9–10

Clifton E. Olmstead, *History of Religion in the United States*, pp. 69–76, 99–105, 114–16

## **Units 5: The Rule of law under the constitution**

### **1.0 INTRODUCTION**

Albert Venn Dicey was a British jurist and constitutional theorist. He is most widely known as the author of *Introduction to the Study of the Law of the Constitution* 1885. The principles it expounds are considered part of the uncoded British constitution. He became Vinerian Professor of English Law at Oxford and a leading constitutional scholar of his day. Dicey popularised the phrase rule of law, although its use goes back to the 17th century.

Dicey was a Liberal Unionist and a vigorous opponent of Home Rule for Ireland and published and spoke against it extensively from 1886 until shortly before his death, advocating that no concessions be made to Irish nationalism in relation to the government of any part of Ireland as an integral part of the United Kingdom. He was thus bitterly disillusioned by the Anglo-Irish Treaty agreement in 1921 that Southern Ireland should become a self-governing dominion the Irish Free State, separate from the United Kingdom. Dicey was also vehemently opposed to women's suffrage, proportional representation while acknowledging that the existing first-past-the-post system wasn't perfect, and to the notion that citizens have the right to ignore unjust laws. Dicey viewed the necessity of establishing a stable legal system as more important than the potential injustice that would occur from following unjust laws. In spite of this, he did concede that there were circumstances in which it would be appropriate to resort to an armed rebellion but stated that such occasions are extremely rare

### **2.0 OBJECTIVES:**

At the end of the unit you should be able to

- \*understand the meaning of the rule of law
- \* the three elements of rule of law

### 3.0 MAIN CONTENT

The Rule of Law is one of the most fundamental aspects of modern legal systems. Simply said, the rule says, howsoever high you may be; the Law is above you. It specifies that the Law is supreme and that no human being is higher than the authority of Law. Most constitutions, such as the English Constitution, the American Constitution and India guarantee to follow the Rule of Law and hence authorities are bound to follow it strictly. Administrative Law is largely based on this Rule. The term Rule of Law was derived from the French phrase *la principe de legalite* the principle of legality. The principles of Cole are developed by Dicey and are written in his book *Law and the Constitution* 1885.

The rule of law is the legal principle that law should govern a nation, as opposed to being governed by decisions of individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behaviour, including behaviour of government officials. The phrase can be traced back to 16th century Britain, and in the following century the Scottish theologian Samuel Rutherford used the phrase in his argument against the divine right of kings. John Locke defined freedom under the rule of law as follows:

Freedom is constrained by laws in both the state of nature and political society. Freedom of nature is to be under no other restraint but the law of nature. Freedom of people under government is to be under no restraint apart from standing rules to live by that are common to everyone in the society and made by the lawmaking power established in it. Persons have a right or liberty to (1) follow their own will in all things that the law has not prohibited and (2) not be subject to the inconstant, uncertain, unknown, and arbitrary wills of others.

The rule of law was further popularized in the 19th century by British jurist A. V. Dicey. The concept, if not the phrase, was familiar to ancient philosophers such as Aristotle, who wrote Law should govern. Rule of law implies that every citizen is subject to the law, including lawmakers themselves. In this sense, it stands in contrast to an autocracy, dictatorship, or oligarchy where the rulers are held above the law. Lack of the rule of law can be found in both democracies and

dictatorships, for example because of neglect or ignorance of the law, and the rule of law is more apt to decay if a government has insufficient corrective mechanisms for restoring it. Government based upon the rule of law is called nomocracy.

### **The Elements of the Rule of Law are:**

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### **1. Supremacy of Law**

- 'Supremacy of Law' is the central and most characteristic feature of Common Law.
- Law is the absolute supreme and predominant as opposed to influence of arbitrary power or discretionary power..

## **2.Equality before Law**

- There must be equality before law or equal subjection of all classes to the ordinary law.
- All people should be subject to one and the same law..

## **3. Predominance of of Legal spirit**

- Rights such as right to personal liberty, freedom from arrest etc.) are the result of judicial decisions in England.
- The rights are a result of court judgements rather than from being enshrined in the Constitution...

## **Modern Concept of Rule of Law**

- Today, 'Rule of Law' is seen more as a concept of rights of citizens.
- Accepted in almost all countries outside the Communist.

## **5.0 SUMMARY**

Rule of law \*The expression 'Rule of Law' has been derived from the French phrase 'la principe de legalite', i.e. a Government based on the principles of law.

\*It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V.Dicey in his book 'The law of the Constitution' published in 1885

Rule of law According to Edward Coke , Rule of Law— means: A.Absence of arbitrary power on the part of the Government B.No man is punishable or can be made to suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.

Rule of law As per Prof. A.V.Dicey, “the rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government. The Law of the Constitution

Rule of law Dicey regarded rule of law as the bedrock of the British Legal System: ‘this doctrine is accepted in the constitutions of U.S.A. and India.

Rule of law According to Prof. Dickey, rules of law contains three principles or it has three meanings as stated below:

1. Supremacy of Law : The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land
2. Equality before Law : the Second meaning of the Rule of Law is no man is above law
3. Predominance of Legal Spirit or the Third meaning of the Rule of Law is the general principles of the constitution are the result of juridical decisions determining the rights of private persons in particular cases brought before the Court.

## 5.0 CONCLUSION

In his early career, Dicey was in favor of the liberalism of John Stuart Mill, and was rather influenced by his work. However, already by the 1880s he started to drift apart from liberal thinking, and warned against its dangers. In his first major work, the seminal *An Introduction to the Study of the Law of the Constitution* 1885, Dicey warned that political freedom was under attack by modern incursions against the Rule of Law. He believed that the freedom British subjects enjoyed was dependent on two pillars: the sovereignty of Parliament and the supremacy of common law through the means of the courts' freedom from governmental interference. Dicey believed that in a society organized in that way, political freedom could be preserved and democratic society could function harmoniously.

The Rule of Law ensures that leaders, who were elected by the people and whom were given the power and authority by the people, always act in the best interest of those people. Dicey, however, warned that the law must be followed by all, as people in power often thought that they were “above the law.” Dicey argued that the inner tendency of all people in power is to satisfy their personal needs out of public resources. He thus insisted that “no person is above the law and it is law that rules all. He said: Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to

punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. [Appointed government officials and politicians, alike]...and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person Dicey 1885 2006).

## **6.0 TUTOR-MARKED ASSIGNMENT:**

Discuss Dicey's principles of the rule of law which has been enshrined in most constitution of the world.

## **7.0 REFERENCE/FURTHER READINGS**

This latter refers specifically to the separation of powers into three branches of government: legislative, executive and judicial.

Quoted in Jan Weerda, *Calvin*, in *Evangelisches Soziallexikon*, Third Edition (1960), Stuttgart (Germany), col. 210

*Ward, Lee (2014). Modern Democracy and the Theological-Political Problem in Spinoza, Rousseau, and Jefferson. Recovering Political Philosophy. Palgrave Macmillan. pp. 25–26.*

## **MODULE THREE: MULTIPLE LEGAL SYSTEMS**

### **UNIT 1: CUSTOMARY LAW**



## 1.0 INTRODUCTION

Legal pluralism is the existence of multiple legal systems within one human population and/or geographic area. Plural legal systems are particularly prevalent in former colonies, where the law of a former colonial authority may exist alongside more traditional legal systems cf. customary law. When these systems developed, the idea was that certain issues e.g., commercial transactions) would be covered by colonial law, while other issues e.g., family and marriage would be covered by traditional law. Over time, these distinctions tended to break down and individuals would choose to bring their legal claims under the system that they thought would offer them the best advantage.

## 2.0 OBJECTIVE

**The objective of this unit is that at the end of the unit :**

- \* You should be able to understand the meaning and nature of customary law
- \* The characteristics of customary law
- \* Understand the meaning of custom
- \* That custom must pass through test before recognized in Nigerian courts

## 3.0 MAIN CONTENT

Customary law is the established pattern of behavior that can be objectively verified within a particular social setting. A claim can be carried out in defense of "what has always been done and accepted by law. Related is the idea of prescription; a right enjoyed through long custom rather than positive law.

Customary law also unofficial law exists where:

1. a certain legal practice is observed and
2. the relevant actors consider it to be law

Most customary laws deal with *standards of community* that have been long-established in a given locale. However the term can also apply to areas of international law where certain standards have been nearly universal in their acceptance as correct bases of action - in example, laws against piracy or slavery *hostis humani generis*. In many, though not all instances, customary laws

will have supportive court rulings and case law that has evolved over time to give additional weight to their rule as law and also to demonstrate the trajectory of evolution if any in the interpretation of such law by relevant courts.

### **Nature of customary law**

A central issue regarding the recognition of custom is determining the appropriate methodology to know what practices and norms actually constitutes customary law. It is not immediately clear that classic Western theories of jurisprudence can be reconciled in any useful way with conceptual analyses of customary law, and thus some scholars like John Comaroff and Simon Roberts)<sup>[2]</sup> have characterised customary law norms in their own terms.

Customary international law are those aspects of international law that study the principle of custom. Along with general principles of law and treaties, custom is considered by the International Court of Justice, jurists, the United Nations, and its member states to be among the primary sources of international law. The vast majority of the world's governments accept in principle the existence of customary international law, although there are many differing opinions as to what rules are contained in it.

In international law, customary law refers to the Law of Nations or the legal norms that have developed through the customary exchanges between states over time, whether based on diplomacy or aggression. Essentially, legal obligations are believed to arise between states to carry out their affairs consistently with past accepted conduct. These customs can also change based on the acceptance or rejection by states of particular acts. Some principles of customary law have achieved the force of peremptory norms, which cannot be violated or altered except by a norm of comparable strength. These norms are said to gain their strength from universal acceptance, such as the prohibitions against genocide and slavery. Customary international law can be distinguished from treaty law, which consists of explicit agreements between nations to assume obligations. However, many treaties are attempts to codify pre-existing customary law.

Customary law is recognized, not because it is backed by the power of some strong individual or institution, but because each individual recognizes the benefits of behaving in accordance with other individuals' expectations, given that others also behave as he expects. Alternatively, if a minority coercively imposes law from above, then that law will require much more force to maintain social order than is

required when law develops from the bottom through mutual recognition and acceptance.

Reciprocities are the basic source both of the recognition of duty to obey law and of law enforcement in a customary law system. That is, individuals must exchange recognition of certain behavioral rules for their mutual benefit. Fuller suggested three conditions that make a duty clear and acceptable to those affected:

Under customary law, offenses are treated as torts private wrongs or injuries rather than crimes offenses against the state or the society. A potential action by one person has to affect someone else before any question of legality can arise; any action that does not, such as what a person does alone or in voluntary cooperation with someone else but in a manner that clearly harms no one, is not likely to become the subject of a rule of conduct under customary law. Fuller proposed that customary law might best be described as a language of interaction. Facilitating interaction can only be accomplished with recognition of clear although not necessarily written codes of conduct enforced through reciprocally acceptable, well established adjudication arrangements accompanied by effective legal sanctions.

A judgment under customary law is typically enforceable because of an effective threat of total ostracism by the community e.g., the primitive tribe, the merchant community. Reciprocities between the groups, recognizing the high cost of refusal to accept good judgments, takes those who refuse such a judgment outside their support group and they become outcasts or outlaws. The adjudicated solutions tend to be accepted due to fear of this severe boycott sanction.

In international law, *customary law* refers to the *Law of Nations* or the legal norms that have developed through the customary exchanges between states over time, whether based on diplomacy or aggression. Essentially, legal obligations are believed to arise between states to carry out their affairs consistently with past accepted conduct. These customs can also change based on the acceptance or rejection by states of particular acts. Some principles of customary law have achieved the force of peremptory norms, which cannot be violated or altered except by a norm of comparable strength. These norms are said to gain their strength from universal acceptance, such as the prohibitions against genocide and slavery. Customary international law can be distinguished from treaty law, which consists of explicit agreements between nations to assume obligations. However, many treaties are attempts to codify pre-existing customary law.

## **4.0 SUMMARY**

A central issue regarding the recognition of custom is determining the appropriate methodology to know what practices and norms actually constitutes customary law. It is not immediately clear that classic Western theories of jurisprudence can be reconciled in any useful way with conceptual analyses of customary law, and thus some scholars (like John Comaroff and Simon Roberts)<sup>[2]</sup> have characterised customary law norms in their own terms. Yet, there clearly remains some disagreement, which is seen in John Hund's critique of Comaroff and Roberts' theory, and preference for the contributions of H. L. A. Hart. Hund argues that Hart's. The Concept of Law solves the conceptual problem with which scholars who have attempted to articulate how customary law principles may be identified, defined and how they operate in regulating social behaviour.

The modern codification of civil law developed from the tradition of medieval customals, collections of local customary law that developed in a specific manorial or borough jurisdiction, and which were slowly pieced together mainly from case law and later written down by local jurists. Customals acquired the force of law when they became the undisputed rule by which certain rights, entitlements, and obligations were regulated between members of a community. Some examples include Bracton's *De Legibus et Consuetudinibus Angliae* for England, the Coutume de Paris for the city of Paris, the Sachsenspiegel for northern Germany, and the many *fueros* of Spain resolving disputes.

## 5.0 CONCLUSION

Customary law is a recognized source of law within jurisdictions of the civil law tradition, where it may be subordinate to both statutes and regulations. In addressing custom as a source of law within the civil law tradition, John Henry Merryman notes that, though the attention it is given in scholarly works is great, its importance is "slight and decreasing."<sup>[12]</sup> On the other hand, in many countries around the world, one or more types of customary law continue to exist side by side with official law, a condition referred to as legal pluralism..

In the canon law of the Catholic Church, custom is a source of law. Canonical jurisprudence, however, differs from Civil law jurisprudence in requiring the express or implied consent of the legislator for a custom to obtain the force of law. In the Common Law of England, "Long usage" must be established. It is a broad principle of property law that, if something has gone on for a long time without objection, whether it be using a right of way or occupying land to which one has no

title, the law will eventually recognise the fact and give the person doing it the legal right to continue.

It is known in case law as Customary Rights Customary rights. Something which has been practised since time immemorial by reference to a particular locality may acquire the legal status of a custom, which is a form of local law. The legal criteria defining a custom are precise. The most common claim in recent times, is for customary rights to moor a vessel. The mooring must have been in continuous use for "Time Immemorial" which is defined by legal precedent as 12 years or 20 years for Crown Land) for the same purpose by people using them for that purpose.

To give two examples ; -A custom of mooring which might have been established in past times for over two hundred years by the fishing fleet of local inhabitants of a coastal community will not simply transfer so as to benefit present day recreational boat owners who may hail from much further afield.

## **6.0 TUTORED MARKED ASSIGNMENT**

Explain the concept of customary law at both local and international levels and what does it entails in contemporary world.

## **7.0 REFERENCE/FURTHER READINGS**

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## **UNIT 2 CRIMINAL LAW AND PROCEDURE**

### **1.0 INTRODUCTION**

Have you ever watched the television show *Law and Order*? In the popular show, the first portion relates to a crime that was committed. This part of the show focuses on the police and detective work involved in trying to solve the crime and gather evidence to prove their case against the perpetrator of the crime. The second part of the show pertains to the legal system and shows how criminal law applies to the facts. Thus, you will see criminal law in action as it plays out in the courtroom. This program offers a very good insight into the body of criminal law.

### **2.0 OBJECTIVES:**

**At the end of the unit you should be able to:**

- \*the meaning of crime
- \*the elements of crimes
- \*what constitute crime and the general defences of a crime

### **3.0 MAIN CONTENT**

Criminal law is the body of law that relates to crime. It proscribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people. Most criminal law is established by statute, which is to say that the laws are enacted by a legislature. It includes the punishment of people who violate these laws. Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation than on punishment. Criminal law also refers to a body of laws that apply to criminal acts. In instances where an individual fails to adhere to a particular criminal statute, he or she commits a criminal act by breaking the law. This body of laws is different from civil law, because criminal law penalties involve the forfeiture of one's rights and imprisonment. Conversely,

civil laws relate to the resolution of legal controversies and involve money damages.

There are various theories for why we have a criminal law system. Neither theory is exclusive or dispositive. The main theories for criminal law include: to deter crime, to reform the perpetrator, to provide retribution for the act, and to prevent further crimes. There is much discussion regarding these theories of criminal law and which policy is best promoted by the body of criminal law.

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements. Capital punishment may be imposed in some jurisdictions for the most serious crimes. Physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in much of the world. Individuals may be incarcerated in prison or jail in a variety of conditions depending on the jurisdiction. Confinement may be solitary. Length of incarceration may vary from a day to life. Government supervision may be imposed, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regimen. Fines also may be imposed, seizing money or property from a person convicted of a crime.

Five theories are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each.

**Retribution** – Criminals ought to *Be Punished* in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be executed himself. A related theory includes the idea of "righting the balance."

**Deterrence** – *Individual* deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. *General* deterrence aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.



**Incapacitation** – Designed simply to keep criminals *away* from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose.

**Rehabilitation** – Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.

**Restoration** – This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury.

## **Types of Criminal Laws**

There are two types of criminal laws: misdemeanors and felonies. A **misdemeanor** is an offense that is considered a lower level criminal offense, such as minor assaults, traffic offenses, or petty thefts. Moreover, in most states, the penalty for the misdemeanor crime is typically one year or less.

In contrast, **felony** crimes involve more serious offenses. Some examples of felonies include murder, manslaughter, dealing drugs, rape, robbery, and arson. In virtually every state in the U.S., felonies carry a penalty of one year or more, depending upon the particular nature of the offense and the jurisdiction where the felony crime was committed. In addition, every state has a different body of criminal laws which vary from state to state. There are also federal criminal law statutes which apply to every state

## **3.5 The Elements of criminal law**

The criminal law generally prohibits undesirable *acts*. Thus, proof of a crime requires proof of some act. Scholars label this the requirement of an *actus reus* or *guilty act*. Some crimes particularly modern regulatory offenses – require no more, and they are known as strict liability offenses. Under the Road traffic Act 1988 it is a strict liability offence to drive a vehicle with an alcohol concentration above the prescribed limit. Nevertheless, because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of

an *intent* to do some bad thing, the *mens rea* or *guilty mind*. As to crimes of which both *actus reus* and *mens rea* are requirements, judges have concluded that the elements must be present at precisely the same moment and it is not enough that they occurred sequentially at different times.<sup>[8]</sup>

## **Actus reus**

Actus reus is Latin word for guilty act and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act, which is a legal duty to act. For example, the act of A striking B might suffice, or a parent's failure to give food to a young child also may provide the actus reus for a crime.

Where the actus reus is a failure to act, there must be a duty of care. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position. Duty also can arise from one's own creation of a dangerous situation. On the other hand, it was held in the U.K. that switching off the life support of someone in a persistent vegetative state is an omission to act and not criminal. Since discontinuation of power is not a voluntary act, not grossly negligent, and is in the patient's best interests, no crime takes place.

An actus reus may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the but for cause and proximate cause of the harm. If more than one cause exists . harm comes at the hands of more than one culprit the act must have more than a slight or trifling link to the harm. Causation is not broken simply because a victim is particularly vulnerable. This is known as the thin skull rule. However, it may be broken by an intervening act *novus actus interveniens* of a third party, the victim's own conduct, or another unpredictable event. A mistake in medical treatment typically will not sever the chain, unless the mistakes are in themselves "so potent in causing death.

## **Mens rea**

Mens rea is another Latin phrase, meaning guilty mind. This is the mental element of the crime. A guilty mind means an intention to commit some wrongful act. Intention under criminal law is separate from a person's motive although motive does not exist in Scots law. A lower threshold of mens rea is satisfied when a defendant recognizes an act is dangerous but decides to commit it anyway. This is recklessness. It is the mental state of mind of the person at the time the actus reus

was committed. For instance, if *C* tears a gas meter from a wall to get the money inside, and knows this will let flammable gas escape into a neighbour's house, he could be liable for poisoning. Courts often consider whether the actor did recognize the danger, or alternatively ought to have recognized a risk. Of course, a requirement only that one *ought* to have recognized a danger though he did not is tantamount to erasing *intent* as a requirement. In this way, the importance of mens rea has been reduced in some areas of the criminal law but is obviously still an important part in the criminal system.

Wrongfulness of intent also may vary the seriousness of an offense and possibly reduce the punishment but this is not always the case. A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm will result, would be murder, whereas a killing affected by reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck. Note: The notion of transferred intent does not exist within Scots' Law. In Scotland, one would not be charged with assault due to transferred intent, but instead assault due to recklessness.

### **Strict liability**

Strict liability can be described as criminal or civil liability notwithstanding the lack mens rea or intent by the defendant. Not all crimes require specific intent, and the threshold of culpability required may be reduced or demoted. For example, it might be sufficient to show that a defendant acted negligently, rather than intentionally or recklessly. In offenses of absolute liability, other than the prohibited act, it may not be necessary to show the act was intentional. Generally, crimes must include an intentional act, and intent is an element that must be proved in order to find a crime occurred. The idea of a strict liability crime is an oxymoron. The few exceptions are not truly crimes at all but are administrative regulations and civil penalties created by statute, such as crimes against the traffic or highway code.

### **Fatal offenses**

A murder, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law. In many jurisdictions, the crime

of murder is divided into various gradations of severity, e.g., murder in the *first degree*, based on *intent*. *Malice* is a required element of murder. Manslaughter Culpable Homicide in Scotland is a lesser variety of killing committed in the absence of *malice*, brought about by reasonable provocation, or diminished capacity. Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness. Settled insanity is a possible defense.

## **Personal offenses**

Many criminal codes protect the physical integrity of the body. The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd. Creating a fear of imminent battery is an assault, and also may give rise to criminal liability. Non-consensual intercourse, or rape, is a particularly egregious form of battery.

## **Property offenses**

Property often is protected by the criminal law. Trespassing is unlawful entry onto the real property of another. Many criminal codes provide penalties for conversion, embezzlement, theft, all of which involve deprivations of the value of the property. Robbery is a theft by force. Fraud in the UK is a breach of the Fraud Act 2006 by false representation, by failure to disclose information or by abuse of position.

## **Participatory offenses**

Some criminal codes criminalize association with a criminal venture or involvement in criminality that does not actually come to fruition. Some examples are aiding, abetting, conspiracy, and attempt. However, in Scotland, the English concept of Aiding and Abetting is known as Art and Part Liability. See Glanville Williams, *Textbook of Criminal Law*, London: Stevens & Sons, 1983; Glanville Williams, *Criminal Law the General Part* London: Stevens & Sons, 1961.

## **Mala in se v. mala prohibita**

While crimes are typically broken into degrees or classes to punish appropriately, all offenses can be divided into *mala in se* and *mala prohibita* laws. Both are Latin legal terms, *mala in se* meaning crimes that are thought to be inherently evil or morally wrong, and thus will be widely regarded as crimes regardless of

jurisdiction. Mala in se offenses are felonies, property crimes, immoral acts and corrupt acts by public officials. Mala prohibita, on the other hand, refers to offenses that do not have wrongfulness associated with them. Parking in a restricted area, driving the wrong way down a one-way street, jaywalking or unlicensed fishing are examples of acts that are prohibited by statute, but without which are not considered wrong. Mala prohibita statutes are usually imposed strictly, as there does not need to be mens rea component for punishment under those offenses, just the act itself. For this reason, it can be argued that offenses that are mala prohibita are not really crimes at all.

## **GENERAL DEFENCES TO CRIMINAL LIABILITY**

In criminal law, all acts or omissions which amount to crimes are not punished at all times. There are situations in which due to the circumstances of the case, some defences can be raised to free the accused from criminal liability. There are a number of these defences. However, due to constraints of space and time only a handful of them would be discussed. The defences to criminal liability which would be discussed include the following:

### **1.The Defence of De Minimis Non Curat Lex**

The latin maxim de minimis non curat lex literally interprets to mean that the law does not concern itself with trifles. As a defence in criminal law, where an offence is so trivial, it can be used as a defence. The statutory backing for this defence is not in the Criminal Code. It is however in **S. 58** of the **Penal Code** which provides:Nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause an injury if that injury is so slight that no person of ordinary sense and temper would complain of the injury. As a result, if someone is charged to court for stealing a pen worth 20 Naira, this defence can be utilised to escape liability.

### **2.The Defence of Accident**

According to the provisions of **S. 24** of the **Criminal Code**, a person is not criminally responsible for an act that occurs independently of the exercise of his will or if it occurs by accident. However, this is subject to the provisions of the Criminal Code in relation to negligent acts and omissions. In the case of *Iromantu vs State* 1964 1 All NLR 311, the deceased grabbed a gun from the accused. In the struggle to collect back the gun, the accused mistakenly touched the trigger and the

gun went off, killing the deceased. The court held that the accused was not criminally liable since the act occurred independently of the exercise of his will.

It should however be noted that accident would not apply if it is reasonably foreseeable that the criminal event would occur. In the case of *State vs Appoh* 1970 2 All NLR 218, two boys were pushing themselves near the river. While doing this, they were warned by another boy that the two boys were playing a dangerous game. As they continued, one of the boys pushed the other into the river and he drowned. The court held that the defence of accident would not apply since it is reasonably foreseeable that pushing near a river could lead to drowning.

In the case of *Ukot vs State* (1992) 5 NWLR pt 240, the accused swung a pen knife in a crowd in order to escape. While swinging the knife, it hit someone and killed him. The accused pleaded accident but the court did not grant his plea because it was reasonably foreseeable that by swinging a pen knife in a crowd, the knife could hit anyone.

### **3. The Defence of Mistake**

The defence of mistake applies to a mistake of fact. This is embodied under **S.25** of the Criminal Code. It provides that a person who acts or refuses to do an act under a reasonable but mistaken belief in a state of affairs, is not criminally responsible. However this would apply if, had the mistaken facts being true, the act would not be criminal.

Before the defence of mistake can be successful, the following must be fulfilled:

- It must be a mistake of fact and not of law.
- The mistake must be honest and reasonable.
- There would be no greater liability if the mistaken facts were found to be true.

### **4. Mistake of Fact not of Law**

According to the provision of **S. 22 of the Criminal Code**, Ignorance of the law is not an excuse to criminal liability unless the the law creating the offence states knowledge of the law to be an element of the offence. This is encapsulated in the maxim *ignorantia juris non excusat*. In the case of *Sherras vs De. Rutzen*, the accused was held not to be liable under S. 16(1) of the Licensing Act when he served beer to a police officer who he thought was off duty since he wasn't

wearing his uniform. The above case is a mistake of fact not of law since he thought the officer was off duty.

For the defence of mistake to apply, the mistake must be one that is honest and reasonable. In the case of ***R vs Gaddam(1954) 14 WACA 442*** the accused killed an old woman who he believed was a witch. The West African Court of Appeal held that this belief was unreasonable and thus a mistake of fact would not be applicable.

For the defence of mistake to hold, if the mistaken facts were actually true, there wouldn't be liability. For instance in the case of ***R vs Gaddam*** as stated above, even if the deceased was actually a witch, killing her extrajudicially was still a crime, thus the defence of mistake would not apply. It should be noted that there are instances in which the law states that the defence of mistake would not apply. For example, according to **S. 233 of the Criminal Code**, if a person has sex with a girl under a specific age, it is not an excuse that he didn't know or he believed that she was under such age.

## **5. The Defence of a Bonafide Claim of Right**

This defence is contained under the provision of S. 23 of the Criminal Code. This section provides that a person would not be criminally liable for an act or omission done in relation to property in the exercise of an honest claim of right over the property and without an intention to defraud. The scope of property in this provision has been defined by the provision of S. 1 of the Criminal Code which defines a property as everything animate or inanimate capable of being the subject of ownership. This covers all kinds of property, including land.

In the case of ***R v. Vega (1938) 40 WACA***, the accused was prosecuted for stealing some corrugated iron sheets which were lying around. The accused raised the defence that he took the sheets on the honest belief that they had been abandoned since they were lying there for a long time. The court acceded to this defence.

## **6. The Defence of Necessity and Extraordinary Emergency**

This defence is contained under the provisions of **S. 26 of the Criminal Code**. This sections provides that except in the case of compulsion, provocation or self-defence, a person would not be liable for acts or omissions which would result in an offence if such acts or omissions were done in sudden circumstances of extraordinary emergency that a normal person would not have acted otherwise.

It should be noted that this defence has limitations. In the case of **R vs Dudley Stephens** two shipmen were stranded at sea with a cabin boy. In order to sustain their life, they killed and ate the cabin boy. They court convicted them but their imprisonment was reduced to six months because of the necessary nature of situation. Generally, judicial opinion doesn't favour the taking of a person's life for the satisfaction of necessity. In the case of **Buckcoke vs Greater London Council** a fire truck driver, in an attempt to rescue a man from a burning building, disobeyed the traffic light, causing injury to another person. Lord Denning held that the fire truck driver was liable for the injury. It should be noted that in this case of the fire truck, the situation was not to the extent that the driver had no other choice to make as provided for in **S. 26 of the Criminal Code**. This is probably the reason why his defence of necessity could not hold sway.

### **Judicial Officers and the Execution of the Law**

A judicial officer has been defined in **S. 1** of the **Criminal Code** to include the Justices of the Supreme Court, Court of Appeal, Federal High Court, State High Court and an administrative officer engaged in a judicial act, proceeding or inquiry. According to the provision of **S. 31** of the **Criminal Code**, except as provided by the Criminal Code, a judicial officer is not criminally responsible for acts done or omitted to be done by him in exercise of judicial functions.

In the case of *Anderson vs Gorrie (1894) 1 QB 668* it was held that no criminal action could be brought against a judge of a superior court in respect of an act done by him in his judicial capacity even if there is evidence that he acted maliciously. Also, **S. 32 (1)** provides that a person would not be criminally liable for any act or omission that is done in execution of the provisions of the law. However, according to the provision of **S. 32 (4)** of the Criminal Code, this would not apply to acts or omission which would result in death or grievous bodily harm.

Criminal procedure is the adjudication process of the criminal law. While criminal procedure differs dramatically by jurisdiction, the process generally begins with a formal criminal charge, and results in the conviction or acquittal of the defendant. Criminal procedure can be either in form of inquisitorial or adversarial criminal procedure.

### **Basic rights**

Currently, in many countries with a democratic system and the rule of law, criminal procedure puts the burden of proof on the prosecution that is, it is up to the prosecution to prove that the defendant is guilty beyond any reasonable doubt,



as opposed to having the defense prove that s/he is innocent, and any doubt is resolved in favor of the defendant. This provision, known as the presumption of innocence, is required, for example, in the 46 countries that are members of the Council of Europe, under Article 6 of the European Convention on Human Rights, and it is included in other human rights documents. However, in practice it operates somewhat differently in different countries.

Similarly, all such jurisdictions allow the defendant the right to legal counsel and provide any defendant who cannot afford their own lawyer with a lawyer paid for at the public expense which is in some countries called a court-appointed lawyer. The fundamental rights are as follows:

1. Right to be informed about the crime for which the person is being arrested.
2. Right to be presented before a judicial officer within three days of custody.
3. In Zimbabwe, the accused has the right to be granted bail on application.

### **Difference in criminal and civil procedures**

Most countries make a rather clear distinction between civil and criminal procedures. For example, an English criminal court may force a defendant to pay a fine as punishment for his crime, and he may sometimes have to pay the legal costs of the prosecution. But the victim of the crime pursues his claim for compensation in a civil, not a criminal, action. In France, Italy, and many countries besides, the victim of a crime known as the injured party may be awarded damages by a criminal court judge. The standards of proof are higher in a criminal action than in a civil one since the loser risks not only financial penalties but also being sent to prison or, in some countries, executed. In English law the prosecution must prove the guilt of a criminal beyond reasonable doubt, but the plaintiff in a civil action is required to prove his case on the balance of probabilities. Beyond reasonable doubt is not defined for the jury which decides the verdict, but it has been said by appeal courts that proving guilt beyond reasonable doubt requires the prosecution to exclude any reasonable hypothesis consistent with innocence: *Plomp v. R.* In a civil case, however, the court simply weighs the evidence and decides what is most probable.

Criminal and civil procedure are different. Although some systems, including the English, allow a private citizen to bring a criminal prosecution against another citizen, criminal actions are nearly always started by the state. Civil actions, on the other hand, are usually started by individuals. In Anglo-American law, the party bringing a criminal action that is, in most cases, the state is called the prosecution,

but the party bringing a civil action is the plaintiff. In both kinds of action the other party is known as the defendant. A criminal case against a person called Ms. Sanchez would be described as United States vs. Sanchez in the United States if initiated by the federal government; if initiated by a state, it would typically be called Name of the State vs. Sanchez or The People vs. Sanchez. In England, it would be styled R. Regina, that is, the Queen vs. Sanchez. But a civil action between Ms. Sanchez and a Mr. Smith would be Sanchez vs. Smith if started by Sanchez, and Smith vs. Sanchez if started by Mr. Smith.

Evidence given at a criminal trial is not necessarily admissible in a civil action about the same matter, just as evidence given in a civil cause is not necessarily admissible on a criminal trial. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action. In fact he may be able to prove his civil case even when the driver is found not guilty in the criminal trial. If the accused has given evidence on his trial he may be cross-examined on those statements in a subsequent civil action regardless of the criminal verdict. Once the plaintiff has shown that the defendant is liable, the main argument in a civil court is about the amount of money, or **damages**, which the defendant should pay to the plaintiff.

## **Constitutional law**

The term *constitution* comes through French from the Latin word *constitutio*, used for regulations and orders, such as the imperial enactments *constitutiones principis*: edicta, mandata, decreta, rescripta. Later, the term was widely used in canon law for an important determination, especially a decree issued by the Pope, now referred to as an *apostolic constitution*

Most commonly, the term *constitution* refers to a set of rules and principles that define the nature and extent of government. Most constitutions seek to regulate the relationship between institutions of the state, in a basic sense the relationship between the executive, legislature and the judiciary, but also the relationship of institutions within those branches. For example, executive branches can be divided into a head of government, government departments/ministries, executive agencies and a civil service/administration. Most constitutions also attempt to define the relationship between individuals and the state, and to establish the broad rights of individual citizens. It is thus the most basic law of a territory from which all the other laws and rules are hierarchically derived; in some territories it is in fact called "Basic Law.

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.<sup>[1]</sup> These rules together make up, i.e. *constitute*, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a *written* constitution; if they are written down in a single comprehensive document, it is said to embody a *codified* constitution. Some constitutions such as the constitution of the United Kingdom are uncoded, but written in numerous fundamental Acts of a legislature, court cases or treaties.

Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.

The Constitution of India is the longest written constitution of any sovereign country in the world, containing 444 articles in 22 parts, 12 schedules and 118 amendments, with 146,385 words in its English-language version, while the Constitution of Monaco is the shortest written constitution, containing 10 chapters with 97 articles, and a total of 3,814 words.

## **General features**

Generally, every modern written constitution confers specific powers to an organization or institutional entity, established upon the primary condition that it abide by the said constitution's limitations. According to Scott Gordon, a political organization is constitutional to the extent that it contains institutionalized mechanisms of power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority.

Activities of officials within an organization or polity that fall within the constitutional or statutory authority of those officials are termed within power or, in Latin, *intra vires*; if they do not, they are termed beyond power or, in Latin, *ultra vires*. For example, a students' union may be prohibited as an organization from engaging in activities not concerning students; if the union becomes involved in non-student activities, these activities are considered to be *ultra vires* of the union's charter, and nobody would be compelled by the charter to follow them. An

example from the constitutional law of sovereign states would be a provincial parliament in a federal state trying to legislate in an area that the constitution allocates exclusively to the federal parliament, such as ratifying a treaty. Action that appears to be beyond power may be judicially reviewed and, if found to be beyond power, must cease. Legislation that is found to be beyond power will be invalid and of no force; this applies to primary legislation, requiring constitutional authorization, and secondary legislation, ordinarily requiring statutory authorization. In this context, within power, *intra vires*, authorized and valid have the same meaning; as do beyond power, *ultra vires*, not authorized and invalid.

In most but not all modern states the constitution has supremacy over ordinary statutory law in such states when an official act is unconstitutional, i.e. it is not a power granted to the government by the constitution, that act is *null and void*, and the nullification is *ab initio*, that is, from inception, not from the date of the finding. It was never law, even though, if it had been a statute or statutory provision, it might have been adopted according to the procedures for adopting legislation. Sometimes the problem is not that a statute is unconstitutional, but the application of it is, on a particular occasion, and a court may decide that while there are ways it could be applied that are constitutional, that instance was not allowed or legitimate. In such a case, only the application may be ruled unconstitutional. Historically, the remedy for such violations have been petitions for common law writs, such as *quo warranto*.

## **Types of Constitution:**

### **1. Written Constitution:**

A written constitution means a constitution written in the form of a book or a series of documents combined in the form of a book. It is a consciously framed and enacted constitution. It is formulated and adopted by a constituent assembly or a council or a legislature. Garner writes, "A written constitution is a consciously planned constitution, formulated and adopted by deliberate actions of a constituent assembly or a convention." It provides for a definite design of government institutions, their organisations, powers, functions and inter-relationships.

It embodies the constitutional law of the state. It enjoys the place of supremacy. The government is fully bound by its provisions and works strictly in accordance with its provisions. A written constitution can be amended only in accordance with a settled process of amendment written in the constitution itself. It is a duly passed

and enacted Constitution. The Constitutions of India, the USA, Germany, Japan, Canada, France, Switzerland and several other states, are written constitutions.

## **2. Unwritten Constitution:**

An unwritten constitution is one which is neither drafted nor enacted by a Constituent Assembly and nor even written in the form of a book. It is found in several historical charters, laws and conventions. It is a product of slow and gradual evolution. The government is organised and it functions in accordance with several well settled, but not wholly written rules and conventions. The people know their Constitution. They accept and obey it, but do not possess it in a written form. An unwritten constitution cannot be produced in the form of a book.

However, an unwritten constitution is not totally unwritten. Some of its parts are available in written forms but these do not stand codified in the form of a legal document or a code or a book. According to Garner, an unwritten constitution is one in which most and not all, rules are unwritten and these are not found in any one charter or document. The Constitution of the United Kingdom is an unwritten constitution.

### **Difference between Written and Unwritten Constitutions:**

(1) A written constitution is written in the form of a book or document, whereas an unwritten constitution is not written in such a form.

(2) A written constitution is made and enacted by a constituent assembly of the people. An unwritten constitution is the result of a gradual process of constitutional evolution. It is never written by any assembly.

(3) A written constitution is usually less flexible than an unwritten constitution. An unwritten constitution depends mostly on unwritten rules or conventions which do not require any formal amendment.

(4) A written constitution is definite. Its provisions can be quoted in support or against any power exercised by the government. An unwritten constitution cannot be produced in evidence. It has to be proved by quoting its sources and practices.

However, the difference between written and unwritten constitutions is not organic. A written constitution has written parts in majority. Along with these, it also has some unwritten parts in the form of conventions. In an unwritten constitution, most of the parts are unwritten and are not written in the form of a

book. However some of its parts are also found written in some charters and other documents.

### **3. Flexible Constitution:**

A Flexible Constitution is one which can be easily amended. Several political scientists advocate the view that a flexible constitution is one in which the constitutional law can be amended in the same way as an ordinary law. Constitutional amendments are passed in the same manner by which an ordinary law is passed.

British Constitution presents a classic example of a most flexible constitution. The British Parliament is a sovereign parliament which can make or amend any law or constitutional law by a simple majority. Laws aiming to affect changes in a constitutional law or in any ordinary law are passed through the same legislative procedure i.e., by a simple majority of votes in the legislature. Similarly, a Constitution is flexible when the procedure of amending it is simple and the changes can be made easily.

#### **Merits of a Flexible Constitution:**

- (i) First, a major merit of the flexible constitution is its ability to change easily in accordance with the changes in the social and political environment of the society and state.
- (ii) Secondly, it is very helpful in meeting emergencies because it can be easily amended.
- (iii) Thirdly, because of its dynamic nature, there are less opportunities for revolt. The constitution has the ability to keep pace with the changing times. The people do not feel the need for revolutionary changes.
- (iv) Finally, since the flexible constitution keeps on developing with times, it always continues to be popular and remains up-to-date.

#### **Demerits of a Flexible Constitution:**

- (i) First, a flexible constitution is often, a source of instability. Flexibility enables the government in power to give it a desired dress and content.

(ii) Secondly, it is not suitable for a federation. In a federation, a flexible constitution can lead to undesirable changes in the constitution by the federal government or by the governments of federating units.

#### **4. Rigid Constitution:**

The Rigid Constitution is one which cannot be easily amended. Its method of amendment is difficult. For amending it, the legislature has to pass an amendment bill by a specific, usually big, majority of 2/3rd or 3/4th. For passing or amending an ordinary law, the legislature usually passes the law by a simple majority of its members. A rigid constitution is considered to be the most fundamental law of the land. It is regarded as the basic will of the sovereign people. That is why it can be amended only by a special procedure requiring the passing of the amendment proposal by a big majority of votes which is often followed by ratification by the people in a referendum. The Constitution of United States of America is a very rigid constitution.

#### **Merits of a Rigid Constitution:**

- (i) First, a rigid constitution is a source of stability in administration.
- (ii) Secondly, it maintains continuity in administration.
- (iii) Thirdly, it cannot become a tool in the hands of the party exercising the power of the state at a particular time.
- (iv) Fourthly it prevents autocratic exercise of the powers by the government.
- (v) Finally a rigid constitution is ideal for a federation.

#### **Demerits of a Rigid Constitution:**

- (i) First, the chief demerit of a rigid constitution is that it fails to keep pace with fast changing social environment.
- (ii) Secondly, because of its inability to change easily, at times, it hinders the process of social development.
- (iii) Thirdly, it can be a source of hindrance during emergencies.

(iv) Fourthly, its inability to easily change can lead to revolts against the government.

(v) Fifthly, a rigid constitution can be a source of conservativeness. It can grow becomes old very soon because it cannot Keep pace with times.

Thus, there are both merits and demerits of Flexible and Rigid Constitutions. The decision whether a state should have a flexible or a rigid constitution, should be taken on the basis of the needs and wishes of society. No hard and fast rule can be laid down as to whether a state should have a flexible or a rigid constitution. In fact, a constitution must have both a certain degree of rigidity as well as an ability to change for keeping pace with the changing times. An excessive rigidity or excessive flexibility should be avoided. The Constitution of India is partly rigid and partly flexible. In several respects, it is a rigid constitution but in practice it has mostly worked as a flexible constitution.

## **5. Enacted Constitution:**

An Enacted Constitution is a man-made constitution. It is made, enacted and adopted by an assembly or council called a Constituent Assembly or Constitutional Council. It is duly passed after a thorough discussion over its objectives, principles and provisions. It is written in the form of a book or as a series of documents and in a systematic and formal manner. The Constitutions of India the USA, Japan, China and most of other states are enacted constitutions.

## **Qualities of a Good Constitution:**

1. Constitution must be systematically written.
2. It should incorporate the constitutional law of the state and enjoy supremacy.
3. It should have the ability to develop and change in accordance with the changes in the environment and needs of the people.
4. It should be neither unduly rigid nor unduly flexible.
5. It must provide for Fundamental Rights and Freedoms of the people.
6. It should clearly define the organisation, powers, functions inter-relations of the government of the state and its three organs.



7. It must provide for the organisation of a representative, responsible, limited and accountable government.

8. It must provide for: Rule of Law, De-centralisation of powers, Independent and powerful Judiciary, A system of Local self-government, A Sound Method of Amendment of the Constitution and Process and Machinery for the conduct of free and elections

9. The Constitution must clearly reflect the sovereignty of the people.

10. The language of the constitution should be simple, clear and unambiguous

The Constitution must empower the judiciary with the power to interpret, protect and defend the Constitution and the fundamental rights and freedoms of the people against the possible legislative and executive excesses. These are the basic features which must be present in every good Constitution.

### **Importance of Constitution:**

Each state has a Constitution which lays down the organisation, powers and functions of the Government of the State. The government always works according to the Constitution, no law or order of the government can violate the Constitution. Constitution is the supreme law and all government institutions and members are bound by it.

### **Constitution enjoys supreme importance in the state because:**

1. It reflects the sovereign will of the people.

2. It lays down of the aims, objectives, values and goals which the people want to secure. .

3. It contains description and guarantee of the fundamental rights of the people.

4. It gives a detailed account of the organisation of the government. The organisation, powers and functions of its three organs of the and their inter-relationship.

5. In a federation, the Constitution lays down the division of powers between the central government and the governments of the federating states/provinces. It is binding upon both the centre and the state governments.

6. It specifies the power and method of amendment of the Constitution.
7. It lays down the election system and political rights of people.
8. It provides for independence of judiciary and rule of law.
9. The constitution governs all and no one can violate its rules.

#### **4.0 SUMMARY**

A constitutional crisis is an event where in a particular part of a constitution is or are not being followed in accordance with the policies or actions taken by the authorities. There are different types of Constitution; these are the Written Constitution, the Unwritten Constitution, the Conventional or Enacted Constitution, the Cumulative or Evolve Constitution, the Rigid or Inelastic Constitution and the Flexible or Elastic Constitution. All of the above mentioned constitutions have their different features and characteristics. The Written Constitution is the constitution where the provisions are all contained in a single document. The Unwritten Constitution is the constitution where the provisions are not contained in a single document. The provisions are written in different

#### **5.0 CONCLUSION**

The Constitution's system of checks and balances sets the various branches against each other for the laudable purpose of constraining tyranny. However, due to partisan polarization, individual corruption, or any number of other reasons, sometimes the political institutions in these arrangements fail, sending the governmental system into a crisis. This was the type of constitutional crisis commentators were seemingly referring to in describing reports that Customs and Border Protection agents members of the executive branch weren't following orders from the judicial branch. In theory, clashes between different parts of government could regularly produce constitutional crises, but in reality, they often don't. Had Nixon ignored the Supreme Court ruling ordering him to turn over tapes of conversations he had recorded in the Oval Office, that would have been a huge crisis of this genre. But he didn't.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

Define a constitution and described the different types of constitution in a country practicing democracy. In your opinion which one is more preferable state the advantages.

## **7.0 REFERENCES/FURTHER READING**

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## **UNIT 3: LAW OF CONTRACT AND COMMERCIAL LAW**

### **1.0 INTRODUCTION**

At common law, the elements of a contract are offer, acceptance, intention to create legal relations, and consideration. Not all agreements are necessarily contractual, as the parties generally must be deemed to have an intention to be legally bound. A so-called gentlemen's agreement is one which is not intended to be legally enforceable, and which is binding in honour only.

### **2.0 OBJECTIVE:**

At the end of the unit you should be able to understand

- \*the definition of contracts
- \*The elements of contract
- \* processes of termination contract and the nature of damages

### **3.0 MAIN CONTENT**

Simply put, a contract is an agreement between two or more people or entities that creates a legal duty or responsibility. Entities entering a contract might include individual people, companies, corporations and organizations, but there are a few conditions that must be met for the contract to hold water in the courtroom. Specifically, a legally enforceable contract must contain some key ingredients:

A contract is a voluntary arrangement between two or more parties that is enforceable by law as a binding legal agreement. Contract is a branch of the law of obligations in jurisdictions of the civil law tradition. Contract law concerns the rights and duties that arise from agreements. A contract arises when the parties agree that there is an agreement. Formation of a contract generally requires an offer, acceptance, consideration, and a mutual intent to be bound. Each party to a contract must have capacity to enter the agreement. Minors, intoxicated persons, and those under a mental affliction may have insufficient capacity to enter a contract.

## **Characteristics of a valid contracts are:**

**Competency:** Everyone involved must be competent. This means that a person who is severely mentally disabled can't enter an enforceable contract. Additionally, contracts entered by minors usually can't be enforced until they reach age 18 or whatever the majority age is where they reside.

A contract is much more than an agreement between two people. There must be an offer and acceptance, intention to create a legally binding agreement, a price paid not necessarily money, a legal capacity to enter a contract of your own free will, and proper understanding and consent of what is involved. Any duress, false statements, undue influence or unconscionable dealings could make a contract illegal and void.

## **Offer and acceptance**

A contract is formed when an offer by one party is accepted by the other party. An offer must be distinguished from mere willingness to deal or negotiate. For example, X offers to make and sell to Y calendars featuring Australian paintings. Before any agreement is reached on size, quality, style or price, Y decides not to continue. At this stage, there is no legally binding contract between X and Y because there is no definite offer for Y to accept until the essential terms of the bargain have been decided.

An offer need not be made to a specific person. It may be made to a person, a class of people, or to the whole world. An offer is a definite promise to be bound, provided the terms of the offer are accepted. This means that there must be acceptance of precisely what has been offered. For example, a used car dealer offers to sell B a Holden panel van for \$1,000, without a roadworthy certificate. If B decides to buy the Holden panel van, but insists on a roadworthy certificate being provided, then B is not accepting the used car dealer's offer. Rather, B is making a counter offer. It is then up to the used car dealer to accept or reject the counter offer.

A person can withdraw the offer that has been proposed before that offer is accepted. For withdrawal to be effective, the person who has proposed the offer must communicate to the other party that the offer has been withdrawn. To continue the example above, the used car dealer may say to B that he'll check with his supervisor and maybe a roadworthy certificate can be provided. If, while waiting for a reply, B decides he does not want to buy the Holden panel van and he tells the used car dealer of his change of mind, then there is no binding contract.

Acceptance occurs when the party answering the offer agrees to the offer by way of a statement or an act. Acceptance must be unequivocal and communicated to the offeror: the law will not deem a person to have accepted an offer merely because they have not expressly rejected it. Some modifications to the rules of offer and acceptance have been made to protect consumers by sections 18 and 41 of the *Competition and Consumer Act 2010* schedule 2 Australian Consumer Law; for example, invitations or offers to purchase cannot be misleading or deceptive.

### **Intention to create legal relations**

A contract does not exist simply because there is an agreement between people. The parties to the agreement must intend to enter into a legally binding agreement. This will rarely be stated explicitly but will usually be able to be inferred from the circumstances in which the agreement was made. For example, offering a friend a ride in your car is not usually intended to create a legally binding relation. You may, however, have agreed with your friend to share the costs of travelling to work on a regular basis and agree that each Friday your friend will pay you \$20 for the running costs of the car. Here, the law is more likely to recognise that a contract was entered into.

Commercially based agreements are seen as including a rebuttable intention to create a legally binding agreement. However, the law presumes that domestic or social agreements are not intended to create legal relations. For example, an arrangement between siblings will not be presumed to be a legally binding contract. A person who wants to enforce a domestic or social agreement needs to prove that the parties *did* intend to create a legally binding agreement.

### **Consideration**

Consideration is the price paid for the promise of the other party. The price must be something of value, although it need not be money. Consideration may be some right, interest or benefit going to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. So long as consideration exists, the court will not question its adequacy, provided that it is of some value. For example, the promise to pay a peppercorn rent in return for the lease of a house would be good consideration. Of course, the consideration must not be illegal or impossible to perform. There is an exception to the rule: documents under seal (deeds) do not require consideration for there to be a binding contract. However, since few contracts between people are made in this way, it is not discussed further in this chapter.

## **Legal capacity**

Not all people are completely free to enter into a valid contract. The contracts of the groups of people listed below involve problematic consent, and are dealt with separately, as follows: people who have a mental impairment; young people minors; bankrupts; corporations people acting on behalf of a company; and prisoners.

### **Parties must be sane**

Generally speaking, people are free to enter into contracts even though they may have a mental impairment, or are temporarily disabled by drugs or alcohol. They are, however, sometimes vulnerable to being bound by contracts they do not fully understand. The question of capacity to make the contract often arises only after the contract is in place. People with disabilities and their advocates will find some protection in the rule that a contract is not valid and enforceable unless there was genuine consent to its making.

Capacity to give consent involves a general understanding of the nature of the contract not necessarily its fine details. A person with a mental impairment, for example, may have the capacity to understand some contracts e.g. buying a loaf of bread, but not to understand other, more complicated contracts e.g. buying a car on credit. Where a person with a disability did not understand the general nature of the contract, a court can intervene to set aside the contract only if: the other party knew or ought to have known of the disability or lack of capacity and it would be unfair for them to take advantage of that; and the benefit received by the other person has not been sold to a third party who did not know the previous transaction might not be valid. Generally, to escape the consequences of a contract, the other party should be notified of the intention not to be bound by the contract within a reasonable time.

Some people with disabilities temporary or long-term are assisted by an administrator appointed by the Guardianship List of the Victorian Civil and Administrative Tribunal. For further information on the role of an administrator, People with disabilities who have an administrator appointed to act on their behalf are generally not free to enter into contracts, unless this is approved in writing by their administrator or an order of the Guardianship List of VCAT.

A person with an intellectual or psychiatric disability will be liable to pay only a reasonable price for necessities sold and delivered s 7 *Goods Act 1958*. Necessaries •, and the rules applicable here, are dealt with in Young people,

below, because the definition is the same for both groups. The term **young person** is used here to refer to anyone under the age of 18 years (s 3 *Age of Majority Act 1977*). Sometimes legal writing refers to minors or infants. The exact capacity of young people to bind themselves and be bound by contract is limited but also unclear, because no Act of Parliament completely covers this area of law. The *Supreme Court Act 1986* (Vic) in sections 49 to 51, Contracts of Minors, is the most useful reference on this question.

### **Consent of the parties**

Entering into a contract must involve the elements of free will and proper understanding of what each of the parties is doing. In other words, the consent of each of the parties to a contract must be genuine. Only where the essential element of proper consent has been given is there a contract that is binding upon the parties. The ultimate consequences of establishing that no proper consent was given to enter the contract are matters dealt with when considering remedies for breach of contract see Taking action as a consumer. Proper consent may be affected by any of the following matters: mistake; false statements; duress; **and** undue influence or unconscionability.

### **MISTAKE VITIATES CONTRACTS**

Only a few types of mistakes will cause the contract to be non-binding on the parties to it: they must be mistakes that go to the very basis of the agreement. For example, where there is a contract for the sale of a car that both parties assume to exist, although in reality it has been destroyed by fire, this contract is non-binding on the parties. By contrast, where the parties are only mistaken about the model of the car, then this contract would be binding.

Another example is when a person signs a written document mistakenly believing that it relates to something entirely different from what in fact it does relate to, in this case the person will not be bound by it. This means that if X is told to sign a document that X reasonably believes to be something like a character reference to assist Z to obtain a loan from a finance company, and the document is later discovered to have been a guarantee of the loan contract, then the guarantee will not be binding on X.

A third example is when Y cannot read, due to blindness, illiteracy or other disability. Someone else tells Y what is in the document and Y signs it. The



document Y signed is not what Y was told it was. The document Y signed would not be binding on Y.

By contrast, if a person who signs a document – believing it to be a contract does not read the terms and conditions, that person will be bound by the contract and will not be entitled to plead mistake.

Other factors may also be relevant to a successful plea of mistake. For instance, whether or not the defence of mistake will be allowed often depends on whether an innocent third party will be adversely affected by a decision that the contract is non-binding. Again, if the signer was careless and failed to take reasonable precautions, the defence will not be allowed to succeed. For these reasons, it is wise to seek legal advice about whether or not a court would hold the contract binding on these grounds. A mistake is an incorrect understanding by one or more parties to a contract and may be used as grounds to invalidate the agreement. Common law has identified three types of mistake in contract: common mistake, mutual mistake, and unilateral mistake.

**Common mistake** occurs when both parties hold the same mistaken belief of the facts. This is demonstrated in the case of *Bell v. Lever Brothers Ltd.*, which established that common mistake can only void a contract if the mistake of the subject-matter was sufficiently fundamental to render its identity different from what was contracted, making the performance of the contract impossible see also *Svanosi v McNamara*. In *Great Peace Shipping Ltd v Tsavliris Salvage International Ltd*, the court held that the common law will grant relief against common mistake, if the test in *Bell v. Lever Bros Ltd* is made out. If one party has knowledge and the other does not, and the party with the knowledge promises or guarantees the existence of the subject matter, that party will be in breach if the subject matter does not exist.

**Mutual mistake** occurs when both parties of a contract are mistaken as to the terms. Each believes they are contracting to something different. Courts usually try to uphold such mistakes if a reasonable interpretation of the terms can be found. However, a contract based on a mutual mistake in judgment does not cause the contract to be voidable by the party that is adversely affected. See *Raffles v. Wichelhaus*.

**Unilateral mistake** occurs when only one party to a contract is mistaken as to the terms or subject-matter. The courts will uphold such a contract unless it was determined that the non-mistaken party was aware of the mistake and tried to take

advantage of the mistake. It is also possible for a contract to be void if there was a mistake in the identity of the contracting party. An example is in *Lewis v. Avery* where Lord Denning MR held that the contract can only be voided if the plaintiff can show that, at the time of agreement, the plaintiff believed the other party's identity was of vital importance. A mere mistaken belief as to the credibility of the other party is not sufficient.

## **ILLEGAL AND VOID CONTRACTS**

The law will not enforce all contracts. There are some categories of contract to be wary of.

Where a contract is illegal, this may affect its enforceability. Contracts that are illegal by statute will be regulated as to enforceability by the statute; thus the statute will need to be read and interpreted. Contracts absolutely prohibited by statute will be void, whether the parties know of the illegality or not. However, where one party performs an otherwise legal contract in a manner that breaches legislation, the other party, if having no knowledge of the facts giving rise to the illegality, can still enforce the contract or recover damages for breach of it. They may also recover money or other property transferred under the contract.

Contracts made void by statute are treated differently; while they remain valid contracts, the courts will not enforce them. Again, the precise extent of the enforceability of, or the recovery of any money paid under, a void contract will depend on the particular statute. Certain types of contracts are illegal at common law, because they are contrary to the public good. These include contracts: to commit a crime, a tort or a fraud; that are sexually immoral; that prejudice public safety, including good relations with other states or countries; that prejudice the administration of justice; that tend to promote corruption in public life; and to defraud the revenue..

The general rule is that the contract is void only so far as it is contrary to the public good; it is not void entirely. That is, the offending part can be removed provided that the rest of the contract continues to make sense. However, contracts illegal at common law are not severable that is, the illegal parts of the contract cannot be removed or severed from the legal • parts. Money paid or property transferred under a contract that is void at common law may be recoverable because the effect of the contract being void is that there is no contract, so that the parties should be put back to their original position. Other kinds of conduct that might or might not

affect the enforceability of a contract are covered by the ACL, which include prohibitions against:

all of which are discussed in Consumer protection laws (*see* Misleading and deceptive conduct •, Unconscionable conduct • and Prohibition of misrepresentations). A contract is a legal document that binds at least two parties to one another. A contract requires one or both parties meet obligations detailed in the contract before it is completed. In some instances, contract termination can occur that will make the contract void of legal binding. Only the parties involved in the agreement may terminate a contract.

## **TERMINATION OF CONTRACT**

A contract is a legal document that binds at least two parties to one another. A contract requires one or both parties meet obligations detailed in the contract before it is completed. In some instances, contract termination can occur that will make the contract void of legal binding. Only the parties involved in the agreement may terminate a contract.

### **1. Impossibility of Performance**

A contract typically requires one or more parties to do something, which is called performance. For example, a company may hire and sign a contract to have a public speaker talk at a company event. Once the public speaker fulfills his duties agreed upon in the contract, it is called performance. If for some reason it is impossible for the public speaker to fulfill his duties, it is called impossibility of performance. The company has the right to terminate the contract in the case of an impossibility of performance.

### **2. Breach of Contract**

When a contract is intentionally not honored by one party, it is called a breach of contract and is grounds for contract termination. A breach of contract may exist because one party failed to meet his obligations at all or did not meet his obligations fully. A material breach of contract allows the hiring party to seek monetary damages, and an immaterial breach of contract does not allow the party to seek monetary damages. For example, if you purchased a product that did not arrive until a day after the agreed upon delivery date, that is an immaterial breach of contract. However, if your order did not come until two weeks after the delivery date and it affected your business, then that is a material breach of contract.

### **3. Prior Agreement**

You may terminate a contract if you and the other party have a prior written agreement that calls for a contract termination because of a specific reason. The agreement must give the details of what qualifies as a reason for contract termination. It should also state what actions need to take place for one of the parties to terminate the contract. In most cases, one party must submit a written notice to the other party to terminate the contract.

### **4. Rescission**

A rescission of a contract is when a contract is terminated because an individual misrepresented themselves, acted illegally or made a mistake. For example, if you bought a house but after further inspection you discover that the seller intentionally hid the poor physical condition of the home, you may possibly terminate the contract. A contract rescission may take place if one party is not old enough to enter a contract or if an elderly person is not able to make legal decisions because of incapacity.

### **5. Completion**

A contract is essentially terminated once the obligations outlined in the contract are completed. Parties should keep documentation showing that they fulfilled their contract duties. Documentation is helpful if the other party tries to later dispute the fulfillment of your contract obligations. A court of law will require proof of contract fulfillment if a dispute occurs.

#### **Discharge by performance**

When a party performs their obligations required by the contract they are no longer subject to it.

#### **Termination for breach**

Where one party commits a serious breach, the other party will be entitled to terminate the contract. However it is important to realise that not every breach is sufficiently serious to allow termination. If a party attempts to terminate a contract without a legal right to do so, their actions will be regarded as repudiation of the contract and the other party will gain a right to terminate and recover damages.

#### **Termination for frustration**

A contract is regarded as frustrated when one of the parties is unable to perform what they contracted to do due to an unforeseen intervening event. Frustration is

difficult to prove but if it can be established, both parties will be discharged from their contractual obligations,

### **Payment of damages for breached of contract**

There are several different types of damages.

**Compensatory damages**, which are given to the party which was detrimented by the breach of contract. With compensatory damages, there are two heads of loss, consequential damage and direct damage.

**Liquidated damages** are an estimate of loss agreed to in the contract, so that the court avoids calculating compensatory damages and the parties have greater certainty. Liquidated damages clauses may be called penalty clauses in ordinary language, but the law distinguishes between liquidated damages legitimate and penalties invalid. A test for determining which category a clause falls into was established by the English House of Lords in *Dunlop Pneumatic Tyre Co. Ltd v. New Garage & Motor Co. Ltd*

**Nominal damages** consist of a small cash amount where the court concludes that the defendant is in breach but the plaintiff has suffered no quantifiable pecuniary loss, and may be sought to obtain a legal record of who was at fault.

**Punitive or exemplary damages** are used to punish the party at fault; but even though such damages are not intended primarily to compensate, nevertheless the claimant and not the state receives the award. Exemplary damages are not recognised nor permitted in some jurisdictions. In the UK, exemplary damages are not available for breach of contract, but are possible after fraud. Although vitiating factors (such as misrepresentation, mistake, undue influence and duress) relate to contracts, they are not contractual actions, and so, in a roundabout way, a claimant in contract may be able to get exemplary damages.

## **4.0 SUMMARY**

A contract is a legally binding or valid agreement between two parties. The law will consider a contract to be valid if the agreement contains all of the following elements:

offer and acceptance; an intention between the parties to create binding relations; consideration to be paid for the promise made; legal capacity of the parties to act;

genuine consent of the parties; and legality of the agreement. An agreement that lacks one or more of the elements listed above is not a valid contract. Each of these elements is dealt with in more detail in this section.

Not all contracts need to be in writing. Contracts that are required by law to be in writing include contracts to buy and sell land or to buy a motor car and door-to-door sales contracts. However, it is always useful to have the terms agreed between the parties written down and attached to or kept with any other relevant papers; for example, copies of quotations, brochures, pamphlets, etc. that were supplied at the time the contract was entered into. Receipts for money paid should always be kept. If a dispute arises, these documents will assist in resolving differences between the parties. A written contract can be drawn up by listing all the terms agreed between the parties and getting each of the parties to sign and date the document at the end.

## **5.0 CONCLUSION**

An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. Since the law of contracts is at the heart of most business dealings, it is one of the three or four most significant areas of legal concern and can involve variations on circumstances and complexities. The existence of a contract requires finding the following factual elements: a. an offer; b) an acceptance of that offer which results in a meeting of the minds; c) a promise to perform; d) a valuable consideration which can be a promise or payment in some form; e) a time or event when performance must be made (meet commitments); f) terms and conditions for performance, including fulfilling promises; g) performance, if the contract is "unilateral". A unilateral contract is one in which there is a promise to pay or give other consideration in return for actual performance. I will pay you \$500 to fix my car by Thursday; the performance is fixing the car by that date. A bilateral contract is one in which a promise is exchanged for a promise. promise to fix your car by Thursday and you promise to pay \$500 on Thursday. Contracts can be either written or oral, but oral contracts are more difficult to prove and in most jurisdictions the time to sue on the contract is shorter such as two years for oral compared to four years for written. In some cases a contract can consist of several documents, such as a series of letters, orders, offers and counteroffers. There are a variety of types of contracts: "conditional" on an event occurring; "joint and

several," in which several parties make a joint promise to perform, but each is responsible; "implied," in which the courts will determine there is a contract based on the circumstances. Parties can contract to supply all of another's requirements, buy all the products made, or enter into an option to renew a contract. The variations are almost limitless. Contracts for illegal purposes are not enforceable at law. 2 v. to enter into an agreement.

## **6.0 TUTOR- MARKED ASSIGNMENT**

What is a contract and what constitute a valid contract in the eyes of the law?

## **7.0 REFERENCE/FURTHER READING**

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Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd [1953] 1 Q.B. 401) the offer is made by an action without any negotiations (such as presenting goods to a cashier), the offer will be presumed to be on the terms of the invitation to treat. </ref

## Units 5: Business and Commercial Law

### 1.0 INTRODUCTION

Business law encompasses all of the laws that dictate how to form and run a business. This includes all of the laws that govern how to start, buy, manage and close or sell any type of business. Business laws establish the rules that all businesses should follow. A savvy businessperson will be generally familiar with business laws and know when to seek the advice of a licensed attorney. Business law includes state and federal laws, as well as administrative regulations. Let's take a look at some of the areas included under the umbrella of business law.

Much of business law addresses the different types of business organizations. There are laws regarding how to properly form and run each type. This includes laws about entities such as corporations, partnerships and limited liability companies. For example, let's say I decide to start my own pet grooming business. I need to decide what type of business I want to be. Will this be a partnership? Will it be a sole proprietorship? What papers do I need to file in order to start this business? These questions fall under the laws that govern **business entities**, which are state laws. The type of entity I pick will also affect how I pay my **federal income taxes**. These, of course, are federal laws.

Next, what will my business be called? Let's say I decide on Barks & Bubbles as a name for my dog grooming company. Now I need to know if anyone else already has that name. This is a trademark question. Patents, copyrights and trademarks are part of intellectual property law. The federal law governs most intellectual property law. Then I need to know if I'll require any special type of license for this business. Do groomers need a license? Am I allowed to have animals on my property, or do I need some sort of special permit? I'll need to check my local and state laws to find out. How will I advertise my business? Am I allowed to say that I'm the 'best in town?' This question falls under consumer protection law, which can be federal or state law. Wow. That's a lot of business law, and I'm not even open for business yet!

### 2.0 OBJECTIVES:

At the end of the unit you will be able to know

- \*The meaning of business and business law

- \*Types of business and commercial transactions



\*the meaning of various terms

### **3.0 MAIN CONTENT**

Business law and commercial law are two areas of legal practice that have so many overlapping issues that most attorneys who practice one will also have expertise in the other. Commercial law focuses on the sale and distribution of goods, as well as financing of certain transactions. Business law focuses on the other aspects of business, including forming a company, mergers and acquisitions, shareholder rights, and property issues such as leasing office or warehouse space. A business that sells products will almost certainly need a lawyer with experience in both of these fields.

Business law is regulated by both state and federal law. The federal government primarily governs stocks and investments, workplace safety and employment laws, and environmental protections. States, however, can add to these federal laws and pass their own laws in other areas, such as imposing licensing requirements for certain professions and establishing rules for forming and running a legal business.

Commercial law is primarily regulated by the Uniform Commercial Code (UCC), which is a model set of laws regarding the sales of goods, leases of good, negotiable instruments, and secured transactions. All states have adopted some form of the UCC, though each state is free to make its own modifications to the laws as it sees fit. Because many states have modified at least some of the UCC provisions to fit their needs, it is important to hire a lawyer familiar with the UCC as it has been enacted in your state.

#### **Terms to Know**

- Uniform Commercial Code (UCC) – A uniform law adopt in some form by all states that governs sales of goods and related issues, such as secured transactions and negotiable instruments
- Negotiable Instrument: A document, such as a note or check, that contains an unconditional promise to pay a specified amount of money on demand or at a specified time
- Merger :The absorption of one company by another
- Acquisition :The obtaining of a controlling interest in a company
- Secured Transaction : A transaction intended to create a security interest in personal property or fixtures of a property
- Security: A financial asset, such as a mortgage, provided to make certain that a debt obligation is fulfilled.

## Managing a business

There are many laws that concern managing a business because there are many aspects involved in managing. As you can already see, running a business will involve a lot of employment law and contract law. For my new business, I'll need to know how to hire, what my contracts should look like, what kind of benefits I have to provide, how to pay employee insurance and taxes and even how to properly fire an employee. Many of these employment and benefit laws are federal laws and regulated by **government agencies**. For example, the Equal Employment Opportunity Commission is a federal agency that enforces employment discrimination laws.

If I also decide to sell things as part of my pet grooming business, like dog collars or dog treats, then I'll need to be familiar with the laws on sales. For businesses that conduct sales, it's especially helpful to be familiar with the **Uniform Commercial Code**, or UCC. This publication governs sales and commercial paper and has been adopted in some form by almost all states. What happens if I provide services but have trouble getting paid? Let's say I groom several dogs for Victor's Vet, but he won't pay my bill. Can I demand payment or report him to the credit reporting agencies? This is a **debt collection law** question. Debt collection laws are mostly federal laws. For instance, many of our debt collection laws are found in the Fair Debt Collection Practices Act, or the FDCPA, which is enforced by the Federal Trade Commission.

What happens if Victor just didn't like my services? Let's say Victor accuses me of purposely sabotaging his chances at a national dog show by giving his poodle a bad haircut. Can Victor sue me? And, if so, will his lawsuit be against me personally, or will it be against my Barks & Bubbles business entity? This scenario falls under **law of tort**. Torts are private, civil actions for wrongful deeds. Tort law is usually state law. This is an extensive area of the law and includes things like work injuries and negligence claims.

## Other Considerations When Hiring a Business and Commercial Lawyer

Each industry faces its own unique business and commercial law issues. An attorney with experience in the type of business that your company conducts will be able to give you more practical advice and help you find a solution to your legal issue that also takes business ethics and industry practices into consideration.

Many business owners and managers only hire an attorney when it is too late for the attorney to be much help. Business owners often try to negotiate sales of goods on their own without known the legal requirements under their state's version of the UCC. This can lead canceled contracts, lost profits, and even legal penalties if the other party decides to sue. Instead of trying to navigate the law on their own, business owners should consult a commercial law attorney early in the contract negotiation process to ensure that their legal rights are protected.

## **Law of agency**

The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the **agent**, that is authorized to act on behalf of another called the principal to create legal relations with a third party. Succinctly, it may be referred to as the equal relationship between a principal and an agent whereby the principal, expressly or implicitly, authorizes the agent to work under his or her control and on his or her behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him or her and third parties into contractual relationship. This branch of law separates and regulates the relationships between agents and principals internal relationship, known as the principal-agent relationship; agents and the third parties with whom they deal on their principals' behalf external relationship; and principals and the third parties when the agents deal.

In India, section 182 of the Contract Act 1872 defines Agent as a person employed to do any act for another or to represent another in dealings with third persons, The reciprocal rights and liabilities between a principal and an agent reflect commercial and legal realities. A business owner often relies on an employee or another person to conduct a business. In the case of a corporation, since a corporation is a fictitious legal person, it can only act through human agents. The principal is bound by the contract entered into by the agent, so long as the agent performs within the scope of the agency.

A third party may rely in good faith on the representation by a person who identifies himself as an agent for another. It is not always cost effective to check whether someone who is represented as having the authority to act for another actually has such authority. If it is subsequently found that the alleged agent was acting without necessary authority, the agent will generally be held liable.

## **Legal principles of Agency relationship**

1. Universal agents hold broad authority to act on behalf of the principal, e.g. they may hold a power of attorney also known as a mandate in civil law jurisdictions or have a professional relationship, say, as lawyer and client.
2. General agents hold a more limited authority to conduct a series of transactions over a continuous period of time; and
3. Special agents are authorized to conduct either only a single transaction or a specified series of transactions over a limited period of time.

An agent who acts within the scope of authority conferred by his or her principal binds the principal in the obligations he or she creates against third parties. There are essentially three kinds of authority recognized in the law: actual authority (whether express or implied), apparent authority, and ratified authority.

### **Actual authority**

Actual authority can be of two kinds. Either the principal may have expressly conferred authority on the agent, or authority may be implied. Authority arises by consensual agreement, and whether it exists is a question of fact. An agent, as a general rule, is only entitled to indemnity from the principal if he or she has acted within the scope of her actual authority, and may be in breach of contract, and liable to a third party for breach of the implied warranty of authority. In tort, a claimant may not recover from the principal unless the agent is acting within the scope of employment.

### **Express actual authority**

Express actual authority means an agent has been expressly told he or she may act on behalf of a principal.

### **Implied actual authority**

Implied actual authority, also called "usual authority", is authority an agent has by virtue of being reasonably necessary to carry out his express authority. As such, it can be inferred by virtue of a position held by an agent. For example, partners have authority to bind the other partners in the firm, their liability being joint and several, and in a corporation, all executives and senior employees with decision-making authority by virtue of their position have authority to bind the corporation. Other forms of implied actual authority include customary authority. This is where

customs of a trade imply the agent to have certain powers. Wool buying industries it is customary for traders to purchase in their own names. Also incidental authority, where an agent is supposed to have any authority to complete other task which is necessary and incidental to completing the express actual authority. This must be no more than necessary

### **Apparent authority**

Apparent authority also called ostensible authority exists where the principal's words or conduct would lead a reasonable person in the third party's position to believe that the agent was authorized to act, even if the principal and the purported agent had never discussed such a relationship. For example, where one person appoints a person to a position which carries with it agency-like powers, those who know of the appointment are entitled to assume that there is apparent authority to do the things ordinarily entrusted to one occupying such a position. If a principal creates the impression that an agent is authorized but there is no actual authority, third parties are protected so long as they have acted reasonably. This is sometimes termed agency by estoppel" or the doctrine of holding out, where the principal will be estopped from denying the grant of authority if third parties have changed their positions to their detriment in reliance on the representations made.

Rama Corporation Ltd v Proved Tin and General Investments Ltd 1952 2 QB 147, Slade J, Ostensible or apparent authority... is merely a form of estoppel, indeed, it has been termed agency by estoppel and you cannot call in aid an estoppel unless you have three ingredients:

(i) a representation, ii reliance on the representation, and (iii) an alteration of your position resulting from such reliance." *Watteau v Fenwick in the UK*

### **Liability of agent to third party**

If the agent has actual or apparent authority, the agent will not be liable for acts performed within the scope of such authority, so long as the relationship of the agency and the identity of the principal have been disclosed. When the agency is undisclosed or partially disclosed, however, both the agent and the principal are liable. Where the principal is not bound because the agent has no actual or apparent authority, the purported agent is liable to the third party for breach of the implied warranty of.

## **Liability of agent to principal**

If the agent has acted without actual authority, but the principal is nevertheless bound because the agent had apparent authority, the agent is liable to indemnify the principal for any resulting loss or damage.

## **Liability of principal to agent**

If the agent has acted within the scope of the actual authority given, the principal must indemnify the agent for payments made during the course of the relationship whether the expenditure was expressly authorized or merely necessary in promoting the principal's business.

## **Duties of agent to principal**

An agent owes the principal a number of duties. These include: a duty to undertake the task or tasks specified by the terms of the agency; a duty to discharge his duties with care and due diligence; An agent must not accept any new obligations that are inconsistent with the duties owed to the principal. An agent can represent the interests of more than one principal, conflicting or potentially conflicting, only after full disclosure and consent of the principal. An agent must not usurp an opportunity from the principal by taking it for himself or passing it on to a third party.

In return, the principal must make a full disclosure of all information relevant to the transactions that the agent is authorized to negotiate.

## **TERMINATION OF AGENCY**

Mutual agreement also through the principal responding his authority. Through renouncing when agent himself stop being an agent. when principal revoke.

The internal agency relationship may be dissolved by agreement. Under sections 201 to 210 of the [Indian Contract Act 1872](#), an agency may come to an end in a variety of ways:

1. Withdrawal by the agent – however, the principal cannot revoke an agency coupled with interest to the prejudice of such interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, e.g., where the goods are consigned by an upcountry constituent to a commission agent for sale, with power to recoup himself from the sale

proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold and debts satisfied, nor is the agency terminated by death or insanity.

2. By the agent renouncing the business of agency;
3. By discharge of the contractual agency obligations.

Alternatively, agency may be terminated by operation of law:

1. By the death of either party;
2. By the insanity of either party;
3. By the bankruptcy insolvency of either party;

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal s. 204, though he can always do so, before such authority has been so exercised s. 203. Further, under s. 205, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill, continuous disobedience of lawful orders, and rude or insulting behavior has been held to be sufficient cause for dismissal of an agent. Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid s. 206. Under s. 207, the revocation or renunciation of an agency may be made expressly or implicitly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them s. 208. When an agent's authority is terminated, it operates as a termination of subagent also s. 210

## **Partnerships and Companies**

This has become a more difficult area as states are not consistent on the nature of a partnership. Some states opt for the partnership as no more than an aggregate of the natural persons who have joined the firm. Others treat the partnership as a business entity and, like a corporation, vest the partnership with a separate legal personality. Hence, for example, in English law, a partner is the agent of the other partners whereas, in Scots law where there is a separate personality, a partner is the agent of the partnership. This form of agency is inherent in the status of a partner and does not arise out of a contract of agency with a principal. The English Partnership Act 1890 provides that a partner who acts within the scope of his actual authority

express or implied will bind the partnership when he does anything in the ordinary course of carrying on partnership business. Even if that implied authority has been revoked or limited, the partner will have apparent authority unless the third party knows that the authority has been compromised. Hence, if the partnership wishes to limit any partner's authority, it must give express notice of the limitation to the world. However, there would be little substantive difference if English law was amended:<sup>[10]</sup> partners will bind the partnership rather than their fellow partners individually. For these purposes, the knowledge of the partner acting will be imputed to the other partners or the firm if a separate personality. The other partners or the firm are the principal and third parties are entitled to assume that the principal has been informed of all relevant information. This causes problems when one partner acts fraudulently or negligently and causes loss to clients of the firm. In most states, a distinction is drawn between knowledge of the firm's general business activities and the confidential affairs as they affect one client. Thus, there is no imputation if the partner is acting against the interests of the firm as a fraud. There is more likely to be liability in tort if the partnership benefited by receiving fee income for the work negligently performed, even if only as an aspect of the standard provisions of vicarious liability. Whether the injured party wishes to sue the partnership or the individual partners is usually a matter for the plaintiff since, in most jurisdictions, their liability is joint and several.

An agent in commercial law also referred to as a manager, is a person who is authorized to act on behalf of another called the principal or client to create a legal relationship with a third party. Real estate transactions refer to real estate brokerage, and mortgage brokerage. In real estate brokerage, the buyers or sellers are the principals themselves and the broker or his salesperson who represents each principal is his agent.

## **4.0 SUMMARY**

The principal and agent theory emerged in the 1970s from the combined disciplines of economics and institutional theory. There is some contention as to who originated the theory, with theorists Stephen Ross and Barry Mitnick claiming its authorship. Ross is said to have originally described the dilemma in terms of a person choosing a flavor of ice-cream for someone whose tastes he does not know. The most cited reference to the theory, however, comes from Michael C. Jensen and William Meckling. The theory has come to extend well beyond economics or institutional studies to all contexts of information asymmetry, uncertainty and risk. In the context of law, principals do not know enough about whether or to what extent a contract has been satisfied, and they end up with agency costs. The



solution to this information problem closely related to the moral hazard problem is to ensure the provision of appropriate incentives so agents act in the way principals wish.

In terms of game theory, it involves changing the rules of the game so that the self-interested rational choices of the agent coincide with what the principal desires. Even in the limited arena of employment contracts, the difficulty of doing this in practice is reflected in a multitude of compensation mechanisms and supervisory schemes, as well as in critique of such mechanisms as e.g., Deming, 1986 expresses in his Seven Deadly Diseases of management.

## **5.0 CONCLUSION**

Mutual agreement also through the principal responding his authority. Through renouncing when agent hm self stop being an agent.when principal revoke. The internal agency relationship may be dissolved by agreement. Under sections 201 to 210 of the Indian Contract Act 1872, an agency may come to an end in a variety of ways:

1. Withdrawal by the agent – however, the principal cannot revoke an agency coupled with interest to the prejudice of such interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, e.g., where the goods are consigned by an upcountry constituent to a commission agent for sale, with poor to recoup himself from the sale proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold and debts satisfied, nor is the agency terminated by death or insanity;
2. By the agent renouncing the business of agency;
3. By discharge of the contractual agency obligations.

Alternatively, agency may be terminated by operation of law:

1. By the death of either party;
2. By the insanity of either party;
3. By the bankruptcy (insolvency) of either party;

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal, though he can always do so, before such authority has been so exercised. Further, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient

cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill, continuous disobedience of lawful orders, and rude or insulting behavior has been held to be sufficient cause for dismissal of an agent. Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid. Under s. 207, the revocation or renunciation of an agency may be made expressly or implicitly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them.

## **6.0 TUTOR MARKED ASSIGNMENT**

**Discuss** the relationship of principal and agent. What the obligation of each to the other.

## **7.0 REFERENCES/ FURTHER READING**

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## **Unit 4 : COOPERATIVE LAW**

### **1.0 INTRODUCTION**

The Law on Cooperatives was adopted in May 1988 to offer greater clarity about the direction of private economic activity during the early period of perestroika. This was necessitated by the fact that the earlier Law on Individual Labor Activity, which went into effect in May 1987 as the first step toward creating a legal private sector, was ambiguous as well as limited in its provisions for privatization. Private economic activity, embodied in organizations called "cooperatives," quickly evolved beyond the provisions of the 1987 Law, and the new Law was intended to reflect the reality of the growing cooperative movement.

In general, the Law liberalized the way in which cooperatives operated. The legal basis for private enterprise was changed, and cooperatives were accorded the status of "basic units" in the economy and were thus placed on an equal footing with state enterprises. No longer was the size of a cooperative or the amount of its assets limited. Cooperatives could now engage in any economic activity, except for those prohibited by law. Financial arrangements also moved in a new direction. Shares in a business could be issued. There was no limit on income, the size of which could be based either on one's financial contribution to the cooperative or on the amount of work one performed there. Cooperatives still had to be registered by local authorities, but these administrative organs no longer had the right of approval or disapproval of its activities. Cooperatives were made formally independent of the state sector, and the latter was forbidden to give compulsory state orders to cooperatives. Cooperatives were given the right to form joint ventures with foreign companies. In essence, the Law made cooperatives indistinguishable from capitalist enterprises.

## **2.0 OBJECTIVE:**

At the end of the units you should be able to

- \*The meaning of cooperative law
- \* The requirements to form cooperative society
- \*Types of cooperative society in Nigeria

## **3.0 MAINCONTENT**

A cooperative in its simplest sense is formed when individuals organize together around a common, usually economic, goal. For business purposes, a cooperative refers to the creation of a nonprofit enterprise for the benefit of those individuals using its services. According to the National Association of Business Cooperatives, roughly 100 million Americans belong to one of the 47,000 existing cooperatives. Of these cooperatives, 10,500 credit unions make up the largest segment. Other types of goods and services that can be provided by working under cooperative principles include agricultural products, utilities, child care/preschools, insurance, health care, legal services, food, equipment, and employment services,

The Law on Cooperatives was a major economic reform implemented in the Union of Soviet Socialist Republics during General Secretary Mikhail Gorbachev's perestroika and glasnost reforms. It was implemented in May of 1988, allowed for independent worker-owned cooperatives to operate in the Soviet Union, as opposed to just state-owned enterprises, and gave guidelines as to how these cooperatives should be managed. While originally the law imposed high taxes and restrictions on employment, it was eventually revised so as not to discourage activity within the private sector. The modern cooperative dates back to 1844, when the Rochdale Equitable Pioneers Society was established in Great Britain. According to the National Rural Electric Cooperative Association, the Rochdale Principles are still followed by every cooperative business. First is the principle of a voluntary and open membership. Cooperatives are open to all individuals who are able to use their services and are willing to accept the responsibilities of membership.

The next principle is that of a democratic organization, operated by its members. The board of directors is comprised of members and is accountable to them. Members actively participate in the co-op by developing policy and making decisions. In a primary cooperative, each member has one vote. Other cooperatives are organized in a different but democratic manner. Members also contribute equally to the economic capital of the cooperative. Part, if not all, of the capital becomes the common property of the collective. Surpluses can be used for development of the organization, as reserves, to benefit members according to their use of or contributions to the cooperative, or to support other member-approved works.

A cooperative is autonomous and independent from other organizations. If it enters into a working relationship with another organization, the arrangement must ensure the democratic control of its members and maintain the independence of the organization. Cooperatives provide training and education to members and employees of the organization in order for them to contribute effectively to the cooperative. They also provide information on the benefits of cooperation to the public. Cooperatives work with other cooperatives in order to strengthen the cooperative movement locally and abroad. Although cooperatives exist for the benefit of their members, they work towards the sustainable development of their communities in accordance with membership policies.

The basic operating principles used by cooperatives are simple. The member-owners share equally in the control of their cooperative. They meet on a regular basis, monitor the business closely using a variety of tools, and elect a board of directors from among themselves. The board in turn hires managers to oversee the daily affairs of the cooperative in a way that serves the members' interests. The initial capital for a cooperative comes from membership investment. After the cooperative's costs are covered and money is designated for operations and improvements to the cooperative, the remaining surplus or profit in a for-profit enterprise is returned to the membership. For a small business, membership in a cooperative may provide greater purchasing power or access to a wider distribution of goods or services than the business would have on its own.

A related concept is that of a collective. A collective is comprised of a group of individuals pooling together their intellectual and financial resources in order to operate a business enterprise for their mutual benefit. Frequently, members have no specific job but rather contribute to projects if they have free time or specific strengths to add to a job. Members of the collective share equally in any monies left over after paying bills. This alternative method of working has lately found

favor with creative businesses such as advertising and design groups. Collectives may remain intact or be of a more fluid nature with members joining and dropping out regularly.

### **The nature of cooperative society**

The nature and functions of cooperatives differ considerably such as purchasing cooperatives, consumer cooperatives, and marketing cooperatives. In the context of agriculture, a farmers' cooperative refers to an organization of farmers residing in the same locale that is established for their mutual benefit in regard to the cultivation and harvest of their products, the purchase of farm equipment and supplies at the lowest possible cost, and the sale of their products at the maximum possible price.

The term *cooperative* also signifies the ownership of an apartment building by a nonprofit corporation that holds title to it and the property upon which it is situated. Stock in the corporation is allotted among the apartment units on the basis of their relative value or size. The right of occupancy to a particular apartment is granted to each cooperative member, who purchases the shares assigned to the desired unit. The member subsequently receives a long-term proprietary lease to that unit. The rent payable pursuant to the lease is that member's proportionate share of the expenses the corporation incurs in operating the cooperative such as insurance, taxes, maintenance, management, and debt service. The cooperative concept evolved in New York City during the early 1900s as a mode of accommodating the public's desire for home ownership; it subsequently expanded to other large urban centers.

In order to finance the purchase or construction of the cooperative building, the cooperative places a blanket mortgage on the property, which is pledged to support the given debt. Lenders usually are hesitant to accept an individual member's stock and proprietary lease as security for a long-term loan. The members' lien a claim on property to satisfy a debt on the lease would be subordinate to the blanket mortgage on the property. The purchaser of a cooperative apartment usually must have sufficient cash available to pay for the stock allotted to the unit he or she wishes to obtain. The initial price of the stock generally does not exceed the amount required for a down payment on a single-family residence. As cooperative members accumulate Equity the value of property exceeding the total debts on it in their stock, subsequent purchasers must either have a substantial amount of cash available or locate a seller who is willing to recoup the equity in installments over several years.

Cooperative members are also financially dependent on each other. The existence of a single blanket mortgage paid by rent receipts means that if several members default in their rent payments, the corporation might not have sufficient funds to pay a mortgage loan instalment. Foreclosure will ensue in regard to the entire membership unless it acts to satisfy the default. Although special reserves and assessments are generally employed to cover such a contingency, the available funds might be inadequate to prevent default.

### **The Structure of Cooperative organization**

1. General Assembly Election Committee Audit/Supervisory Committee Board of Directors Management Staff Election and Training Committee Ethics Committee Mediation & Conciliation Committee Secretary Treasurer .

Most businesses, such as sole proprietorships, limited liability companies and corporations, have a hierarchical leadership structure. In contrast, a cooperative organization has a much more democratic structure. Members of the cooperative can vote on the group's mission statement, its business methods and even its formal structure. Some cooperative groups may choose to have a centralized core of decision makers, while others may take the option of a looser alliance of individuals or member firms.

### **Centralized Cooperative Structures**

A local cooperative is made up of individual producers who work together to achieve common goals. Many small family farms and other agricultural companies form local cooperatives to pool resources and share knowledge. When several local cooperatives unite under the same offices, the group becomes a federated cooperative, with a central office overseeing the operations of each member cooperative. Members of a mixed cooperative can be either individual producers or member cooperative group.

### **Subsidiary Cooperative Structures**

Not all members of a cooperative organization are either individual producers or other cooperatives. Some cooperatives employ subsidiary companies to perform tasks that would normally fall under the central cooperative's office. These subsidiary companies are either partially or totally owned by the cooperative. For instance, the parent cooperative may choose to acquire an accounting firm to perform financial tasks for the entire cooperative, rather than hiring an outside firm, and include that firm within its existing structure.

## **Joint Cooperative Ventures**

A cooperative organization may choose to work with another cooperative, commercial firm or individual on a specific project. For the duration of the project, the other entity does not need to join the cooperative. Instead, these joint ventures allow the entities to remain separate while working together on a common goal. This arrangement allows the cooperative to take advantage of the partner's resources, while it maintains its democratic structure.

## **New Cooperative Structures**

Due to the evolution of agricultural industrialization, many local cooperatives are taking on new structural models. Many cooperatives are changing from their original model of mutual benefit to an investor-driven, for-profit model. This change often involves the conversion of member-owner rights into common stock shareholder rights. Some organizations in other industries, including the financial, insurance and professional service arenas, have moved away from the cooperative model and converted to publicly traded companies to attract investor capital.

Cooperatives are business entities owned by the purchasers of their products and users of their services. These organizations provide electricity, home and car loans (credit unions), health care, housing and insurance mutual insurance companies, sell consumer and farm products and equipment and help producers market their wares. They also exist locally and nationwide. Cooperatives model their structure after corporations with most, but not all, choosing to incorporate. However, the rights and responsibilities of the participants reflect the member-centered nature of cooperatives.

## **Membership**

Normally, a person joins by buying goods and services rather than investing in the entity; some cooperatives accept members who purchase stock in the entity. Members vote for the board of directors; each member gets a single vote, while a shareholder in a typical corporation gets one vote for each share they own. Cooperatives pay out profits to the members in the form of patronage, also known as refunds; the amount is in proportion to his purchases from the cooperative. When the cooperative dissolves, the members share in the property remaining after the cooperative pays its creditors.

## **Directors**



The directors oversee the operation of the cooperative. The board sets the cooperative's policies, which include how people become members of the cooperative and how money is spent, and decide when members receive patronage and how much. Directors are responsible for acquiring land, buildings and other property. They represent the members and must assess their needs and the cooperative's ability to meet them. Managers and officers are selected by the board to carry out the strategies and plans of the cooperative.

## Officers

As in typical corporations, the board of directors choose officers. The president presides at meetings of directors and members, oversees the entity's affairs and is an intermediary between the board and the professional managers; the vice president assumes these duties if the president not be available. The secretary keeps records of the cooperative's meetings, actions and members and has custody of the bylaws, which functions as the cooperative's operating manual. The treasurer accounts for the entity's income and outflow of money.

## Managers

The board of directors selects a professional manager to carry out its plans and policies. The manager oversees the cooperative's daily operations; this includes hiring, training and supervising employees; assuring adequate inventory for stores and the proper workings of physical facilities and equipment; and interacting with new and prospective members. The manager must educate herself on developments and changes in laws and regulations that affect the cooperative.

The International Cooperative Alliance defines a **cooperative** also known as **co-operative**, **co-op**, or **coop** as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. Cooperatives may include:

- non-profit community organizations
- businesses owned and managed by the people who use their services a consumer cooperative
- organisations managed by the people who work there (worker cooperatives
- organisations managed by the people to whom they provide accommodation housing cooperatives
- hybrids such as worker cooperatives that are also consumer cooperatives or credit unions

- multi-stakeholder cooperatives such as those that bring together civil society and local actors to deliver community needs
- second- and third-tier cooperatives whose members are other cooperatives.

## **TYPES OF COOPERATIVE SOCIETIES IN NIGERIA**

In Africa, the first cooperatives appeared at the beginning of the 20th century. It happened because the colonial administration intended to establish contacts with the local population through cooperation. The development of cooperative society in Nigeria has been slow and difficult. This can be explained by the following factors. The first is that cooperatives were allowed to operate only in the status approved by the colonial power. Any deviation from the existing order was impossible. Such cooperatives were short-lived due to their weak material base.

The second, large landowners, tribal chiefs, and community leaders looked towards the emergence of cooperatives involving the poor. They knew that this kind of cooperation will spur the organized struggle of the peasants against the exploiters. These factors explain why, in the colonial period, the idea of cooperation was spreading very slowly. The first attempts to create different types of cooperative society in Nigeria were aimed at the peasants. For example, agrarian cooperative society in the city of Ibadan (1904), the cooperation of growers Agege (1907), and the Association of farmers, EGBA (1910). These cooperative societies appeared in the region of cocoa cultivation and regardless of state support.

The sharp economic decline has become a reason for the appearance of the new types of cooperatives. The idea was to provide financial assistance for the under-privileged. So that they could afford to buy essential things and get basic needs. First of all, it should be mentioned that Nigerians can't meet all their demands. It is obvious, as the majority of people live at a level less than the federal poverty line. Everyone understands it is impossible to obtain any property with cash wages of less than \$1 per day. That's why the community strives to organize different forms and types of cooperatives in Nigeria.

A cooperative is a private business organization that is owned and controlled by the people who use its products, supplies or services. Although cooperatives vary in types and membership size, all were formed to meet the specific objectives of the members, and are structured to adapt to a member's changing needs.

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### **1.Consumer cooperatives:**

Its role is to provide affordable price for goods and services which are essential for the overwhelming majority of people. It is crucially important in the case of domestic commodity shortage.

### **2. Credit cooperatives**

Such cooperatives exist for providing savings and loan services to its members. There are such advantages as: convenient collateral for loans, low-interest rates on issued loans, high speed of decision-making on granting of the required amount of money, the minimum difference between interest on deposits and loans.

### **3.Agricultural/Farmers' cooperatives**

In Nigeria, the agricultural sector is the main sphere of production. It involves the overwhelming mass of the population (about 43% of the working population). However, the low level of development of productive forces and the predominance of traditional low-productivity types of farming make this industry the most deprived in the structure of the national economy.

The ability of the agricultural sector to play its traditional role in the economy of Nigeria was limited by various socio-economic and structural factors, since independence in 1960. Some of which included the civil war in the late 60s, a severe drought in the early 70s and 80s, as well as the discovery of oil deposits. The oil boom in the 70s created a relative loss of interest in agriculture in comparison to other sectors of the economy. Nevertheless, oil prices in the 80s fell to some extent, refreshing the interest in the agricultural sector.

This type of cooperatives is the most popular among Nigerians. World practice shows that development of agriculture is largely determined by the use of the benefits of farmers' cooperative society. The development of a system of agricultural cooperation is the question of social, political, and economic importance.

#### 4. Housing cooperatives

It is a cooperative where every member can buy a piece of land, take part in building houses, and make investments on a profitable basis in real estate business.

#### 4. Fishing cooperatives

These kinds of cooperatives also still exist. They are usually organized for providing either fresh or processed fish products. There is even a special discount for its members for buying nets and gears. The fact that the prices are reasonable is why it is easy to get into this kind of cooperation.

#### 5. Multipurpose cooperatives

Cooperation has an important role to play in the economic system for the efficient development of any industry in Nigeria. It best combines the personal, collective, and public interests. Its role and importance have considerably increased. More people are paying attention to cooperation, seeing in it the possibility of surviving despite the difficult economic situation. Potential advantages and disadvantages of cooperative society in Nigeria are as follows:

- The cooperative movement is able to concentrate the employment, logistical, financial, and other resources for effective use.
- Due to this cooperation business abilities of the members are increasing: the social and economic conditions of their lives and the rural population are improving as a whole.
- Cooperation provides a more sensitive reaction to market fluctuations. However, in cooperative groups, it is easy to achieve a rational use of local, natural and economic resources.

Under ideal conditions, the presence of multipurpose cooperative society traditions is an important part of the successful implementation of the cooperative; goals. Cooperation, in our opinion, will play a crucial role in promoting the process of

development and togetherness. It also leads us on an important direction of industrialization of the economy which will aid our developing country.

## **RESPONSIBILITIES, POWERS AND FUNCTIONS OF BOARD OF DIRECTORS:**

The board of directors of a listed company shall exercise its powers and carry out its fiduciary duties with a sense of objective judgment and independence in the best interests of the listed company. The board of directors of a listed company shall ensure that:

(a) professional standards and corporate values are put in place that promote integrity for the board, senior management and other employees in the form of a Code of Conduct, defining therein acceptable and unacceptable behaviors. The board shall take appropriate steps to disseminate Code of Conduct throughout the company along with supporting policies and procedures and these shall be put on the company's website;

(b) adequate systems and controls are in place for identification and redress of grievances arising from unethical practices.

(c) a vision and/or mission statement and overall corporate strategy for the listed company is prepared and adopted. It shall further ensure that significant policies have been formulated;

A complete record of particulars of the significant policies along with the dates on which they were approved or amended by the board of directors shall be maintained.

(d) a system of sound internal control is established, which is effectively implemented and maintained at all levels within the company;

(e) within two years of coming into force of this Code, a mechanism is put in place for an annual evaluation of the board's own performance;

(f) the decisions on the following material transactions or significant matters are documented by a resolution passed at a meeting of the board:

- investment and disinvestment of funds where the maturity period of such investments is six months or more, except in the case of banking companies, non-banking finance companies and insurance companies;

- determination of the nature of loans and advances made by the listed company and fixing a monetary limit thereof.

(g) the board of directors shall define the level of materiality, keeping in view the specific circumstances of the company and the recommendations of any technical or executive subcommittee of the board that may be set up for the purpose.

The legal responsibilities of boards and board members vary with the nature of the organization, and with the jurisdiction within which it operates. For companies with publicly trading stock, these responsibilities are typically much more rigorous and complex than for those of other types.

Typically the board chooses one of its members to be the chairman, who holds whatever title is specified in the bylaws. The Chairman and the Chief Executive Officer (CEO) shall not be the same person. The Chairman shall be elected from among the non-executive directors of the listed company. The Chairman shall be responsible for leadership of the board and shall ensure that the board plays an effective role in fulfilling all its responsibilities. The Board of Directors shall clearly define the respective roles and responsibilities of the Chairman and CEO.

The board of directors, including the general manager or chief executive officer, has very defined roles and responsibilities within the business organization. Essentially it is the role of the board of directors to hire the CEO or general manager of the business and assess the overall direction and strategy of the business. The CEO or general manager is responsible for hiring all of the other employees and overseeing the day-to-day operation of the business. Problems usually arise when these guidelines are not followed. Conflict occurs when the directors begin to meddle in the day-to-day operation of the business. Conversely, management is not responsible for the overall policy decisions of the business.

The board of directors selects officers for the board. The major office is the president or chair of the board. Next there is a vice-president or vice-chair who serves in the absence of the president. These positions are filled by board members. Next you usually have a secretary and treasurer or combined secretary/treasurer. These positions focus on very specific activities and may be filled by electing someone who is serving on the board of directors or appointing someone who is not a member of the board of directors. The selection process is often based on who is willing and who is the most qualified, although seniority may come into play. Each board may have their own ways of handling those issues.

The seven points below outline the major responsibilities of the board of directors.

1. Recruit, supervise, retain, evaluate and compensate the manager. Recruiting, supervising, retaining, evaluating and compensating the CEO or general manager are probably the most important functions of the board of directors. Value-added business boards need to aggressively search for the best possible candidate for this position. Actively searching within your industry can lead to the identification of very capable people. Don't fall into the trap of hiring someone to manage the business because he/she is out of work and needs a job. Another major error of value-added businesses is under-compensating the manager. Managerial compensation can provide a good financial payoff in terms of attracting top candidates who will bring financial success to the value-added business.

2. Provide direction for the organization. The board has a strategic function in providing the vision, mission and goals of the organization. These are often determined in combination with the CEO or general manager of the business.

3) Establish a policy based governance system. The board has the responsibility of developing a governance system for the business. The articles of governance provide a framework but the board develops a series of policies. This refers to the board as a group and focuses on defining the rules of the group and how it will function. In a sense, it's no different than a club. The rules that the board establishes for the company should be policy based. In other words, the board develops policies to guide its own actions and the actions of the manager. The policies should be broad and not rigidly defined as to allow the board and manager leeway in achieving the goals of the business.

4. Govern the organization and the relationship with the CEO. Another responsibility of the board is to develop a governance system. The governance system involves how the board interacts with the general manager or CEO. Periodically the board interacts with the CEO during meetings of the board of directors. Typically that is done with a monthly board meeting, although some boards have switched to meetings three to four times a year, or maybe eight times a year. In the interim between these meetings, the board is kept informed through phone conferences or postal mail.

5. Fiduciary duty to protect the organization's assets and member's investment. The board has a fiduciary responsibility to represent and protect the member's/investor's interest in the company. So the board has to make sure the assets of the company are kept in good order. This includes the company's plant,

equipment and facilities, including the human capital people who work for the company.

6. Monitor and control function. The board of directors has a monitoring and control function. The board is in charge of the auditing process and hires the auditor. It is in charge of making sure the audit is done in a timely manner each year.

An annual general meeting, also known as the **annual meeting** is a meeting of the general membership of an organization. These organizations include membership associations and companies with shareholders. These meetings may be required by law or by the constitution, charter, or by-laws governing the body. The meetings are held to conduct business on behalf of the organization or company. An organization may conduct its business at the annual general meeting. The business may include electing a board of directors, making important decisions regarding the organization, and informing the members of previous and future activities. At this meeting, the shareholders and partners may receive copies of the company's accounts, review fiscal information for the past year, and ask any questions regarding the directions the business will take in the future.

At the annual general meeting, the president or chairman of the organization presides over the meeting and may give an overall status of the organization. The secretary prepares the minutes and may be asked to read important papers. The treasurer may present a financial report. Other officers, the board of directors, and committees may give their reports. Attending this meeting are the members or the shareholders of the organization, depending on the type of organization.

Working or acting together willingly for a common purpose or benefit.

demonstrating a willingness to cooperate : The librarian was cooperative in helping us find the book. pertaining to economic cooperation : a cooperative business. involving or denoting an educational program comprising both classroom study and on-the-job or technical training, especially in colleges and universities. a jointly owned enterprise engaging in the production or distribution of goods or the supplying of services, operated by its members for their mutual benefit, typically organized by consumers or farmers. a building owned and managed by a corporation in which shares are sold, entitling the shareholders to occupy individual units in the building. an apartment in such a building.



A sole proprietorship is easy to form and gives you complete control of your business. You're automatically considered to be a sole proprietorship if you do business activities but don't register as any other kind of business. Sole proprietorships do not produce a separate business entity. This means your business assets and liabilities are not separate from your personal assets and liabilities. You can be held personally liable for the debts and obligations of the business. Sole proprietors are still able to get a trade name. It can also be hard to raise money because you can't sell stock, and banks are hesitant to lend to sole proprietorships. Sole proprietorships can be a good choice for low-risk businesses and owners who want to test their business idea before forming a more formal business

Partnerships are the simplest structure for two or more people to own a business together. There are two common kinds of partnerships: limited partnerships and limited liability partnerships. Limited partnerships have only one general partner with unlimited liability, and all other partners have limited liability. The partners with limited liability also tend to have limited control over the company, which is documented in a partnership agreement. Profits are passed through to personal tax returns, and the general partner the partner without limited liability must also pay self-employment taxes.

Limited liability partnerships are similar to limited partnerships, but give limited liability to every owner. An LLP protects each partner from debts against the partnership, they won't be responsible for the actions of other partners. Partnerships can be a good choice for businesses with multiple owners, professional groups like attorneys, and groups who want to test their business idea before forming a more formal business.

An LLC lets you take advantage of the benefits of both the corporation and partnership business structures. LLCs protect you from personal liability in most instances, your personal assets — like your vehicle, house, and savings accounts won't be at risk in case your LLC faces bankruptcy or lawsuits.

Co-operatives are businesses owned and run by and for their members. Whether the members are the customers, employees or residents they have an equal say in what the business does and a share in the profits. As businesses driven by values not just profit, co-operatives share internationally agreed principles and act together to build a better world through co-operation. The International Co-operative Alliance is an independent, non-governmental organisation established in

1895 to unite, represent and serve co-operatives worldwide. The Alliance provides a global voice and forum for knowledge, expertise and co-ordinated action for and about co-operatives. In 1995, the Alliance adopted the revised Statement on the Co-operative Identity which contains the definition of a co-operative, the values of co-operatives, and the seven co-operative principles as described below. co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity **and** solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

## **FORMATION OF COOPERATIVE SOCIETY**

According to Section 5 of the law, a cooperative society that is “Subject to provisions of this law, and has as its objects of promotion, the economic interests of its members in accordance with cooperative principles, or a society established for the purpose of facilitating the operations of such societies may be registered under this law with or without Limited Liability.”

Understanding how to register a Cooperative Society is a step in the right direction, especially when you consider that a lot of people have lost their life savings and cash by having business dealings with companies or organisations that are not recognized by law.

A registered cooperative society is a society with its main objects as promotion of economic and social interests of its members by means of common undertaking. A cooperative society operates basing on mutual aid and conforms to cooperative principles; it is established for the purpose of facilitating operations of societies.

In Nigeria, the Cooperative Societies Act provides direction on how cooperatives should be set up and run. These laws are made by the government through the minister responsible for cooperatives. All cooperative societies in Nigeria are registered, with or without limited liability, according to the cooperative society act and related rules. Registration, implementation and enforcement of the act and relate rules is done by a government appointed officer referred to as the Registrar of cooperative societies.

1.Coordinate people to form up a cooperative society. The start-up cooperative members must be at least enough to form a Society Board in a full cooperative; they should therefore not be less than five people;

2. Thereafter, applicants should write a letter to the Province Cooperative Officer (PCO) requesting to be registered as a pre-cooperative society indicating their intention to do so;
3. The members should then arrange for meeting that must be chaired by the Provincial Cooperative Officer (DCO). The meeting is set in order for cooperative members to elect a Formation Board with a Chairman and a Secretary;
4. After election, the Formation Board should decide on the type of society to be formed, prepare by-laws for the society and assess founder members' level of business; look in to the future and estimate number of future members and levels of business to be done by the society in future; carryout a feasibility study and prepare feasibility report; record details of founder members, their share capital and contributions also record details of prospective members, their probable share capital and contributions. at commencement, the formation board should begin to keep accounts to allow periodic assessment of the group's activities; and must appoint a delegate in charge of representing the group in all civil matters
5. When above are completed, members of a group must make an application to the Registrar's representative in the area where the society shall operate. The Registrar's representative may be the District Cooperative Officer at District level or the Assistant Registrar at Regional level.
6. The submitted documents shall then be assessed;
7. After assessment, if the registrar is satisfied, he / she issues a letter of recognition which will allow the group to operate as a pre-cooperative society for three (3) years.
8. During the given three (3) years members of the formed pre-cooperative society must be working hard to fulfill the conditions required to become a full cooperative society. When all requirements are fulfilled at the end of the three years, the society shall then be registered as a full cooperative society however, if at the end of the three (3) years the pre-cooperative society has not fulfilled the conditions, the letter of recognition will be cancelled.
9. Upon full registration, the registrar then issues a Registration Certificate and a Certified Copy of By- laws

## **LAGOS AND THE BENEFITS OF COOPERATIVE SOCIETIES**

According to the International Co-operative Alliance (ICA), a cooperative society is an association of people that come together to pool resources together to engage in business or economic activities for the purpose of improving their welfare. The cooperative movement began in Europe in the 19th century, primarily in Britain and France. Robert Owen (1771–1858), a Welshman who made his fortune in the cotton trade, is considered as the father of the cooperative movement. In Nigeria, the history of cooperative movement dates back to the 1930s. The most prevalent of such institution is the credit organization known in English as the ‘Contribution Society’ but which, according to variations in language, has diverse terms such as ‘Adashi’ ‘Esusu’ or ‘Ajo’ and ‘Isusu’.

In 1935, the Nigeria cooperative society ordinance was enacted via the recommendation of Mr. C. F. Strickland which was fashioned out of the India cooperation society’s Act of 1912. The ordinance provided for recognition of cooperative as a separate business enterprise, prohibition of the indiscriminate use of the title ‘cooperative’ and appointment of a registrar of cooperative to control and administer cooperative laws and fostering of cooperative development. Without gainsaying, cooperatives are the forerunners of modern sustainability as displayed in their age-long principles. Cooperative enterprises have made positive contributions to sustainability through their ability to utilize the dynamics of human and natural resources within a given community for the benefit of such community and beyond.

Over the years, cooperative societies have clearly demonstrated that they are key actors to redefine the sustainable development models prioritizing social equity. The cooperative formula is seen as a solution that is not only durable but contemporary, resilient and relevant, and therefore significant in establishing a more solid economic development through their ethic economy, defense of the collective interest and the democratization of the entrepreneurial sector.

Cooperatives have a proven record of creating and sustaining employment also they help to improve the living and working conditions of women and men globally, make essential infrastructure and services available even in areas neglected by the state and by investor-driven enterprises.

Cooperative societies help members to develop a savings culture. Nobody can escape poverty without a savings habit. Anyone that spends everything on consumption is just a step away from poverty. Saving is made relatively easy with

cooperatives because every member must contribute regularly without default. In most private and public organisations, such contribution is usually deducted directly from members' income. So, irrespective of their needs, they are made to save as an obligation.

Cooperatives also offer members access to loans either in cash or in the form of goods. As it is difficult for a camel to pass through the eye of a needle, so it is for the average individual to get loan from banks. For low income earners, it is even worse, because they don't have collateral. Even for those that can meet the conditions for bank loans, the loan may not come promptly as needed. But as a member of a cooperative, loan can be accessed promptly as your contributions serve as collateral while fellow contributors are accepted as guarantors. Also, the interest rate and repayment terms are not crushing as that of the banks. This easy access to loans has helped many people achieve improved welfare.

In many countries, political, economic and social changes have put pressure on governments to limit their involvement in economic and social affairs. The core idea of structural adjustment programs is a shift from public to private initiative, financing, management and responsibility.

The cooperative model of joint ownership and management is, therefore, increasingly being used by employees to buy out their own enterprises in the transport, service and manufacturing sectors, as a means of protecting and generating jobs in an era of continued downsizing resulting from globalization and technological changes.

It is in order to draw wider attention to the immeasurable benefits of cooperatives that the International Cooperative Day is observed on the first Saturday of July every year as established by the International Cooperative Alliance (ICA) and embraced by the United Nations (UN). The International Day aims to strengthen and extend partnerships between the International Co-operative Movement and other actors, including governments, at local, national and international levels.

In Lagos State, the number of registered Cooperative Societies has grown from one hundred and eight (108) from 1967 to well over fifteen thousand (15,000) with a net asset of N70, 731,066,384.90k (Seventy billion, seven hundred and thirty-one million, sixty-six thousand, three hundred and eighty-four naira and ninety kobo) according to the mid-year report of the Cooperative Department for year 2016. Aside this impressive financial profile, the Cooperative Movement in Lagos has been consistently supporting the state government's policies and programmes in

the areas of public transportation, job creation, housing and infrastructure provision.

In reciprocating these contributions, the state government has continued to provide the enabling environment for profitable investment of cooperative funds. The Cooperative Arbitration Panel and other advisory units of government have also been providing succor and financial security to the Cooperative Movement in this regard. One of the major reasons why the State Government established the State Cooperative College at Oko-Oba, Agege is to encourage the act of cooperation and increase the knowledge and skill of cooperative toward reducing fraud and conflict within Cooperative Societies in Lagos State. The College has trained over 5,516 cooperators in the last four year.

However, though lots of people have heard about cooperatives, it is just a few that are actually exploring the enormous opportunities they present. Even governments at all levels are yet to really comprehend how useful cooperative societies can be, particularly in stamping out poverty and improving welfare of the citizens. When wholly utilized, cooperatives can boost job creation as well as national productivity.

In our clime, cooperative societies remain one of the most potent channels of investment accessible to salary earners and other low income earners. As various homes contend with the reality of our nation's dwindling economic fortune, now is the time for Nigerians to avail themselves of the immense benefits of cooperatives.

## **5.0 SUMMARY**

To register a cooperative, it is necessary to prepare a package of documents, including:

Protocol on the creation of a cooperative, a list of its members, management bodies, and statutes;

A copy of the passport and tax number of the head, officials and / or founders of the cooperative;

If the founder is a legal entity, then additional documents will be required to confirm the eligibility of the authorized founder members to sign the necessary documents. For example, the decision of the general meeting on the establishment of a cooperative legal entity, a copy of the charter, the order to appoint a director of a legal entity. Specification of the necessary documents will be determined by the

specialists in each case. The registration algorithm of a cooperative is identical to the registration procedure of enterprises - documents can be submitted in paper or electronic form, they are compiled in the state language. The decision to register a cooperative is made within 24 hours after receiving the documents, excluding weekends and holidays.

Non-profitable status can be obtained by all cooperatives, if: activity is not for the sake of profit; the charter of the cooperative contains a ban on the distribution of benefits between the founders; provision is made for the transfer of cooperative assets to another cooperative in case of liquidation.

## **5.0 CONCLUSION**

A society is a group of people involved in persistent social interaction, or a large social group sharing the same geographical or social territory, typically subject to the same political authority and dominant cultural expectations. Societies are characterized by patterns of relationships social relations between individuals who share a distinctive culture and institutions; a given society may be described as the sum total of such relationships among its constituent of members. In the social sciences, a larger society often evinces stratification or dominance patterns in subgroups.

Insofar as it is collaborative, a society can enable its members to benefit in ways that would not otherwise be possible on an individual basis; both individual and social (common) benefits can thus be distinguished, or in many cases found to overlap. A society can also consist of like-minded people governed by their own norms and values within a dominant, larger society. This is sometimes referred to as a subculture, a term used extensively within criminology. More broadly, and especially within structuralist thought, a society may be illustrated as an economic, social, industrial or cultural infrastructure, made up of, yet distinct from, a varied collection of individuals. In this regard society can mean the objective relationships people have with the material world and with other people, rather than "other people" beyond the individual and their familiar social environment.

## **6.0 TUTOR-MARKED ASSIGNMENT:**

1. Explain a cooperative society and the organization structure of a cooperative society.

2. What the role of government in cooperative societies in Nigeria?

3. Define cooperative societies and various types of society in Nigeria and explain the role of government to cooperative societies.

## **7.0 REFERENCES/ FURTHER READINGS**

□ <http://soviethistory.msu.edu/1985-2/cooperatives/cooperatives-texts/law-on-cooperatives/>

□ Pike, John (7 September 2011). "Perestroika". *GlobalSecurity.org*. Retrieved 17 March 2015.

## **UNIT 6: LAW OF TORTS**

### **1.0 INTRODUCTION**

A body of rights, obligations, and remedies that is applied by courts in civil proceedings to provide relief for persons who have suffered harm from the wrongful acts of others. The person who sustains injury or suffers pecuniary damage as the result of tortious conduct is known as the plaintiff, and the person who is responsible for inflicting the injury and incurs liability for the damage is known as the defendant or tortfeasor.

Three elements must be established in every tort action. First, the plaintiff must establish that the defendant was under a legal duty to act in a particular fashion. Second, the plaintiff must demonstrate that the defendant breached this duty by failing to conform his or her behavior accordingly. Third, the plaintiff must prove that he suffered injury or loss as a direct result of the defendant's breach.

The law of torts is derived from a combination of common-law principles and legislative enactments. Unlike actions for breach of contract, tort actions are not dependent upon an agreement between the parties to a lawsuit. Unlike criminal



prosecutions, which are brought by the government, tort actions are brought by private citizens. Remedies for tortious acts include money damages and injunctions (court orders compelling or forbidding particular conduct). Tortfeasors are subject to neither fine nor incarceration in civil court.

## 2.0 OBJECTIVE

At the end of the units you should be able

- \*know what tort under the law
- \*know intentional and unintentional tort
- \*Various damages a tortfeasor can pay to a victim

## 3.0 MAIN CONTENT

Tort law refers to the set of laws that provides remedies to individuals who have suffered harm by the unreasonable acts of another. Tort law is based on the idea that people are liable for the consequences of their actions, whether intentional or accidental, if they cause harm to another person or entity. Torts are the civil wrongs that form the basis of civil lawsuits. To explore this concept, consider the following *tort law* definition.

A tort, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act. The person who commits the act is called a **tortfeasor**. Although crimes may be torts, the cause of legal action is not necessarily a crime, as the harm may be due to negligence which does not amount to criminal negligence. The victim of the harm can recover their loss as damages in a lawsuit. In order to prevail, the plaintiff in the lawsuit, commonly referred to as the **injured party**, must show that the actions or lack of action was the legally recognizable cause of the harm. The equivalent of tort in civil law jurisdictions is delict.

Legal injuries are not limited to physical injuries and may include emotional, economic, or reputational injuries as well as violations of privacy, property, or constitutional rights. Torts comprise such varied topics as auto accidents, false imprisonment, defamation, product liability, copyright infringement, and environmental pollution toxic torts. While many torts are the result of negligence, tort law also recognizes intentional torts, where a person has intentionally acted in a way that harms another, and in a few cases particularly for product liability in the

United States strict liability which allows recovery without the need to demonstrate negligence.

Tort law is different from criminal law in that:

(1) torts may result from negligent as well as intentional or criminal actions and

(2) tort lawsuits have a lower burden of proof such as preponderance of evidence rather than beyond a reasonable doubt. Sometimes a plaintiff may prevail in a tort case even if the person who allegedly caused harm was acquitted in an earlier criminal trial. For example, O. J. Simpson was acquitted in criminal court of murder but later found liable for the tort of wrongful death.

### **Intentional Torts**

An intentional tort is when an individual or entity purposely engages in conduct that causes injury or damage to another. For example, striking someone in a fight would be consider an intentional act that would fall under the tort of battery; whereas accidentally hitting another person would not qualify as “intentional” because there was no intent to strike the individual ...however, this act may be considered negligent if the person hit was injured. Although it may seem like an intentional tort can be categorized as a criminal case, there are important differences between the two. A crime can be defined as a wrongful act that injures or interferes with the interests of society.

In comparison, intentional torts are wrongful acts that injure or interfere with an individual’s well-being or property. While criminal charges are brought by the government and can result in a fine or jail sentence, tort charges are filed by a plaintiff seeking monetary compensation for damages that the defendant must pay if they lose. Sometimes a wrongful act may be both a criminal and tort case.

### **Examples of Intentional Torts**

Assault, Battery, False imprisonment, Conversion, Intentional infliction of emotional distress, Fraud/deceit, Trespass (to land and property, Defamation

### **Negligence**

There is a specific code of conduct which every person is expected to follow and a legal duty of the public to act a certain way in order to reduce the risk of harm to others. Failure to adhere to these standards is known as negligence.

Unlike intentional torts, negligence cases do not involve deliberate actions, but instead are when an individual or entity is careless and fails to provide a duty owed to another person. The most common examples of negligence torts are cases of slip and fall, which occur when a property owner fails to act as a reasonable person would, thus resulting in harm to the visitor or customer. Examples of Negligence Torts: Slip and fall accidents, Car accidents, Truck accidents, Motorcycle accidents, Pedestrian accidents. Bicycle accidents, Medical malpractice

## **Common Types of Torts**

The torts most likely to be heard in magistrate or metropolitan court are the kinds that arise from intentional or negligent acts, or failures to act, that result in injury to people or damage to property. Common torts include: assault, battery, damage to personal property, conversion of personal property, and intentional infliction of emotional distress. Injury to people may include emotional harm as well as physical harm. Assault: Intentionally threatening a person with an immediate battery. Battery: Intentional offensive touching of another person without the person's consent.

Intentional or accidental damage to personal property: Property damage can occur in a number of ways, such as automobile accidents; breaking, marring or staining of valuables; or poor aim such as baseballs or gunshots accidentally sent through windows. But any action to recover for property damage is limited to the jurisdiction of the court. For example, a magistrate can only decide a case involving a fire that burned down a building if the damages are ten thousand dollars or less. Intentional infliction of emotional distress: A claim for intentional infliction of emotional distress requires a plaintiff to show (1) that the defendant engaged in extreme and outrageous conduct that was done recklessly or with the intent to cause severe emotional distress and (2) the plaintiff experienced severe emotional distress as a result of the conduct. Extreme and outrageous conduct is that which goes beyond bounds of common decency and is atrocious and intolerable to the ordinary person. Severe emotional distress is distress of such an intensity and duration that no ordinary person would be expected to tolerate it. A plaintiff is not required to show that she has suffered a physical injury in order to recover damages for severe emotional distress.

Tort law divides most specific torts into three general categories:

1. **Intentional Torts** – the causing of harm by an intentional act, such as intentionally conning someone out of his money.

2. **Negligent Torts** – the causing of harm through some negligent act, such as causing a car accident by running a red light.
3. **Strict Liability Torts** – the result of harm incurred due to the actions of another, with no finding of fault by the defendant.

Additional and separate specific torts include:

- Defamation Torts
- Nuisance Torts
- Privacy Torts
- Economic Torts

## **Intentional Torts**

Intentional torts are acts committed with the intent to harm another, or to deliberately interfere with an individual's rights to bodily safety, emotional tranquility, privacy, control over property, freedom from deception, and freedom from confinement. Intentional torts commonly include such issues as assault and/or battery, false imprisonment, invasion of privacy, theft, property damage, fraud or other deception, and trespassing.

Intent is a key issue in proving an intentional tort, as the injured party, called the Plaintiff, must prove to the court that the other party, called the Respondent or Defendant, acted intentionally, and knew that his actions could cause harm. In some cases, the Plaintiff need only prove that the Defendant *should have known* that his actions could cause harm. Many intentional torts may also be charged as criminal offenses. eg Raymond stops by the local bar for a few drinks before he heads home after work. After drinking four cocktails, Raymond gets into his car, and runs a stop sign, crashing into another car, seriously injuring its occupants. Although Raymond might argue that he didn't know he would hurt someone, it is expected that Raymond *should have known* that driving under the influence is likely to cause harm, or to kill another person. Because Raymond intentionally drank alcohol, knowing he planned on driving home, and any reasonable person should know that drinking and driving could result in harm, he has committed an intentional tort. In addition, Raymond may be criminally charged with felony.

## **Negligent Torts**

The acts leading to claims of harm or injury in negligent torts are not intentional. There are three specific elements that must be satisfied in a claim of negligence:

1. The defendant must have a duty or owe a service to the plaintiff or victim
2. The defendant must have failed that duty, or violated a promise or obligation to the plaintiff
3. The plaintiff must have suffered an actual loss, injury, or damages that were directly caused by the plaintiff's actions, or failure to act

## **Strict Liability Torts**

Strict liability refers to the concept of imposing liability on a defendant, usually a manufacturer, without proving negligent fault, or intent to cause harm. The purpose of strict liability torts is to regulate activities that are acknowledged as being necessary and useful to society, but which pose an abnormally high risk of danger to the public.

Such activities may include transportation and storage of hazardous substances, blasting, and keeping certain wild animals in captivity. The possibility of civil lawsuits under strict liability torts keeps individuals or corporations undertaking such dangerous acts diligent in taking every possible precaution to keep the public safe.

## **Suing Under Strict Liability Tort**

In a strict liability lawsuit, the law assumes that the supplier or manufacturer of the product was aware the defect existed before the product reached the consumer. Because of this, the plaintiff need only prove that harm or damages occurred, and that the defendant is responsible. To successfully bring a civil lawsuit under a strict liability tort, the following elements must be proven:

1. The named defendant is the manufacturer of the defective product
2. The product was defective when the plaintiff purchased it
3. The defect was present when the defendant sold the product
4. The defect caused the plaintiff's injuries or damages
5. The injuries or damages caused by the product's defect were reasonably foreseeable by the defendant

A plaintiff in a strict liability lawsuit may be awarded additional damages if he can prove that the defendant knew about the defect when the product was sold to consumers. eg Amanda buys a new car from her local Zoom Auto dealership. Only three months later, Amanda noticed her brakes felt soft, so she took her car to dealer's repair shop. They told her she just needed new brake pads, replaced them, and sent Amanda on her way. A month later, while Amanda was driving on a busy

freeway, her brakes failed, and she crashed into another car. Amanda's car was very badly damaged, and Amanda suffered a broken arm and a concussion.

Amanda discovers, while researching the brake problem she had been having with her car, that this particular model has had brake problems since it was first released for sale to the public. In digging deeper, Amanda discovers that Zoom Auto knew the car's brake system was defective before they sold the cars, but determined it would be too expensive to bring them all back into

## **4.0 SUMMARY**

The word *tort* comes from the Latin term *torquere*, which means "twisted or wrong." The English Common Law recognized no separate legal action in tort. Instead, the British legal system afforded litigants two central avenues of redress: Trespass for direct injuries, and actions "on the case" for indirect injuries. Gradually, the common law recognized other civil actions, including Defamation, LIBEL, and slander. Most of the American colonies adopted the English common law in the eighteenth century. During the nineteenth century, the first U.S. legal treatises were published in which a portion of the common law was synthesized under the heading of torts.

Over the last century, tort law has touched on nearly every aspect of life in the United States. In economic affairs, tort law provides remedies for businesses that are harmed by the unfair and deceptive trade practices of a competitor. In the workplace, tort law protects employees from the intentional or negligent infliction of emotional distress. Tort law also helps regulate the environment, providing remedies against both individuals and businesses that pollute the air, land, and water to such an extent that it amounts to a Nuisance.

Sometimes tort law governs life's most intimate relations, as when individuals are held liable for knowingly transmitting communicable diseases to their sexual partners. When a loved one is killed by a tortious act, surviving family members may bring a Wrongful Death action to recover pecuniary loss. Tort law also governs a wide array of behavior in less intimate settings, including the operation of motor vehicles on public roadways.

The law of torts serves four objectives. First, it seeks to compensate victims for injuries suffered by the culpable action or inaction of others. Second, it seeks to shift the cost of such injuries to the person or persons who are legally responsible for inflicting them. Third, it seeks to discourage injurious, careless, and risky behavior in the future. Fourth, it seeks to vindicate legal rights and interests that

have been compromised, diminished, or emasculated. In theory these objectives are served when tort liability is imposed on tortfeasors for intentional wrongdoing, Negligence, and ultrahazardous activities

There are a number of specific types of tort that form the basis of the majority of civil lawsuits in the United States. These include, among others: Negligence, Intentional Infliction of Emotional Distress, Assault, Battery, Trespass and Products Liability.

## **5.0 CONCLUSION**

Tort law is the body of laws that enables people to seek compensation for wrongs committed against them. When someone's actions cause some type of harm to another, whether it be physical harm to another person, or harm to someone's property or reputation, the harmed or injured person or entity may seek damages through the court.

Damages are a monetary award ordered by the court to be paid to an injured party, by the party at fault. Damages may be awarded in compensation for loss of, or damage to, personal or real property, for an injury, or for a financial loss.

The types of damages that may be awarded by the court for civil wrongs, called tortious conduct," of an individual or entity include: Reimbursement for property loss or property damage, Medical expenses, Pain and suffering, Loss of earning capacity and Punitive damages,

## **6.0 TUTOR-MARKED ASSIGNMENT:**

Define law of torts and any five types of torts you have learnt in this unit,

## **7.0 REFERENCES / FURTHER READINGS**

- ☐ Glanville Williams, or grounds for lawsuit. Learning the Law. Eleventh Edition. Stevens. 1982. p. 9
- ☐ The word is derived from Old French and Anglo-French "tort" (injury), which is derived from Medieval Latin *tortum*., See Online Etymology Dictionary.
- ☐ Malone WS. (1970). *Ruminations on the Role of Fault in the History of the Common Law of Torts*. Louisiana Law Review.

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- Bruce R. O'Brien, "Anglo-Saxon Law", in *The Oxford International Encyclopedia of Legal History*, vol. 1 (Oxford: Oxford UP, 2009), 179.
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## **Unit 7: FAMILY LAW IN NIGERIA**

### **1.0 INTRODUCTION**

In the context of human society, a family is a group of people affiliated either by consanguinity by recognized birth, affinity by marriage or other relationship, or co-residence as implied by the etymology of the English word family or some combination of these. Members of the immediate family may include spouses, parents, brothers, sisters, sons, and daughters. Members of the extended family may include grandparents, aunts, uncles, cousins, nephews, nieces, and siblings-in-law. Sometimes these are also considered members of the immediate family, depending on an individual's specific relationship with them.

In most societies, the family is the principal institution for the socialization of children. As the basic unit for raising children, anthropologists generally classify most family organizations as matrifocal a mother and her children; conjugal (a wife, her husband, and children, also called the nuclear family; avuncular for example, a grandparent, a brother, his sister, and her children; or extended parents and children co-reside with other members of one parent's family. Sexual relations among the members are regulated by rules concerning incest such as the incest taboo. The word family" can be used metaphorically to create more inclusive categories such as community, nationhood, global village, and humanism. The field of genealogy aims to trace family lineages through history. The family is also an important economic unit studied in family economics. Family comes as a result of marriages. We shall look at family law and types of marriages in Nigeria.

Nigeria is a federation of 36 states and the Federal Capital Territory, Abuja. Under the Constitution of the Federal Republic of Nigeria 1999, as amended in 2010, the breakdown of statutory marriage and other matters incidental to it are under the Exclusive Legislative List. This means that the laws governing matrimonial causes are made by the National Assembly, that is,



federal law. Therefore, the 36 constituent states and the Federal Capital Territory cannot legislate on dissolution of marriage and the welfare of children consequent upon dissolution.

Marriages, marital breakdown and the welfare of children in Nigeria are mainly governed by the Matrimonial Causes Act enacted in 1970, now Cap. M7 Laws of the Federation 2004. In 1983, the Matrimonial Causes Rules were made pursuant to the Matrimonial Causes Act. These Rules set out the procedure for bringing matrimonial causes to court. However, the Child's Rights Act 2003 made by Nigeria pursuant to the United Nations Convention on the Rights of the Child has been adopted by states like Lagos, with provisions on welfare and adoption of children. In 2012, Lagos State enacted the Family Law Rules pursuant to the Child's Rights Law. The Rules have greatly simplified procedures on adoption, custody, guardianship and welfare of children generally in Lagos State.

Other laws include:

- The Maintenance Orders Act Cap MI, Laws of the Federation of Nigeria 2004, which facilitates the enforcement in Nigeria of maintenance orders made in England and Ireland and other countries it has been extended to.
- The Married Women's Property Act 1882, a statute of general application in Nigeria.
- The Law Against Domestic Violence in Lagos State 2007.

In 2013, the Same Sex Marriage (Prohibition) Act 2013 was enacted by the National Assembly. This criminalises and provides penalties for solemnisation and witnessing of same sex marriages. In addition, Nigerian law is substantially founded on received English law (consisting of common law, doctrine of equity, and statutes of general application which were in force on 1 January 1900. Decisions of courts in England are persuasive authority in Nigeria. Family law has not fully developed in Nigeria compared with certain other jurisdictions. Areas like surrogacy, pre-nuptial agreements, and division of property are not contemplated or not sufficiently provided for in law. Case law has attempted to fill the gap by ensuring the law serves justice in particular cases.

Nigeria is a multicultural society with over 250 ethnic groups. These ethnic groups have their own customary laws on dissolution of marriage and, to a limited extent, welfare of children, which regulate marriages conducted under customary law. Such rules of customary law are only valid in so far as they do not conflict with the principles of natural justice, equity and good conscience. There are also islamic marriages which are governed by sharia law. Once a person opts to contract a statutory marriage, the breakdown of the marriage and related issues will be regulated by federal enactments and not customary/sharia laws.

## **2.0 OBJECTIVE**

**At the end should be able to**

\* know what is family law

\*The characteristics of a valid marriage

### 3.0 MAIN CONTENT

Family law also called matrimonial law is an area of the law that deals with family matters and domestic relations, including: Marriage, civil unions, and domestic partnerships, Adoption and surrogacy, Child abuse and child abduction, The termination of relationships and ancillary matters, including divorce, annulment, property settlements, alimony, child custody and visitation, child support and alimony awards, Juvenile adjudication and paternity testing and paternity fraud.

Marriage, also called matrimony or wedlock, is a socially or ritually recognised union between spouses that establishes rights and obligations between them, between them and their children, and between them and their in-laws. The definition of marriage varies according to different cultures, but it is principally an institution in which interpersonal relationships, usually sexual, are acknowledged. In some cultures, marriage is recommended or considered to be compulsory before pursuing any sexual activity. When defined broadly, marriage is considered a cultural universal.

Marriage can be recognized by a state, an organization, a religious authority, a tribal group, a local community, or peers. It is often viewed as a contract. Civil marriage, which does not exist in some countries, is marriage without religious content carried out by a government institution in accordance with the marriage laws of the jurisdiction, and recognised as creating the rights and obligations intrinsic to matrimony. Marriages can be performed in a secular civil ceremony or in a religious setting via a wedding ceremony. The act of marriage usually creates normative or legal obligations between the individuals involved, and any offspring they may produce. In terms of legal recognition, most sovereign states and other jurisdictions limit marriage to opposite-sex couples and a diminishing number of these permit polygyny, child marriages, and forced marriages. Over the twentieth century, a growing number of countries and other jurisdictions have lifted bans on and have established legal recognition for interracial marriage, interfaith marriage, and most recently, gender-neutral marriage. Some cultures allow the dissolution of marriage through divorce or annulment. In some areas, child marriages and polygamy may occur in spite of national laws against the practice.

Historically, in most cultures, married women had very few rights of their own, being considered, along with the family's children, the property of the husband; as such, they could not own or inherit property, or represent themselves legally see for example coverture. In Europe, the United States, and other places in the developed world, beginning in the late 19th century and lasting through the 21st century, marriage has undergone gradual legal changes, aimed at improving the rights of the wife. These changes included giving wives legal identities of their own, abolishing the right of husbands to physically discipline their wives, giving wives property rights, liberalizing divorce laws, providing wives with reproductive rights of their own, and requiring a wife's consent when sexual relations occur. These changes have occurred primarily in Western countries. In the 21st century, there continue to be controversies regarding the legal status of married women, legal acceptance of or leniency towards violence within marriage especially sexual violence, traditional marriage customs such as dowry and bride price, forced marriage, marriageable age, and criminalization of consensual behaviors such as premarital and extramarital sex.

## **Legally contracted Marriage**

The legal status, condition, or relationship that results from a contract by which one man and one woman, who have the capacity to enter into such an agreement, mutually promise to live together in the relationship of Husband and Wife in law for life, or until the legal termination of the relationship. Marriage is a legally sanctioned contract between a man and a woman. Entering into a marriage contract changes the legal status of both parties, giving husband and wife new rights and obligations. Public policy is strongly in favor of marriage based on the belief that it preserves the family unit. Traditionally, marriage has been viewed as vital to the preservation of morals and civilization.

The traditional principle upon which the institution of marriage is founded is that a husband has the obligation to support a wife, and that a wife has the duty to serve. In the past, this has meant that the husband has the duty to provide a safe house, to pay for necessities such as food and clothing, and to live in the house. A wife's obligation has traditionally entailed maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children. Changes in society have modified these marital roles to a considerable degree as married women have joined the workforce in large numbers, and more married men have become more involved in child rearing.

Individuals who seek to alter marital rights and duties are permitted to do so only within legally prescribed limits. Antenuptial agreements are entered into before marriage, in contemplation of the marriage relationship. Typically these agreements involve property rights and the terms that will be in force if a couple's marriage ends in Divorce. Separation agreements are entered into during the marriage prior to the commencement of an action for a separation or divorce. These agreements are concerned with Child Support, visitation, and temporary maintenance of a spouse. The laws governing these agreements are generally concerned with protecting every marriage for social reasons, whether the parties desire it or not. Experts suggest that couples should try to resolve their own difficulties because that is more efficient and effective than placing their issues before the courts.

In the United States, marriage is regulated by the states. At one time, most states recognized Common-Law Marriage, which is entered into by agreement of the parties to be husband and wife. In such an arrangement, no marriage license is required nor is a wedding ceremony necessary. The parties are legally married when they agree to marry and subsequently live together, publicly holding themselves out as husband and wife. The public policy behind the recognition of common-law marriage is to protect the parties' expectations, if they are living as husband and wife in every way except that they never participated in a formal ceremony. By upholding a common-law marriage as valid, children are legitimized, surviving spouses are entitled to receive Social Security benefits, and families are entitled to inherit property in the absence of a will. These public policy reasons have declined in significance. Most states have abolished common-law marriage, in large part because of the legal complications that arose concerning property and inheritance.

The U.S. Supreme Court has held that states are permitted to reasonably regulate marriage by prescribing who can marry and the manner in which marriage can be dissolved. States may grant

an Annulment or divorce on terms that they conclude are proper, because no one has the constitutional right to remain married. There is a right to marry, however, that cannot be casually denied. States are proscribed from absolutely prohibiting marriage in the absence of a valid reason. The U.S. Supreme Court, for example, struck down laws in southern states that prohibited racially mixed marriages. These antimiscegenation statutes were held to be unconstitutional in the 1967 case of *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010, because they violated Equal Protection of the laws.

On the other hand, the Court ruled in 1878 that polygamous marriages having more than one spouse simultaneously are illegal. The requirement that marriage involve one man and one woman was held to be essential to Western civilization and the United States in *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244. Chief Justice MORRISON R. WAITE, writing for a unanimous court, concluded that a state (in that case, Utah may outlaw Polygamy for everyone, regardless of whether it is a religious duty, as the Mormons claimed it was.

All states limit people to one living husband or wife at a time and will not issue marriage licenses to anyone who has a living spouse. Once someone is married, the person must be legally released from his or her spouse by death, divorce, or annulment before he or she may legally remarry. Persons who enter into a second marriage without legally dissolving a first marriage may be charged with the crime of bigamy.

The idea that marriage is the union of one male and one female has been thought to be so basic that it is not ordinarily specifically expressed by statute. This traditional principle has been challenged by gays and lesbians who, until recently, have unsuccessfully sought to legalize their relationships. In *Baker v. Nelson*, 191 N.W.2d 185 Minn. 1971, the Minnesota Supreme Court sustained the clerk's denial of a marriage license to a homosexual couple.

The 1993 decision of the Hawaii Supreme Court in *Baehr v. Lewin*, 852 P.2d 44, 74 Haw. 530, revived the possibility of homosexual marriage. In *Baehr*, the court held that the state law restricting legal marriage to parties of the opposite sex establishes a sex-based classification, which is subject to strict constitutional scrutiny when challenged on equal protection grounds. Although the court did not recognize a constitutional right to same-sex marriage, it indicated that the state would have a difficult time proving that the gay and lesbian couples were not being denied equal protection of the laws. On remand, the Circuit Court of Hawaii found that the state had not met its burden, and it enjoined the state from denying marriage applications solely because the applicants were of the same sex *Baehr v. Miike*, 1996 WL 694235 [Hawaii Cir. Ct., Dec. 3, 1996]. However, this decision was stayed pending another appeal to the Hawaii Supreme Court. In the wake of *Baehr*, a number of states prepared legislation to ban same-sex marriage and to prohibit recognition of such marriages performed in Hawaii. In 1996, Congress enacted the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 219, which defines marriage as a legal union between one man and one woman and permits states to refuse to recognize same-sex marriages performed in other states.

Age is an additional requirement. Every jurisdiction mandates that a man and a woman must be old enough to wed. In the 1800s, the legal age was as low as 12 years old for females. Modern statutes ordinarily provide that females may marry at age 16 and males at age 18. Sometimes a

lower age is permitted with the written consent of the parents. A number of states allow for marriage below the minimum age if the female is pregnant and a judge grants permission.

Every couple who wishes to marry must comply with a state's formal requirements. Many states require a blood test or a blood test and physical examination before marriage, to show whether one party is infected with a venereal disease. In some states, for example, the clerk is forbidden to issue a marriage license until the parties present the results of the blood test. Most states impose a waiting period between the filing of an application for a license and its issuance. The period is usually three days, but in some states the period may reach five days. Other states mandate a waiting period between the time when the license is issued and the date when the marriage ceremony may take place. Many states provide that the marriage license is valid only for a certain period of time. If the ceremony does not take place during this period, a new license must be obtained.

It has been customary to give notice of an impending marriage to the general public. The old form of notice was called "publication of the banns, and the upcoming marriage was announced in each party's church three Sundays in a row before the marriage. This informed the community of the intended marriage and gave everyone the opportunity to object if any knew of a reason why the two persons could not be married. Today, the names of applicants for marriage licenses are published in local newspapers.

Once a license is issued, the states require that the marriage commence with a wedding ceremony. The ceremony may either be civil or religious because states may not require religious observances. Ceremonial requirements are very simple and basic, in order to accommodate everyone. In some states, nothing more is required than a declaration by each party in the presence of an authorized person and one additional witness that he or she takes the other in marriage.

Marriage is a legally sanctioned contract between a man and a woman. Entering into a marriage contract changes the legal status of both parties, giving husband and wife new rights and obligations. Public policy is strongly in favor of marriage based on the belief that it preserves the family unit. Traditionally, marriage has been viewed as vital to the preservation of morals and civilization. The traditional principle upon which the institution of marriage is founded is that a husband has the obligation to support a wife, and that a wife has the duty to serve. In the past, this has meant that the husband has the duty to provide a safe house, to pay for necessities such as food and clothing, and to live in the house. A wife's obligation has traditionally entailed maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children. Changes in society have modified these marital roles to a considerable degree as married women have joined the workforce in large numbers, and more married men have become more involved in child rearing.

Individuals who seek to alter marital rights and duties are permitted to do so only within legally prescribed limits. Antenuptial agreements are entered into before marriage, in contemplation of the marriage relationship. Typically these agreements involve property rights and the terms that will be in force if a couple's marriage ends in Divorce. Separation agreements are entered into during the marriage prior to the commencement of an action for a separation or divorce. These

agreements are concerned with Child Support, visitation, and temporary maintenance of a spouse. The laws governing these agreements are generally concerned with protecting every marriage for social reasons, whether the parties desire it or not. Experts suggest that couples should try to resolve their own difficulties because that is more efficient and effective than placing their issues before the courts.

In the United States, marriage is regulated by the states. At one time, most states recognized Common-Law Marriage, which is entered into by agreement of the parties to be husband and wife. In such an arrangement, no marriage license is required nor is a wedding ceremony necessary. The parties are legally married when they agree to marry and subsequently live together, publicly holding themselves out as husband and wife. The public policy behind the recognition of common-law marriage is to protect the parties' expectations, if they are living as husband and wife in every way except that they never participated in a formal ceremony. By upholding a common-law marriage as valid, children are legitimized, surviving spouses are entitled to receive Social Security benefits, and families are entitled to inherit property in the absence of a will. These public policy reasons have declined in significance. Most states have abolished common-law marriage, in large part because of the legal complications that arose concerning property and inheritance.

The U.S. Supreme Court has held that states are permitted to reasonably regulate marriage by prescribing who can marry and the manner in which marriage can be dissolved. States may grant an Annulment or divorce on terms that they conclude are proper, because no one has the constitutional right to remain married. There is a right to marry, however, that cannot be casually denied. States are proscribed from absolutely prohibiting marriage in the absence of a valid reason. The U.S. Supreme Court, for example, struck down laws in southern states that prohibited racially mixed marriages. These antimiscegenation statutes were held to be unconstitutional in the 1967 case of *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010, because they violated Equal Protection of the laws.

On the other hand, the Court ruled in 1878 that polygamous marriages (i.e., having more than one spouse simultaneously) are illegal. The requirement that marriage involve one man and one woman was held to be essential to Western civilization and the United States in *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244. Chief Justice MORRISON R. WAITE, writing for a unanimous court, concluded that a state (in that case, Utah) may outlaw Polygamy for everyone, regardless of whether it is a religious duty, as the Mormons claimed it was.

All states limit people to one living husband or wife at a time and will not issue marriage licenses to anyone who has a living spouse. Once someone is married, the person must be legally released from his or her spouse by death, divorce, or annulment before he or she may legally remarry. Persons who enter into a second marriage without legally dissolving a first marriage may be charged with the crime of bigamy.

The idea that marriage is the union of one male and one female has been thought to be so basic that it is not ordinarily specifically expressed by statute. This traditional principle has been challenged by gays and lesbians who, until recently, have unsuccessfully sought to legalize their

relationships. In *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), the Minnesota Supreme Court sustained the clerk's denial of a marriage license to a homosexual couples.

The 1993 decision of the Hawaii Supreme Court in *Baehr v. Lewin*, 852 P.2d 44, 74 Haw. 530, revived the possibility of homosexual marriage. In *Baehr*, the court held that the state law restricting legal marriage to parties of the opposite sex establishes a sex-based classification, which is subject to strict constitutional scrutiny when challenged on equal protection grounds. Although the court did not recognize a constitutional right to same-sex marriage, it indicated that the state would have a difficult time proving that the gay and lesbian couples were not being denied equal protection of the laws. On remand, the Circuit Court of Hawaii found that the state had not met its burden, and it enjoined the state from denying marriage applications solely because the applicants were of the same sex (*Baehr v. Miike*, 1996 WL 694235 [Hawaii Cir. Ct., Dec. 3, 1996]). However, this decision was stayed pending another appeal to the Hawaii Supreme Court. In the wake of *Baehr*, a number of states prepared legislation to ban same-sex marriage and to prohibit recognition of such marriages performed in Hawaii. In 1996, Congress enacted the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 219, which defines marriage as a legal union between one man and one woman and permits states to refuse to recognize same-sex marriages performed in other states.

Age is an additional requirement. Every jurisdiction mandates that a man and a woman must be old enough to wed. In the 1800s, the legal age was as low as 12 years old for females. Modern statutes ordinarily provide that females may marry at age 16 and males at age 18. Sometimes a lower age is permitted with the written consent of the parents. A number of states allow for marriage below the minimum age if the female is pregnant and a judge grants permission.

Every couple who wishes to marry must comply with a state's formal requirements. Many states require a blood test or a blood test and physical examination before marriage, to show whether one party is infected with a venereal disease. In some states, for example, the clerk is forbidden to issue a marriage license until the parties present the results of the blood test.

Most states impose a waiting period between the filing of an application for a license and its issuance. The period is usually three days, but in some states the period may reach five days. Other states mandate a waiting period between the time when the license is issued and the date when the marriage ceremony may take place. Many states provide that the marriage license is valid only for a certain period of time. If the ceremony does not take place during this period, a new license must be obtained.

It has been customary to give notice of an impending marriage to the general public. The old form of notice was called "publication of the banns," and the upcoming marriage was announced in each party's church three Sundays in a row before the marriage. This informed the community of the intended marriage and gave everyone the opportunity to object if any knew of a reason why the two persons could not be married. Today, the names of applicants for marriage licenses are published in local newspapers.

Once a license is issued, the states require that the marriage commence with a wedding ceremony. The ceremony may either be civil or religious because states may not require religious

observances. Ceremonial requirements are very simple and basic, in order to accommodate everyone. In some states, nothing more is required than a declaration by each party in the presence of an authorized person and one additional witness that he or she takes the other in marriage.

A minority of states have sought to curb growing divorce rates by enacting legislation designed to encourage couples to remain married. Statutes in states such as Arkansas, Arizona, and

## **Types of marriages in nigeria**

The type, functions, and characteristics of marriage vary from culture to culture, and can change over time. In general there are two types: civil marriage and religious marriage, and typically marriages employ a combination of both (religious marriages must often be licensed and recognized by the state, and conversely civil marriages, while not sanctioned under religious law, are nevertheless respected). Marriages between people of differing religions are called interfaith marriages, while marital conversion, a more controversial concept than interfaith marriage, refers to the religious conversion of one partner to the other's religion for sake of satisfying a religious requirement.

Arranged marriage – A marriage that is at some level arranged by someone other than those being married..

## **Polygamy, monogamy, and polyandry**

Polyandry means a woman having multiple husbands occurs very rarely in a few isolated tribal societies. These societies include some bands of the Canadian Inuit, although the practice has declined sharply in the 20th century due to their conversion from tribal religion to Christianity by Moravian missionaries. Additionally, the Spartans were notable for practicing polyandry. Societies which permit group marriage are extremely rare, but have existed in Utopian societies such as the Oneida Community.

Today, many married people practice various forms of consensual nonmonogamy, including polyamory and Swinging. These people have agreements with their spouses that permit other intimate relationships or sexual partners. Therefore, the concept of marriage need not necessarily hinge on sexual or emotional monogamy.

## **Christian acceptance of monogamy**

In the Christian society, a one man one woman model for the Christian marriage was advocated by Saint Augustine 354-439 AD with his published letter *The Good of Marriage*. To discourage polygamy, he wrote it "was lawful among the ancient fathers: whether it be lawful now also, I would not hastily pronounce. For there is not now necessity of begetting children, as there then



was, when, even when wives bear children, it was allowed, in order to a more numerous posterity, to marry other wives in addition, which now is certainly not lawful. Sermons from St. Augustine's letters were popular and influential. In 534 AD Roman Emperor Justinian criminalized all but monogamous man/woman sex within the confines of marriage.

Two major types of marriage exist in Nigeria: monogamy, a marriage of one man to one woman, and polygyny, a marriage of one man to two or more wives. In most cultural groups in Nigeria, traditional marriage is usually an arrangement between two families as opposed to an arrangement between two individuals. Accordingly, there is pressure on the bride and bridegroom to make the marriage work as any problem will usually affect both families and strain the otherwise cordial relationship between them. In most Nigerian cultures, the man usually pays the dowry or bride-price and is thus considered the head of the family. Adultery is acceptable for men, but forbidden for women. Marriage ceremonies vary among Nigerian cultures.

### **Islamic marriages**

In Islam, marriage is a legal contract between two people. Both the groom and the bride are to consent to the marriage of their own free wills. A formal, binding contract is considered integral to a religiously valid Islamic marriage, and outlines the rights and responsibilities of the groom and bride. There must be two Muslim witnesses of the marriage contract. Divorce in Islam can take a variety of forms, some initiated by the husband and some initiated by the wife. In addition to the usual marriage until death or divorce, there is a different fixed-term marriage known as *zawāj al-mut'ah* pleasure marriage. permitted only by the Twelver branch of Shia Islam for a pre-fixed period. There is also *Nikah Misyar*, a non-temporary marriage with the removal of some conditions such as living together, permitted by Sunni Muslims.

### **Conditions for marriage**

Islamic marriages require acceptance, in Arabic, of the groom, the bride and the consent of the custodian (*wali*) of the bride. The wali of the bride is normally a male relative of the bride, preferably her father. The guardian (*wali*) of the bride can only be a free Muslim. The bride is normally present at the signing of the marriage contract. The *Wali mujbir* is a technical term of Islamic law which denotes the guardian of a bride. In traditional Islam, the literal definition of wali, which means custodian or protector, is used. In this context, it is meant that the silence of the bride is considered consent. In most schools of Islamic law, only the father or the paternal grandfather of the bride can be wali mujbir.

If the conditions are met and a mahr and contract are agreed upon, an Islamic marriage ceremony, or wedding, can take place. The marital contract is also often signed by the bride. The consent of the bride is mandatory. Hadith The Islamic marriage is then declared publicly, in Arabic: by a responsible person after delivering a sermon to counsel and guide the couple. It is not required, though customary, that the person marrying the couple should be religiously qualified. The bridegroom can deliver the sermon himself in the presence of representatives of both sides if he is religiously educated, as the story goes about Imam Muhammad bin Ali around 829 AD and recently in Kashmir in 2013 AD by Muhammad Asif bin Ali more than eleven

centuries later. It is typically followed by a celebratory reception in line with the couple's or local customs, which could either last a couple of hours or precede the wedding and conclude several days after the ceremony.

The Qur'an tells believers that even if they are poor they should marry to protect themselves from immorality. The Quran asserts that marriage is a legitimate way to satisfy one's sexual desire. Islam recognizes the value of sex and companionship and advocates marriage as the foundation for families and channeling the fulfillment of a base need. Marriage is highly valued and regarded as being half of one's faith, according to a saying of Muhammad. Whether marriage is obligatory or merely allowed has been explored by several scholars, and agreed that If a person has the means to marry and has no fear of mistreating his wife or of committing the unlawful if he does marry, then marriage in his case is *mustahabb* preferred.

### **Prerequisites**

The Qur'an outlines some conditions for a marriage to take place. A marriage should be conducted through a contract and a mandatory sum of wealth provided to the bride, which here refers to the *mahr*. Once a *mahr* has been ascertained with the realization that it is an obligation of a Muslim husband, the groom is required to pay it to the bride at the time of marriage unless he and his bride can mutually agree to delay the time of some of its payment. In 2003, Rubya Mehdi published an article in which the culture of *mahr* among Muslims was thoroughly reviewed. There is no concept of dowry as such in Islam, although *mahr* is often translated into English as *dowry* in the want of a more accurate word. A dowry as such is a payment to the groom from the bride's family, and is not an Islamic custom. Bride prices are also expressly prohibited. Another requisite of marriage is chastity. No fornicator has the right to marry a chaste partner except if the two purify themselves of this sin by sincere repentance.

Spoken consent of the woman is only required if she is not a virgin and her wali is neither her father nor her paternal grandfather. But a virgin may not be married off without her permission. If she is too shy to express her opinion her silence will be considered as implicit agreement [Al Bukhari:6968. The wali, who can force a bride against her outspoken will into marriage, is called wali mujbir, according to The Encyclopaedia of Islam. If the woman was forced into a marriage, without the above-mentioned conditions, according to the Hanafi school of Islamic law the decision can be revoked, when the bride comes of age. Binti Khudham says that when she became a widow her father solemnized her marriage. She did not like the decision so she went to Muhammad, who gave her permission to revoke her marriage.<sup>[38]</sup> Hence, forced marriages are against Islamic teachings if the woman is a virgin, and those forced into marriages before they have come of age have the right to contest them once they do.

The importance of the wali is debated between the different schools of thought. To the Hanafi Sunnis, a male guardian is not required for the bride to become married, even if it is her first marriage. Therefore, the marriage contract is signed between the bride and the groom, not the groom and the wali. To the Hanbali, Shafi'i, and Maliki Sunni schools, a wali is required in order for a virginal woman to marry. In these schools, if a woman has been divorced, she becomes her own guardian and does not need a wali to sign a marriage contract.

## **Rights and obligations of spouses**

According to Islam, both men and woman have rights over each other when they enter into a marriage contract with the husband serving as protector and supporter of the family most of the time, from his means. This guardianship has two aspects for both partners:

The husband is financially responsible for the welfare and maintenance of his wife or wives and any children they produce, to include at a minimum, providing a home, food and clothing. In return, it is the duty of the wife to safeguard the husband's possessions and protect how wealth is spent. If the wife has wealth in her own capacity she is not obliged to spend it upon the husband or children, as she can own property and assets in her own right, so the husband has no right for her property and assets except by her will. A pre-marital agreement of the financial expectation from the husband is in the mahr, given by him to the wife for her exclusive use, which is included as part of his financial responsibility.

Several commentators have stated that the superiority of a husband over his wife is relative, and the obedience of the wife is also restrictive. The Quran advises men that if they are certain of a rebellious attitude by the woman, they should first admonish her, then refuse to share beds, and finally beat (darab) her, according to Qur'an 4:34. Today most Islamic scholars agree that it be without leaving a mark and not on the face. This refers to serious breaches of behaviour such as being promiscuous according to renowned 20th-century scholar Muhammad Hamidullah which is not expected from a dutiful wife, and not for simple disobedience to the husband. In explaining this, Ibn Abbas gives an example of striking with a toothstick.

Women are also reminded that in case the husband is not fulfilling his responsibilities, there is no stigma on them in seeking divorce. The Quran re-emphasizes that justice for the woman includes emotional support, and reminds men that there can be no taking back of the mahr or bridal gifts given to women. In unfortunate cases where the agreement was to postpone payment of the mahr, some husbands will bully their wives and insist on the return of what he gave her in order to agree to the dissolution of the marriage, this is un-Islamic and cruel. Where the husband has been abusive or neglectful of his responsibilities, he does not have the right to take his wife's property in exchange for her freedom from him. Unfortunately most couples refuse to go to the judge and binding arbitration for these issues even though the Quran says: And if you fear a breach between them, then appoint an arbiter from his folk and an arbiter from her folk. If they the arbiters desire reconciliation, Allah will affect it between them. Surely, Allah is All-Knowing, All-Aware.

## **Marriage contracts and forced/unconsented marriages**

The marriage contract is concluded between the *wali*, or guardian, of the bride and bridegroom, not between bridegroom and bride. The *wali* of the bride can only be a free Muslim. The *wali* of the bride is normally a male relative of the bride, preferably her father. If the bride is a virgin, the *wali mujbir*, that is her father or paternal grandfather, can not force the bride into the marriage against her proclaimed will; according to most scholars. According to Khomeini and Ali al-Sistani, both Shia scholars both having the degrees mujtahid and marja', and also almost all

contemporary scholars, the marriage is invalid without bride's free consent and no obligation can make marriage official and legal.

The notable example to this is the Hanafi school the largest of the four classical schools of Islamic thought), which holds that a bride's permission is required if she has reached puberty. They also hold that if a bride was forced into marriage before reaching puberty; then upon attaining puberty, she has the option to nullify the marriage if she wishes. A *wali* other than the father or the paternal grandfather of the bride, then called *wali mukhtar*, needs the consent of the bride according to the majority of scholars. If the bride is silent about the issue, i.e. her wali expressed his intention to marry her off to a certain man, and she did not object to it; then consent is assumed via her lack of objection. For all schools of Islamic jurisprudence the systematization of their school is the guideline for their decision, not single hadiths, that liberal Muslims often cite. Two of these hadiths are the following:

Abu Hurayrah reported that the Prophet said: "A non-virgin woman may not be married without her command, and a virgin may not be married without her permission; and it is permission enough for her is to remain silent because of her natural shyness." [Al-Bukhari:6455, Muslim & Others. It is reported in a hadith that A'ishah related that she asked the Prophet : In the case of a young girl whose parents marry her off, should her permission be sought or not? He replied: "Yes, she must give her permission." She then said: "But a virgin would be shy, O Messenger of Allaah!" He replied: "Her silence is considered as her permission." Al-Bukhari, Muslim, & Others.

## **Divorce**

Divorce in Islam can take a variety of forms, some initiated by the husband and some initiated by the wife. The theory and practice of divorce in the Islamic world have varied according to time and place. Historically, the rules of divorce were governed by sharia, as interpreted by traditional Islamic jurisprudence, and they differed depending on the legal school. Historical practice sometimes diverged from legal theory. In modern times, as personal status family laws were codified, they generally remained within the orbit of Islamic law, but control over the norms of divorce shifted from traditional jurists to the state.

## **Relationships which prohibit marriage**

In certain sections of the pre-Islamic Arab tradition, the son could inherit his deceased father's other wives i.e. not his own mother) as a wife. The Qur'an prohibited this practice. Marriage between people related in some way is subject to prohibitions based on three kinds of relationship. The following prohibitions are given from the male perspective for brevity; the analogous counterparts apply from the female perspective; e.g., for "aunt" read "uncle". A bride signing the *nikah nama* (marriage certificate)

## **Prohibited marriages**

Quran States

O ye who believe! It is not lawful for you to inherit women forcefully

(Al-Quran 4:19)

And don't marry women to whom you father has ever married except what has passed. Indeed it was lewdness, disbelief, and a bad way. Prohibited to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, brother's daughters, sister's daughters, your mothers that are those who suckled you, your sisters from suckling, mothers of your women, your step-daughters in your guardianship from your women you have entered upon but if you have not entered upon them then there is no blame on you, women of your sons from your loins, and that addition of two sisters (in a wedlock) except what has passed. Surely God is All-forgiving All-merciful.

### **Prohibitions based on consanguinity**

Seven relations are prohibited because of consanguinity i.e. kinship or relationship by blood, viz. mothers, daughters, sisters, paternal aunts, maternal aunts and nieces (whether sister's or brother's daughters. In this case, no distinction is made between full and half relations, both being equally prohibited. Distinction is however made with step relations i.e. where both the biological mother and father of a couple wishing to marry are separate individuals for both parties, in which case it is permitted. The word mother also connotes the father's mother and mother's mother all the way up. Likewise the word "daughter" also includes the son's daughter and daughter's daughter" all the way down. The sister of the maternal grandfather and of the paternal grandmother (great aunts) are also included on equal basis in the application of the directive.

### **Prohibitions based on suckling**

Marriage to what are sometimes described as foster relations in English are not permitted, although the concept of "fosterage" is not the same as is implied by the English word. The relationship is that formed by suckling from the breast of a wet nurse. This is what is meant by fosterage in Islam in the quotation below. In Islam, the infant is regarded as having the same degree of affinity to the wet nurse as in consanguinity, so when the child grows up marriage is prohibited to those related to the wet nurse by the same degree as if to the child's own mother. Hadith reports confirm that fosterage does not happen by a chance suckling, it refers to the first two years of a child's life before it is weaned Islahi writes that "this relationship is established only with the full intent of those involved. It only comes into being after it is planned and is well thought of.

### **Prohibitions based on marriage**

The daughter-in-law is prohibited for the father, and the mother-in-law, the wife's daughter, the wife's sister and daughters of the wife's siblings nieces, the maternal and paternal aunts of the wife are all prohibited for the husband. However, these are conditional prohibitions:

1. Only the daughter of that wife is prohibited with whom one has had conjugal contact.

2. Only the daughter-in-law of a real son is prohibited.
3. The sister of a wife, her maternal and paternal aunts and her brother's or sister's daughters nieces are only prohibited if the wife is in wedlock with the husband.

### **Prohibition based on religion**

Quran states Do not marry your girls to unbelievers until they believe: A man slave who believes is better than an unbeliever, even though he allures you. Unbelievers do (but) beckon you to the Fire. But God beckons by His Grace to the Garden (of bliss) and forgiveness, and makes His Signs clear to mankind: That they may celebrate His praise." (Al-Quran 2:221)

O ye who believe! When there come to you believing women refugees, examine (and test) them: God knows best as to their Faith: if ye ascertain that they are Believers, then send them not back to the Unbelievers. They are not lawful wives for the Unbelievers, nor are the Unbelievers lawful husbands for them. (Al-Quran 60:10)

never will Allah give the disbelievers over the believers a way [to overcome them].(Al-Quran 4:141)

it is not lawful by Allah Almighty for Muslim women to marry non Muslim men of any faith. (Quran 2:221 60:10 4:141)

but It is lawful for Muslim men to marry only Jewish or Christian women. (Quran 5:5)

### **Polygamy**

According to sharia law, Muslims are allowed to practice polygamy. According to the Qur'an, a man may have up to four legal wives at any one time. The husband is required to treat all wives equally. If a man fears that he will not be able to meet these conditions then he is not allowed more than one wife.

"If he fears that he shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if he fear that he shall not be able to deal justly (with them), then only one, or that which your right hands possess. That will be more suitable, to prevent you from doing injustice." (Qur'an 4:3) Yusuf Ali translation. A bride-to-be may include terms in her marriage contract that require monogamy for her husband or require her consent before he marries another wife. Polyandry is forbidden. A woman cannot have more than one husband at a time.

### **Iddah**

A woman cannot marry after divorce or death of her husband for a certain period. This period is known as iddah.

- A divorcee cannot marry for three menstrual cycles after divorce
- A divorcee who has no courses cannot marry for three months
- A pregnant woman cannot marry until laying her burden

- A widow cannot remarry for four months and ten days

## **Other types of customary law marriage**

Besides the strict bride-price marriage, which is the commonest type, and the one most commonly contracted, there are other relationships which are regarded as marriage in customary law. While some of them possess the characteristics of a bride price marriage, others display different and unique features. There are essential and formal requirements for the celebration of valid customary law marriages. Although the details of such requirements vary from one locality to another, the broad principles are sometimes similar.

## ***Capacity***

The parties to a customary-law marriage must possess the capacity under that law to marry each other.

## ***Age***

Most systems of customary law in Nigeria do not prescribe any age for the solemnization of customary-law marriage. This lacuna in the rule of customary law has to a large extent encouraged a high incidence of child marriage, with all its attendant evils. While in some areas child betrothal is rampant, marriage does not in fact take place until the parties have attained the age of puberty. Where a girl under sixteen years marries under customary law, the consummation of that marriage does not constitute the sexual offence of having unlawful carnal knowledge of her under the Criminal Code Act. This is because Section 6 of the Code defines 'unlawful carnal knowledge' to exclude sexual relations between husband and wife. Usually, where a provision of the Code applies only to the husband and wife of a statutory marriage, this is clearly specified. In the absence of such qualification it is submitted that 'husband and wife' includes the parties to customary-law marriage, which is a system of marriage recognized by Nigerian law.

In some parts of the country, the minimum age for customary-law marriage has been fixed by legislation. The age of marriage under customary law is governed in the three Eastern States of Nigeria by the Age of Marriage Law 1956. Section 3(1) of the Law provides that 'A marriage . . . between or in respect of persons either of whom is under the age of sixteen shall be void'. If a party to such a void marriage is charged with any of the sexual offences under the Criminal Code arising from having unlawful carnal knowledge of a girl, it is a good defence to prove that the accused had reasonable cause to believe that the girl in question was his wife.

By section 4(1) of the Law, it is an offence punishable with six months' imprisonment or a fine of two hundred Naira for any person to ask, receive or obtain any property or benefit of any kind for himself or for any other person on account of marriage which is void under the Law. Similarly it is an offence to give, confer on, or procure from any person any property or benefit in relation to such void marriage. In these cases, ignorance of the parties' age is no defence unless the accused can prove that he took reasonable steps to verify the ages of the parties to the

marriage. When the age of a person is in issue in a prosecution under the Law, the opinion of a qualified medical practitioner on that question is sufficient and cannot be questioned in any court.

Under Section 6, no court shall take cognizance of any marriage that is made void by this legislation. This provision seems too wide for the purpose of attaining the objectives of the statute. It is submitted that, at least, it should be made possible for courts to determine the validity or invalidity of a marriage. This section should, therefore, be construed accordingly so as to make its contents reasonable.

In *Emeakuana v Umeojiako*, the respondent claimed for an order that he is the legal and natural father of a female child born by the second appellant on December 27, 1972 and therefore entitled to be granted its custody. Both the second appellant and her father gave evidence in the lower court that the former was about fifteen years of age when the marriage with the respondent was celebrated. That piece of evidence was not contradicted or questioned. Obi-Okoye, J., (as he then was) held that the marriage in question contravened section 3(1) of the Age of Marriage Law and was, therefore, void.

Except for the cases which have reached the courts, evidence abound that the prohibition of the Age of Marriage Law is not observed in many parts of the four Eastern States.

In four Native Authority areas in three of the Northern States of Nigeria-Biu (Borno State), Idoma, and Tiv (Benue State), and Borgu Kwara State the marriageable age for girls has been fixed by the various Declarations of Native marriage law and custom Orders made in respect of these areas. The following ages for girls have been prescribed for the respective areas: Biu fourteen years; Idoma twelve years; Tiv age of puberty; and Borgu - thirteen years; In Borgu and Idoma, any man who marries a girl below the stated age, and the father or guardian of such girl who permits such marriage, are guilty of an offence punishable with a fine of 100Naira or imprisonment for six months, or both.

### **Termination of marriages in Nigeria**

Nigeria enacted the Matrimonial Causes Act in 1970 to regulate the dissolution of statutory marriage. But this limitation to statutory marriage only entails shortcomings in respect of the other marriage systems that are also found in Nigeria: customary and Islamic marriage. All three systems, based on very different traditions, are, in principle, largely incompatible. This becomes particularly apparent when a marriage between the same persons contracted both under customary and statutory law is to be divorced. The requirements for customary and statutory divorce are not congruous in the different concepts of the potentially polygamous, customary (and Islamic) marriage and of the monogamous, statutory marriage. There are no provisions in the Matrimonial Causes Act considering obvious conflict situations. Reform has been frequently suggested but has not been implemented yet.

This article tries at first to analyse the main aspects of customary, Islamic and statutory marriage and, especially, divorce, for in the case of the dissolution of marriage the distinguishing elements become most apparent. Then a proposal of an integrating divorce law will be presented which takes account of central features of the present marriage systems. It will be shown that many



essential elements of these systems can be retained and combined to some extent in a unifying law. The proposal will frequently refer to the Tanzanian Law of Marriage Act 1971 which constitutes a fairly convincing attempt to unify different marriage systems.

## **5.0 SUMMARY**

Marriage, also called matrimony or wedlock, is a socially or ritually recognised union between spouses that establishes rights and obligations between those spouses, as well as between them and any resulting biological or adopted children and affinity (in-laws and other family through marriage). The definition of marriage varies not only between cultures or religions, but also within them throughout their histories, evolving to both expand or contract in what is encompassed, but typically it is principally an institution in which interpersonal relationships, usually sexual, are acknowledged or sanctioned. In some cultures, marriage is recommended or considered to be compulsory before pursuing any sexual activity. When defined broadly, marriage is considered a cultural universal.

Individuals may marry for several reasons, including legal, social, libidinal, emotional, financial, spiritual, and religious purposes. Whom they marry may be influenced by socially determined rules of incest, prescriptive marriage rules, parental choice and individual desire. In some areas of the world, arranged marriage, child marriage, polygamy, and sometimes forced marriage, may be practiced as a cultural tradition. Conversely, such practices may be outlawed and penalized in parts of the world out of concerns of the infringement of women's rights, or the infringement of children's rights (both female and male children, and because of international law. In developed parts of the world, there has been a general trend towards ensuring equal rights within marriage for women and legally recognizing the marriages of interfaith, interracial, and same-sex couples. These trends coincide with the broader human rights movement.

## **6.0 CONCLUSION**

Bride Price, Celebration of marriage, Registration Of Customary Marriage, Proof Of Marriage, Proof Of Customary Law Marriage, Islamic Law Marriage, Celebration Of Customary Marriage and Other Types Of Customary Marriage

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## **MODULE 4: THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA**

### **Unit 1: THE NIGERIAN POLICE**

#### **1.0 INTRODUCTION :**

The importance of criminal justice to the smooth running of any society cannot be over emphasized. Indeed an effective criminal justice system is regarded by many as fundamental to the maintenance of law and order. However the Nigerian criminal justice system is not only dysfunctional it is also outdated and absolutely not fit for purpose many of the provisions are outdated and in some cases anachronistic. Besides, the loopholes in the law and procedure have become so obvious that lawyers especially defense lawyers have become masters in dilatory tactics. It has thus become increasingly difficult to reach closure of any kind in many criminal cases. Convictions and acquittals have become exceedingly rare. While the foregoing assertion is quite instructive, It is pertinent to note that these views are widely held among many legal practitioners and eminent jurist, who have also called for fundamental reform to the Nigerian criminal justice system.

An effective criminal justice system is fundamental to the maintenance of law and order. Criminal justice, because it addresses behavioral issues, must be dynamic and proactive. Consequently, many of the provisions are outdated and in some cases anachronistic. Besides, the loopholes in the laws and procedure have become so obvious that lawyers especially defense lawyers have become masters in dilatory tactics. It has thus, become increasingly difficult to reach closure of any kind in many criminal cases. Convictions or acquittals have become exceedingly rare.

#### **2.0 OBJECTIVES:**

At the end of the unit you will be able to understand

**\*The security agent involved in the Administration of Criminal justice in Nigeria.**

**\*The role of the Nigerian police in carrying investigation**

**\*the organization structure of**

#### **3.0 MAIN CONTENT**

Section 214.(1) of the 1999 Nigerian constitution provides that: There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

(2) Subject to the provisions of this Constitution -

(a) the Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly;

(b) the members of the Nigeria Police shall have such powers and duties as maybe conferred upon them by law;

(c) the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields.

The Police Act is an act to make provision for the organisation, discipline, powers and duties of the police, the special constabulary and the traffic wardens. [1967 No. 41.] [1st April, 1943]. According to the Police Act, the duties of The police shall be the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

When it concerns public safety and public order as provided for in section 215 of the Constitution, The President may give to the Inspector-General such directions with respect to the maintaining and securing of public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions or cause them to be complied with. Similarly, the Commissioner of a State shall comply with the directions of the Governor of the State with respect to the maintaining and securing of public safety and public order within the State, or cause them to be complied with: (Provided that before carrying out any such direction the Commissioner may request that the matter should be referred to the President for his directions. The officer's powers and duties are conferred by statute.

The Nigerian PoliceForce (NPF) is the principal law enforcement agency in Nigeria with a staff strength of about 371,800. There are currently plans to increase the force to 650,000, adding 280,000 new recruits to the existing 370,000. The NP is a very large organization consisting of 36 State commands grouped into 12 zones and 7 administrative organs. The agency is currently headed by IGP Ibrahim Kpotun Idris.

## **History of Nigeria Police Force**

Nigeria's police was first established in 1820. The first person to have the highest rank in all the police is commissioner general colonel KK. In 1879 a 1,200-member armed paramilitary Hausa Constabulary was formed. In 1896 the Lagos Police was established. A similar force, the Niger Coast Constabulary, was formed in Calabar in 1894 under the newly proclaimed Niger Coast Protectorate. In the north, the Royal Niger Company set up the Royal Niger Company Constabulary in 1888 with headquarters. When the protectorates of Northern and Southern Nigeria were proclaimed in the early 1900s, part of the Royal Niger Company Constabulary became the Northern Nigeria Police, and part of the Niger Coast Constabulary became the Southern Nigeria Police. During the colonial period, most police were associated with local

governments native authorities. In the 1960s, under the First Republic, these forces were first regionalised and then nationalised.

The NPF performed conventional police functions and was responsible for internal security generally; for supporting the prison, immigration, and customs services; and for performing military duties within or outside Nigeria as directed. Plans were announced in mid-1980 to expand the force to 200,000. By 1983, according to the federal budget, the strength of the NPF was almost 152,000, but other sources estimated it to be between 20,000 and 80,000. Reportedly, there were more than 1,300 police stations nationwide. Police officers were not usually armed but were issued weapons when required for specific missions or circumstances. They were often deployed throughout the country, but in 1989 Babangida announced that a larger number of officers would be posted to their native areas to facilitate police- community relations.

The Nigerian Police is designated by Section 194 of the 1999 constitution as the national police of Nigeria with exclusive jurisdiction throughout the country. Constitutional provision also exists, however, for the establishment of separate NPF branches forming part of the armed forces of the Federation or for their protection of harbours, waterways, railways and airfields. One such branch, the Port Security Police, was reported by different sources to have a strength in 1990 of between 1,500 and 12,000.

## **Organization structure of the Nigeria police**

The NPF maintains a three-tier administrative structure of departments, zonal and state commands.

### **Departments**

<b>Title</b>	<b>Departments</b>	<b>Responsibilities</b>
Department of Finance and Administration	Finance and Administration	General administration and Finance
Department of Operations	Operations	Crime prevention, Public Order, Public Safety
Department of Logistics and Supply	Logistics and Supply	Works and Police Estate Management
Department of Criminal Investigation	Force Criminal Investigation Department (FORCID)	Investigation
Department of Training and Development	Training	Human resources

Department of Research and Planning	Planning, Research and Development	Statistics and Data
Department of Information Technology	Information and communication technology	Communication management

The NPF was under the general operational and administrative control of an Inspector General appointed by the president and responsible for the maintenance of law and order. He was supported at headquarters in Lagos by a Deputy Inspector General (DIG) and in each state by police commissioners. The 1979 constitution provided for a Police Service Commission that was responsible for NPF policy, organization, administration, and finance (except for pensions, In February 1989, Babangida abolished the Police Service Commission and established the Nigeria Police Council in its stead, under direct presidential control. The new council was chaired by the president; the chief of General Staff, the minister of internal affairs, and the police inspector general were members. As part of the government reorganization in September 1990, Alhajji Sumaila Gwarzo, formerly SSS director, was named to the new post of minister of state, police affairs.

In late 1986, the NPF was reorganized nationwide into seven area commands, which superseded a command structure corresponding to each of the States of Nigeria. Each command was under a commissioner of police and was further divided into police provinces and divisions under local officers. NPF headquarters, which was also an area command, supervised and coordinated the other area commands. Later these Area Commands were grouped under Zone Commands as follows:

Zone 1, Headquartered Kano, with Kano, Kastina, and Jigawa Commands

Zone 2, Headquartered Lagos, with Lagos, and Ogun commands

Zone 3, Headquartered Yola, with Adamawa, and Gombe Commands

The 1986 NPF reorganization was occasioned by a public eruption of tensions between the police and the army. A superintendent was suspended for a time for grumbling that the army had usurped police functions and kept police pay low, and there were fights between police and army officers over border patrol jurisdiction. The armed forces chief of staff announced a thorough reorganization of the NPF into the seven new area commands and five directorates criminal investigations, logistics, supplies, training, and operations under deputy inspectors general. About 2,000 constables and 400 senior police officers were dismissed by mid-1987, leaving senior police officers disgruntled.

In mid-1989 another NPF reorganization was announced after the AFRCs acceptance of a report by Rear Admiral Murtala Nyako. In 1989 the NPF also created a Quick Intervention Force in each state, separate from the mobile police units, specifically to monitor political events and to quell unrest during the transition to civil rule. Each state unit of between 160 and 400 police was

commanded by an assistant superintendent and equipped with vehicles, communications gear, weapons, and crowd control equipment, including cane shields, batons, and tear gas.

A Federal Investigation and Intelligence Bureau was to be set up as the successor to the Directorate of Intelligence and Investigation; three directorates were established for operations, administration, and logistics, each headed by a deputy inspector general.

The Directorate of Operations was subdivided into four units under a deputy director operations, training, communications, and the Mobile Police.

The Directorate of Administration was composed of an administration unit headed by an assistant inspector general (AIG), and of budget and personnel units under commissioners.

The Directorate of Logistics had four units procurement, workshop/transport, supply, and work/maintenance under AIGs. The zonal arrangements were retained. However, AIGs were authorized to transfer officers up to the rank of chief superintendent, to set up provost units, to deploy mobile units, and to promote officers between the ranks of sergeant and inspector.

The above three Directorates were renamed Departments

### **Criminal Investigation Department**

D Department The Criminal Investigation Department (CID) is the highest criminal investigation arm of the Nigeria Police NPF. The Department is headed by a Deputy Inspector-General (DIG). Its primary functions include investigation and prosecution of serious and complex criminal cases within and outside the Country. The Department also coordinates crime investigations throughout the NPF. The CID is divided into sections, with most of them headed by Commissioners of Police (CPs). The Sections are:

- i. Administration
- ii. Anti-Fraud Section
- iii. The Central Criminal Registry (CCR)
- iv. Special Anti-Robbery Squad (SARS)
- v. X-Squad
- vi. General Investigation
- vii. Special Fraud Unit (SFU)
- viii. Legal Section
- ix. Forensic Science Laboratory

x. Interpol Liaison

xi. Homicide

xii. Anti-Human Trafficking Unit

xiii. Force Intelligence Bureau (FIB)

xiv. DCI Kaduna Annex

xv. Counter Terrorism Unit (CTU)

**Police Mobile Force:** The Police Mobile Force was established as a strike or Anti-riot unit under the control of the Inspector-General of Police to counter incidents of civil disturbance. It is designated to take over operations of major crisis where conventional police units cannot cope. There are presently 12 MOPOL Commands, MOPOLs 1 thru 12, controlling 52 Police Mobile Squadrons which are spread amongst the 36 State Commands and Federal Capital Territory .

### **Supervision of the Nigeria Police**

Three major Governmental Agencies oversee the control and supervision of the Nigerian Police Force; The Police Service Commission, the Nigerian Police Council and Ministry of interior.

#### **The Police Service Commission**

The PSC is the civilian oversight body on the police. It is responsible for appointment, promotion, and discipline of all police officers except the Inspector General of Police. It shall collaborate, cooperate and work with all the stake holders, namely the police council with the President of Nigeria as Chairman, all the Governors of the Federating States of Nigeria, the Minister of Interior and the Inspector-General of Police as members to turn the police around and enable it to meet the challenges of the 21st century

#### **The Nigeria Police Council (NPC)**

The Ministry of Interior.

### **4.0 SUMMARY**

The **Nigerian Police** (NP) formerly The Nigeria Police Force is the principal law enforcement agency in Nigeria with a staff strength of about 371,800. There are currently plans to increase the force to 650,000, adding 280,000 new recruits to the existing 370,000. The NP is a very large organization consisting of 36 State commands grouped into 12 zones and 7 administrative organs. The agency is currently headed by IGP Ibrahim Kpotun Idris

### **5.0 CONCLUSION**



- A police officer has the power to conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name. (S.23 Police Act)
- A Police officer has the Power to arrest with or without warrant. S.24 Police Act)
- Power to search (S.28 Police Act)
- Power to detain and search suspected persons (S.29 Police Act)
- Power to take fingerprints
- Grant Bail of person arrested without warrant, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place mentioned in the recognisance.

The Code of Conduct and Professional Standards for Police Officers is to provide all members for the Nigeria Police Force with a set of guiding principles and standards of behaviour while on or off-duty.

A Primary Responsibility of a Police Officer is to act as an official representative of government who is required and trusted to work within the law. The fundamental duties of a police officer include serving the community, safeguarding lives and property, protecting the innocent, keeping the peace and ensuring the rights of all to liberty, equality and justice; In performing duties, a police officer shall perform all duties impartially, without favour of affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. They will conduct themselves both in appearance and composure, in such a manner as to inspire confidence and respect for the position of public trust they hold.

## **6.0 TUTOR- MARKED ASSIGNMENT.**

1. Draw the organizational structure of the Nigeria police and briefly discuss the various departments of this agency in the administration of justice.
- 2, Discuss the powers of the police and its roles as provided by the constitution.

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## **UNIT 2: THE FEDERAL MINISTRY OF JUSTICE.**

### **1.0 INTRODUCTION**

The Federal Ministry of Justice is the legal arm of the Federal Government of Nigeria, primarily concerned with bringing cases before the judiciary that are initiated or assumed by the government. The Federal Ministry of Justice is responsible for ensuring justice for all. It provides a sound legal framework to maintain the rule of law as well as economic and social reform. Some of the duties that fall within the realm of the ministry include the prosecution of criminal case, Defence of civil suits, provision of legal advice to government organisations and institutions, drafting of Bills, handling of complaints of breaches of Citizens' Rights, publication of revised laws and White Papers for the Ministry of Justice. To provide fair, timely, accessible, and equal justice for all Nigerians.

### **2.0 OBJECTIVES:**

At the end of the unit you will be able to

- \*The role of federal? State ministry of justice
- \* Know the various departments in the ministry
- \* The role of the attorney general

### **3.0 MAIN CONTENT**

It is headed by the Attorney General, who is also Minister of Justice. The Attorney General is appointed by the President, and is assisted by a Permanent Secretary, who is a career civil servant. As of November 2015, the Attorney General is Justice. Different departments in the ministry are responsible for:

Public prosecution.

The Department of Public Prosecution is one of the main Stream Departments in the Federal Ministry of Justice. Its primary functions include:

- i. Proffering Legal Advice or Opinion to the Nigerian Police and other Law Enforcement Agencies, Ministries and Extra-Ministerial Departments on criminal matters and letters repertoires and extradition);
- ii. Public prosecution of accused person in all court of competent jurisdiction including the High Court, Federal High Court, Court of Appeal and Supreme Court within and outside the Federal Capital Territory, Abuja;
- iii. Defending criminal action in courts of competent jurisdiction. on behalf of Honorable Attorney General of the Federation such as entering Nolle-prosequi authorized, by the Honorable' Attorney General of the Federation, Bail matters, Human Rights enforcement actions etc., Trafficking in minors and young women from Nigeria for the purpose of sexual exploitation;
- iv. Presently the Department is headed by a Director who is supported by competent Lawyers and effective support staff.
- v. By virtue of section 174 of the constitution of the Federal Republic of Nigeria 1999 as (amended) which vests powers on the Honourable Attorney-General of the Federation to institute, take over, continue or discontinue with matters in Nigerian Courts except Court Martial. The Department of Public Prosecutions performs these functions on behalf of the HAGF.
- vi. Department of Public Prosecution handles petitions forwarded to the HAGF for intervention as Chief Law officers of the Federation and Minister of Justice.
- vii. The department of Public Prosecution provides legal advisory services to MDAs and supervises External Prosecutors who are prosecuting criminal cases in various courts in the country.
- viii. Establishment of Complex Case Group (CCG) by the Assistance of the British Council in 2003;

- Citizens rights, Law reporting, Finance and administration, Planning, research and statistics, Legal drafting, International and comparative law, Civil litigation, Solicitors, Human resource management and Procurement.

A **justice ministry** or **ministry of justice** is a ministry or other government agency charged with justice. The ministry is often headed by a **minister for justice** or **secretary of justice** or **secretary for justice**; sometimes the head of a **department of justice** is entitled *attorney general*. Specific duties may relate to organizing the justice system, overseeing the public prosecutor and maintaining the legal system and public order. Some ministries have additional responsibilities in related policy areas overseeing elections, directing the police, law reform. The duties of the ministry of justice may in some countries be split from separate responsibilities of an attorney general often responsible for the justice system and the interior minister (often responsible for public order. Sometimes the prison system is separated into another government department called Corrective Services.

## Statutory duties

By Section 195 of the 1999 Constitution of Nigeria, “There shall be an Attorney-General for each State who shall be the Chief Law Officer of the State and a Commissioner for

Justice of the government of that State pursuant to the above provision Also the Attorney General shall be the Head the Ministry of Justice, charged with the responsibility to provide a legal services and support for local law enforcement in the state and acts as the chief counsel in state litigation. In addition, the Attorney General Oversees law enforcement agencies.

## **Functions, powers and duties**

The Attorney General is legal adviser to the Government and attends Government meetings. The Attorney General advises the Government on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union, the European Convention on Human Rights or other international treaties to which Ireland has acceded. The Attorney General also advises as to whether the State can ratify international treaties and conventions. The Attorney General represents the State in legal proceedings.

The Attorney General is legal adviser to each Government Department and certain public bodies. The Attorney General is the representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights. The Attorney General defends the constitutionality of Bills referred to the Supreme Court under Article 26 of the Constitution. The Attorney General is an ex officio member of the Council of State which the President of Ireland can consult in relation to his exercise and performance of certain powers and functions under the Constitution. The Attorney General also has functions in respect of the Law Reform Commission under the Law Reform Commission Act 1975, in respect of legislative programming as a member of the Legislation Committee which is chaired by the Government Chief Whip. The Attorney General also has a function under the Coroners Act 1962 to direct a coroner to hold an inquest where he considers that the circumstances of a person's death make the holding of an inquest advisable. The Attorney General also has some limited statutory functions, e.g. the Geneva Conventions Act 1962.

The Office of the Parliamentary Counsel and the Chief State Solicitor's Office are both constituent parts of the Attorney General's Office. Accordingly, the principal legal functions carried out by the Office as a whole are the provision of legal advice Advisory Counsel, legislative drafting Parliamentary Counsel, the provision of litigation, conveyancing and other transactional services Chief State Solicitor's Office.

***Nolle prosequi*** Classical Latin: is legal term of art and a Latin legal phrase meaning be unwilling to pursue a phrase amounting to do not prosecute. It is a phrase used in many common law criminal prosecution contexts to describe a prosecutor's decision to voluntarily discontinue criminal charges either before trial or before a verdict is rendered. It contrasts with an involuntary dismissal.

## **4.0 SUMMARY**

- i. Proffering legal Advice on Criminal matters; Undertaking of public prosecution of accused Person;
- ii. Defending criminal action in courts of competent jurisdiction;
- iii. Prompt and courteous handling of cases; Handling of extradition matters;
- iv. Overseeing implementation of mutual legal assistance, agreement on criminal matters;
- v. Assisting and encouraging the criminal law jurisprudence in intellectual circles;
- vi. Overseeing and coordinating the work of other statutory prosecuting agencies.

## **5.0 CONCLUSION**

The Federal Ministry of Justice is responsible for ensuring justice for all. It provides a sound legal framework to maintain the rule of law as well as economic and social reform. Some of the duties that fall within the realm of the ministry include the prosecution of criminal case, Defence of civil suits, provision of legal advice to government organisations and institutions, drafting of Bills, handling of complaints of breaches of Citizens' Rights, publication of revised laws and White Papers for the Ministry of Justice.

The Department performs the following functions as a key role-player in the administration of criminal justice and effective execution of Government's policy on crime:

1. Rendering of legal advisory services to the Police, the State Security Services Department etc on criminal investigations and Prosecutions.
2. Rendering of legal advice to Government Ministries, Agencies and Departments on crime-related issues and concerns.
3. Monitoring and Supervision of Prosecutions by the Police and other prosecuting agencies in the Magistrate Courts.
4. Preparation and filing of criminal Court processes to facilitate commencement of trial of offenders by the Courts.
5. Prosecution of criminal cases in the High Courts and Magistrate Courts.
6. Prosecution of Criminal Appeals in the High Courts, Court of Appeal and Supreme Court.
7. Collation and utilization of crime-related data for the effective implementation and execution of Government's policy on crime.

## **6.0 TUTORED MARKED ASSIGNMENT:**

How important is the ministry of justice both at the federal and state levels?

## 7.0 REFERENCES / FURTHER READING

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## UNIT 3 : THE JUDICIARY

### 1.0 INTRODUCTION

The Nigerian Judicature is made up of the regulatory institutions, courts/tribunals, judicial processes, judges and non-judge workers, the inter-phasing agency of law enforcement centers and Prisons or other holding centers. Together they all uphold the idea of effective justice administration for the benefit of citizens and other stakeholders connected to the Nigerian sovereignty which is the primary justification for a judicial arm of government.

The Judiciary arm of government is responsible for interpreting the law of the land, while applying it in situations where they are necessary; this makes the job of the Judiciary a very critical one. The law of the land constitutes the bases upon which judgments are ruled; it is therefore fundamental that its interpretation and application be carried out with absolute alacrity and meticulousness. The Nigerian Judicial System comprises of 'the Body of Benchers' and 'the Bar' itself. The Body of Benchers is a collection of the highest ranking legal practitioners in the country which is headed by the Chief Justice of the Federation. It also has as its members the respective Chief Judges of the States of the Federation and certain very reputable lawyers in the country, whereas the Bar is a body of all the barristers in the country. These together constitute the Nigerian Legal Class. The Nigerian Judicial System has come a long way, taking its origin from the colonial era. It was saddled with the responsibility of checking the activities of the Executive and Legislative arms of government. The Judiciary as a matter of fact, plays a very vital role in the development of the country considering the fact it is the mechanism that oversees

to the usage and management of power in the country. If the power that is vested on the Executive and Legislative offices is not checked, the bulk of the citizenry will have lots of troubles and challenges to contend with.

The primary responsibility of the Judiciary is to ensure that the Executive and Legislative arms of government function within the ambits of the constitutional provisions made available to them. The Judiciary ought to stand isolated while performing its constitutional duty. It does not need any interference from the Executive or Legislature in carrying out its primary assignment. It operates independent of any external disturbances and functions with the constitutional power vested in its office. The Nigerian Judicial System has had lots of challenges to contend with. During the shambolic military era, the Judiciary was subjected to abject emasculation to the extent that it lost the substance to its name and only existed as a nomenclatural entity. To say the least, 'the Judiciary sank into oblivion'. But with the advent of democracy came an organized political façade that accorded the Judiciary its rightful place as the watchdog of the polity. The importance of the Judiciary in any political system cannot be over-emphasized, hence the constitution provides for its absolute independence to enable it perform its sacred constitutional function without sentiments and reservations .

## **2.0 OBJECTIVES**

Judiciary is an indispensable organ of government. Its importance cannot be over emphasized. Any society without a judiciary system is bound to face chaos and anarchy. In a nation where the judiciary is weak or not independent its people might be confronted with injustice and all kinds of intimidation. The judiciary organ performs several roles to ensure stability of a society. Some of its statutory functions amongst others include: conflicts resolution, punish people who violate the laws of the land, interpret the constitution of the land and check the activities of the other organs of the government namely: the executive and legislature. Thus absence of judiciary system could create uncomfortable situation in any given country. Democracy as the government of the masses cannot stand in such as a country.

According to section 6(1) of the Constitution, "The Judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation." On the other hand, section 6(2) provides that: "the judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State. That however is not the end. The Constitution further underscores the separateness of Federal Courts and State Courts by the delimitation it provided in its Chapter 7 which is headed 'The Judicature'. Whilst Part I of the Chapter is headed 'Federal Courts', Part II is headed 'State Court'. Under the Federal Courts, we have the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the National Industrial Court of Nigeria, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the FCT and the Customary Court of Appeal of the FCT.

Democracy as defined by ex-President Abraham Lincoln is the government of the people by the people and for the people. Hence in a weak judiciary system, the people cannot enjoy the dividends of democracy. Several weeks before the National chapter of the Judiciary Staff Union

of Nigeria (JUSUN) declared a nationwide strike the workers in Rivers judiciary are on strike. The strike no doubt has negative effect on the administration of justice in the country. The long closure of the courts could force people who have grievances to seek justice elsewhere other than the constitutional means of looking for redress in law courts.

Ineffective judiciary system is capable of throwing the entire nation into confusion. A moribund judiciary organ is not healthy for the development of democracy in Nigeria. This is a country where there are cracks in most of the sectors. Nigeria is a democratic nation; therefore for democracy to drive well there must be an independent judiciary. There is a close relationship between judiciary and democracy. Government and relevant authorities should do something about the striking judiciary staff so that courts will resume sitting to dispense justice. This will reduce unnecessary tension in the country.

Both the suspended 1979 constitution and the never implemented 1989 constitutions, as well as the new constitution promulgated on May 29, 1999 provide for an independent judiciary. In practice, the judiciary is subject to executive and legislative branch pressure, influence by political leaders at both the state and federal levels, and suffers from corruption and inefficiency.

Under the 1999 constitution, the regular court system comprises federal and state trial courts, state appeals courts, the Federal Court of Appeal, the Federal Supreme Court, and Shari'ah Islamic and customary traditional courts of appeal for each state and for the federal capital territory of Abuja. Courts of the first instance include magistrate or district courts, customary or traditional courts, Shari'ah courts, and for some specified cases, the state high courts. In principle, customary and Shari'ah courts have jurisdiction only if both plaintiff and defendant agree, but fear of legal costs, delays, and distance to alternative venues encourage many litigants to choose these courts.

Trials in the regular court system are public and generally respect constitutionally protected individual rights, including a presumption of innocence, the right to be present, to confront witnesses, to present evidence, and to be represented by legal counsel. However, low compensation for judges, understaffing, poor equipment, bribery, special settlements, and a host of developmental factors decrease the reliability and impartiality of the courts.

Under the Abubakar Government, military tribunals continued to operate outside the constitutional court system, but they were used less and less frequently as military rule waned; the tribunals officially were disbanded by the implementation of the new constitution and the return to civilian rule. The tribunals had in the past been used to try both military personnel and civilians accused of various crimes, but groups asserted that these tribunals failed to meet internationally accepted standards for fair trial.

In October 1999, the governor of Zamfara signed into law two bills passed by the state legislature aimed at instituting Shari'ah law in the state. As a result, school children are now being segregated by sex in Zamfara schools, some public transportation, and some health facilities. There were fears among non-Muslims that despite legal provisions, women and other groups would be subjected to discrimination in Shari'ah courts. As of early 2003, eleven other northern states had adopted various forms or adaptations of Shari'ah law, including: Sokoto,



Kebbi, Niger, Kano, Katsiana, Kaduna, Jigawa, Yobe, Bauchi, Borno, and Gombe. Some of these states have already issued sentences of public caning for consumption of alcohol, amputations for stealing, and death by stoning for committing adultery.

### **The hierarchy of Courts in Nigeria {ascending}**

The hierarchy of courts is the arrangement of courts in the method through which appeal flows. If the judgement at the lower court is not satisfying, an appeal can be made to the higher court in order to get redress and justice. I would highlight the courts starting from the lowest.

#### **Magistrate/ District Courts**

This is just a single court, it transforms to a magistrate court in the hearing of a criminal case while in the hearing of a civil case it becomes a district court. These are courts that are regarded as courts of inferior jurisdiction. There are two adduced reasons for this. Firstly, it is not listed among the courts in S.6(5)(a) – (i) of the 1999 Constitution. And section S.6(3) provides that the courts that are mentioned in the previous section are courts of superior record. By implication, courts that are not mentioned are courts of inferior record. The second reason for this is that they cannot punish contempt ex facie curria.

The decisions of magistrate courts are bound by decisions of the higher courts but their own decisions do not bind any court. Also, they are not bound any of their previous decisions.

#### **The High Court/Sharia/Customary Court Of Appeal**

Directly above the district/magistrate court, you would find the High Courts, Customary Court of Appeal and Sharia Court of Appeal. Pursuant to S.6(5) of the 1999 Constitution, we have federal high court, state high court and the high court of the federal capital territory. Of these three, the state high court has the widest jurisdiction. It should be noted that customary and sharia courts of appeal are not bound by judicial precedent. This is because they are not of common law origin. Also, they hear appeals on cases from the area courts. While the high court hears from the magistrate court.

These courts are referred to as courts of co-ordinate jurisdiction therefore, they are not bound by previous decisions of another high court. At best, the decision of another high court is persuasive on another high court. However, it is not expected for a high court to depart from another high court's decision except in good cause.

A state high court, unlike the federal high court, has wider jurisdiction. In the provision of S.251 of the constitution, you would be able to see the limited jurisdiction placed on the Federal High Court. Thus, if a state high court makes a decision on a matter of federal application, it binds all magistrate courts in the country. If it makes a decision on matters of state application, it only binds courts of inferior jurisdiction in the state.

#### **Court of Appeal**

Directly above the high court is the court of appeal. There is only one court of appeal in Nigeria but it has different divisions over the country. Thus, decisions by the court of appeal in Ilorin division is treated as its own decision in the court of appeal Lagos state. The question then is how does the court of appeal deal with judicial precedent?

It is trite that the court of appeal is bound by decisions of the supreme court. However, in dealing with decisions of a court of appeal in another division, the court of appeal is bound to an extent. In civil cases, it is bound by the decision of another court of appeal except in the situations provided for in the case of *Young vs Bristol Aeroplane Co*:

- If the decision is given *per incuriam*
- If there are two or more conflicting decisions of different courts of appeals, it can follow either of them or choose to follow none of them.
- When a decision of a court of appeal is in contrast with a decision of the Supreme court.

However, in criminal matters, a court of appeal is not bound to follow the decisions of other courts of appeals. This is because of the very nature of criminal law in which each case should be treated on its merit. Strictly following a previous decision could lead to irreparable damage. This may be due to the fact that it is better for the court to set free 10 guilty persons than to convict a single innocent person.

### **The supreme Court**

This is the highest court in the land and its decisions on any matter is final. Its decisions are binding on all courts throughout the country. The supreme court is not bound by any previous decision of any court anywhere. However, it follows its previous decisions in order to maintain certainty and uniformity in the administration of justice. The supreme court may, however, choose to depart from its previous decisions in the following situation:

- If the previous decision is given *per incuriam*
- If following the previous decision would lead to substantial injustice.
- When a legislation nullifies the decision made in the previous judgement. see *Bucknor Maclean vs Inlaks Nig Ltd* 1980 where the court departed from its decision in two previous cases: *Shell BP vs Jammal Engineering Ltd* and *Owumi vs Paterson Zochonis and co Ltd* due to the fact that adherence to these precedents could lead to substantial injustice.
- If it is faced with two previous conflicting decisions of its own, it can choose to follow anyone.

In the case of *Odi vs Osafile* the court reasoned that the law was made for man and not man for the law. Also, man isn't infallible and so are his thoughts. Therefore if it is pointed out that there has been a substantial error in a previous decision, the court should have the jurisdiction to correct.

## **Not to be confused with Precedence or President.**

In legal systems based on common law, a precedent, or authority, is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. Common law legal systems place great value on deciding cases according to consistent principled rules so that similar facts will yield similar and predictable outcomes, and observance of precedent is the mechanism by which that goal is attained. The principle by which judges are bound to precedents is known as *stare decisis*. Black's Law Dictionary defines precedent as a rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases. Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and Delegated legislation (in U.K. parlance or regulatory law in U.S. parlance) regulations promulgated by executive branch agencies.

**Case law**, in common law jurisdictions, is the set of decisions of adjudicatory tribunals or other rulings that can be cited as precedent. In most countries, including most European countries, the term is applied to any set of rulings on law which is guided by previous rulings, for example, previous decisions of a government agency.

Essential to the development of case law is the publication and indexing of decisions for use by lawyers, courts and the general public, in the form of law reports. While all decisions are precedent though at varying levels of authority, some become leading cases or landmark decisions" that are cited especially often.

Stare decisis Anglo-Latin pronunciation is a legal principle by which judges are obligated to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim *Stare decisis et non quieta movere*: to stand by decisions and not disturb the undisturbed. In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters. The principle of *stare decisis* can be divided into two components.

The first is the rule that a decision made by a superior court, or by the same court in an earlier decision, is binding precedent that the court itself and all its inferior courts are obligated to follow. The second is the principle that a court should not overturn its own precedent unless there is a strong reason to do so and should be guided by principles from lateral and inferior courts. The second principle, regarding persuasive precedent, is an advisory one that courts can and do ignore occasionally.

## **Case law in common law systems**

In the common law tradition, courts decide the law applicable to a case by interpreting statutes and applying precedent which record how and why prior cases have been decided. Unlike most civil law systems, common law systems follow the doctrine of *stare decisis*, by which most courts are bound by their own previous decisions in similar cases, and all lower courts should make decisions consistent with previous decisions of higher courts.<sup>[4]</sup> For example, in England, the High Court and the Court of Appeal are each bound by their own previous decisions, but the

Supreme Court of the United Kingdom is able to deviate from its earlier decisions, although in practice it rarely does so.

Generally speaking, higher courts do not have direct oversight over day-to-day proceedings in lower courts, in that they cannot reach out on their own initiative (*sua sponte*) at any time to reverse or overrule judgments of the lower courts. Normally, the burden rests with litigants to appeal rulings (including those in clear violation of established case law) to the higher courts. If a judge acts against precedent and the case is not appealed, the decision will stand.

A lower court may not rule against a binding precedent, even if the lower court feels that the precedent is unjust; the lower court may only express the hope that a higher court or the legislature will reform the rule in question. If the court believes that developments or trends in legal reasoning render the precedent unhelpful, and wishes to evade it and help the law evolve, the court may either hold that the precedent is inconsistent with subsequent authority, or that the precedent should be *distinguished* by some material difference between the facts of the cases. If that judgment goes to appeal, the appellate court will have the opportunity to review both the precedent and the case under appeal, perhaps overruling the previous case law by setting a new precedent of higher authority. This may happen several times as the case works its way through successive appeals. Lord Denning, first of the High Court of Justice, later of the Court of Appeal, provided a famous example of this evolutionary process in his development of the concept of estoppel starting in the ***High Trees case: Central London Property Trust Ltd v. High Trees House Ltd* [1947] K.B. 130.**

Judges may refer to various types of persuasive authority to reach a decision in a case. Widely cited non-binding sources include legal encyclopedias such as *Corpus Juris Secundum* and *Halsbury's Laws of England*, or the published work of the Law Commission or the American Law Institute. Some bodies are given statutory powers to issue Guidance with persuasive authority or similar statutory effect, such as the Highway Code.

In federal or multi-jurisdictional law systems there may exist conflicts between the various lower appellate courts. Sometimes these differences may not be resolved and it may be necessary to distinguish how the law is applied in one district, province, division or appellate department. Usually only an appeal accepted by the court of last resort will resolve such differences and, for many reasons, such appeals are often not granted.

Any court may seek to distinguish its present case from that of a binding precedent, in order to reach a different conclusion. The validity of such a distinction may or may not be accepted on appeal. An appellate court may also propound an entirely new and different analysis from that of junior courts, and may or may not be bound by its own previous decisions, or in any case may distinguish the decisions based on significant differences in the facts applicable to each case. Or, a court may view the matter before it as one of first impression, not governed by any controlling precedent.

Where there are several members of a court, there may be one or more judgments given; only the ratio decidendi of the majority can constitute a binding precedent, but all may be cited as persuasive, or their reasoning may be adopted in argument. Quite apart from the rules of

precedent, the weight actually given to any reported judgment may depend on the reputation of both the court and the judges.

## **RULES OF INTERPRETATION**

Statutory interpretation is the process by which courts interpret and apply legislation. Some amount of interpretation is often necessary when a case involves a statute. Sometimes the words of a statute have a plain and straightforward meaning. But in many cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge. To find the meanings of statutes, judges use various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. In common law jurisdictions, the judiciary may apply rules of statutory interpretation both to legislation enacted by the legislature and to delegated legislation such as administrative agency regulations.

The judiciary interprets how legislation should apply in a particular case as no legislation unambiguously and specifically addresses all matters. Legislation may contain uncertainties for a variety of reasons:

- Words are imperfect symbols to communicate intent. They are ambiguous and change in meaning over time. (The word 'let' used to mean 'prevent' or hinder and now means allow. The word 'peculiar' is used to mean *both* specific *and* unusual, e.g. kangaroos are peculiar to Australia, and it's very peculiar to see a kangaroo outside Australia.)
- Unforeseen situations are inevitable, and new technologies and cultures make application of existing laws difficult. (Is e-mail subject to the same protection as documents held by a person, or is it considered less protected since it is in the hands of a third party?)
- Uncertainties may be added to the statute in the course of enactment, such as the need for compromise or catering to special interest groups.

**Literal rule** : The literal rule of statutory interpretation should be the first rule applied by judges. Under the literal rule, the words of the statute are given their natural or ordinary meaning and applied without the judge seeking to put a gloss on the words or seek to make sense of the statute.

The **plain meaning rule**, also known as the **literal rule**, is one of three rules of statutory construction traditionally applied by English courts. The other two are the mischief rule and the "golden rule".

The plain meaning rule dictates that statutes are to be interpreted using the ordinary meaning of the language of the statute. In other words, a statute is to be read word for word and is to be interpreted according to the ordinary meaning of the language, unless a statute explicitly defines some of its terms otherwise or unless the result would be cruel or absurd. Ordinary words are given their ordinary meaning, technical terms are given their technical meaning, and local, cultural terms are recognized as applicable. The plain meaning rule is the mechanism that

prevents courts from taking sides in legislative or political issues. Additionally, it is the mechanism that underlies textualism and, to a certain extent, originalism.

**Golden Rule:** In law, the **golden rule**, or **British rule**, is a form of statutory construction traditionally applied by English courts. The other two are the "plain meaning rule" (also known as the literal rule and the mischief rule. The golden rule allows a judge to depart from a word's normal meaning in order to avoid an absurd result.

The term golden rule seems to have originated in an 1854 court ruling, and implies a degree of enthusiasm for this particular rule of construction over alternative rules that has not been shared by all subsequent judges. For example, one judge made a point of including this note in a 1940 decision: The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning.

**Mischief Rule:** The **mischief rule** is one of three rules of statutory interpretation traditionally applied by English courts. The other two are the plain meaning rule also known as the literal rule and the golden rule. The main aim of the rule is to determine the mischief and defect that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. In applying the mischief rule, the court is essentially asking what part of the law did the law not cover, but was meant to be rectified by Parliament in passing the bill. The rule was first laid out in a 16th-century ruling of the Exchequer Court.

Therefore, the court must try to determine how a statute should be enforced. This requires **statutory construction**. It is a tenet of statutory construction that the legislature is supreme assuming constitutionality when creating law and that the court is merely an interpreter of the law. Nevertheless, in practice, by performing the construction the court can make sweeping changes in the operation of the law.

Statutory interpretation refers to the process by which a court looks at a statute and determines what it means. A statute, which is a bill or law passed by the legislature, imposes obligations and rules on the people. Statutes, however, although they make the law, may be open to interpretation and have ambiguities. Statutory interpretation is the process of resolving those ambiguities and deciding how a particular bill or law will apply in a particular case.

Assume, for example, that a statute mandates that all motor vehicles travelling on a public roadway must be registered with the Department of Motor Vehicles . If the statute does not define the term "motor vehicles, then that term will have to be interpreted if questions arise in a court of law. A person driving a motorcycle might be pulled over and the police may try to fine him if his motorcycle is not registered with the DMV. If that individual argued to the court that a motorcycle is not a motor vehicle then the court would have to interpret the statute to determine what the legislature meant by motor vehicle and whether or not the motorcycle fell within that definition and was covered by the statute.

There are numerous rules of statutory interpretation. The first and most important rule is the rule dealing with the statute's plain language. This rule essentially states that the statute means what it says. If, for example, the statute says "motor vehicles", then the court is most likely to construe

that the legislation is referring to the broad range of motorised vehicles normally required to travel along roadways and not aeroplanes or bicycles even though aeroplanes are vehicles propelled by a motor and bicycles may be used on a roadway.

#### **4.0 SUMMARY**

Judicial independence can be defined as the total freedom of the judicial arm from the other two arms (Executive and Legislature) of government. The purpose of this is to ensure the entrenchment of democracy.

Independence protects the judicial institution from the Executive and from the Legislature. As such, it lies at the very heart of the separation of powers. Other arms of governance are accountable to the people, but the Judiciary – and the Judiciary alone – is accountable to a higher value and to standards of judicial rectitude.[10] It is on this basis that the United Nations adopted basic principles on the independence of the judiciary.[11] That is, before it can be held that the judiciary is truly independent, these principles have to be in place. These principles are;

The independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the Judiciary.

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The judiciary have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the court be subject to revision. The principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

#### **5.0 CONCLUSION**

It is an incontestable fact that the judiciary occupies a pre-eminent position in the administration of justice not only in Nigeria but in every sane society where there is respect for the rule of law as opposed to rule by brute force. It therefore follows that the independence of judiciary is necessary for the sustenance of the Rule of Law and Democracy. Condition of service of judicial officers should be reviewed to attract the best brains to the bench.

The constitution should be amended to ensure that it provides for financial autonomy of the judiciary by establishing a provision for a capital expenditure for the judiciary. The court system should be made more sovereign, liable, proficient, neutral, reachable, affordable and trustworthy, especially as regard removal of judges. Efficient mechanisms should be put in place to ensure enforcement of court rulings against government, like a regulatory body. The Judiciary should be allocated a good percentage of the income of the State. And democratic institutions should be strengthened to make them effective, independent and accountable.

## **6.0 TUTORED MARKED ASSIGNMENT**

Discuss the constitutional role of the judiciary in Nigeria and what are challenges confronting the effective administration of justice today?

## **7.0 REFERENCE FOR FURTHER READINGS**

Textual canons are rules of thumb for understanding the words of the text. Some of the canons are still known by their traditional Latin names.

### **Plain meaning**

When writing statutes, the legislature intends to use ordinary English words in their ordinary senses. The United States Supreme Court discussed the plain meaning rule in *Caminetti v. United States*, 242 U.S. 470 (1917), reasoning [i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms." And if a statute's language is plain and clear, the Court further warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."

### **Rule against surplusage**

Where one reading of a statute would make one or more parts of the statute redundant and another reading would avoid the redundancy, the other reading is preferred.

*Eiusdem generis* ("of the same kinds, class, or nature")



When a list of two or more specific descriptors is followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them. For example, where "cars, motor bikes, motor powered vehicles" are mentioned, the word "vehicles" would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes).

*Expressio unius est exclusio alterius* ("the express mention of one thing excludes all others")

Items not on the list are impliedly assumed not to be covered by the statute or a contract term. However, sometimes a list in a statute is illustrative, not exclusionary. This is usually indicated by a word such as "includes" or "such as."

*In pari materia* upon the same matter or subject

When a statute is ambiguous, its meaning may be determined in light of other statutes on the same subject matter.

*Noscitur a sociis* ("a word is known by the company it keeps")

When a word is ambiguous, its meaning may be determined by reference to the rest of the statute.

*Reddendo singula singulis* or referring each to each

When a will says "I devise and bequeath all my real and personal property to A", the principle of *reddendo singula singulis* would apply as if it read "I devise all my real property, and bequeath all my personal property, to A", since the word devise is appropriate only to real property and the term bequeath is appropriate only to personal property.

*Generalia specialibus non derogant* ("the general does not detract from the specific.")

Substantive. Substantive canons instruct the court to favor interpretations that promote certain values or policy results.

Charming Betsy Canon . National statute must be construed so as not to conflict with international law. See *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804): It has also been observed that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains...

Interpretation in Light of Fundamental Values . Statute does not violate fundamental societal values. See, for example, *Holy Trinity Church v. United States*,<sup>[13]</sup> or *Coco v The Queen*. However, legislation that is intended to be consistent with fundamental rights can be overridden by clear and unambiguous language.<sup>[15]</sup>

Rule of Lenity . In construing an ambiguous criminal statute, the court should resolve the ambiguity in favor of the defendant. See *McNally v. United States*, 483 U.S. 350 (1987); See, e.g., *Muscarello v. U.S.*, 524 U.S. 125 (1998) (declining to apply the rule of lenity); *Evans v. U.S.*, 504 U.S. 255 (1992) (Thomas, J., dissenting); *Scarborough v. U.S.*, 431 U.S. 563 (1977) (Stewart, J., dissenting); See *United States v. Santos* (2008).

Avoidance of abrogation of state sovereignty . See *Gregory v. Ashcroft*;<sup>1</sup> see also *Gonzales v. Oregon*; see also *Nevada Dept. of Human Resources v. Hibbs*, except where such would deprive the defendant of bedrock, foundational rights that the Federal Government intended to be the minimum floor that the states were not allowed to fall beneath; *Dombrowski v Pfister*.<sup>[21]</sup>

"Indian" Canon . National statute must be construed in favor of Native Americans. See *Chickasaw Nation v. United States*, 534 U.S. 84 (2001): "statutes are to be construed liberally in favor of Indians with ambiguous provisions interpreted to their benefit." This canon can be likened to the doctrine of contra proferentem in contract law.

## **UNIT 4: THE NIGERIAN PRISONS**

### **1.0 INTRODUCTION**

In modern republics, the function of prison is said to be correction. When individuals break laws that uphold the common good, the conventional wisdom goes, they need to be punished or otherwise taught to be more socially cooperative and generous. However, the only thing that prison teaches is obedience. A corrected citizen is one who internalizes prison bars even on the streets.

Prison serves as a constant threat against all who would oppose what governments and corporations do with our collective resources. A critic might point out that prison is only a threat to dissidents who break the law, but what it comes down to is that there are no legal means to fundamentally change the government. Elections are simply a Darwinian means of weeding out representatives (of the elite) whose populist rhetoric is less convincing. If all you want from your government is some new gun law or corporate accountability standard, you may find your democracy fulfilling (provided you can muster about a hundred thousand person-hours of volunteer work, two hundred thousand dollars of donations, and provided the corporations or resident religious fundamentalists in the government don't put up too much of a fight, and also provided you don't mind that these new rules will be bent occasionally for the rich and powerful). But if what you want is a society that values human and environmental interests over Machiavellian state and corporate interests, and most people do at some level, then you're out of

luck; your government will not represent you. There is no consent of the governed; we were all born subjects, whereas the government is not born out of our initiative or participation. In fact, it functions best without us. If the only option you have is to consent, that's not consensus: it's submission

## **2.0 OBJECTIVE:**

At the end of this unit you should be able to know

- \*the origin of the Nigeria prisons

- \*Types of prisons in Nigeria

- \*the structure of the Nigerian prison and other prisons

## **3.0 MAIN CONTENT**

A prison, correctional facility, detention center, jail, gaol, penitentiary or remand centre is a facility in which inmates are forcibly confined and denied a variety of freedoms under the authority of the state. Prisons are most commonly used within a criminal justice system: people charged with crimes may be imprisoned until they are brought to trial; those pleading or being found guilty of crimes at trial may be sentenced to a specified period of imprisonment. Besides their use for punishing crimes, jails and prisons are frequently used by authoritarian regimes against perceived opponents.

The term prison or penitentiary is often used to describe institutions that incarcerate people for longer periods of time, such as many years, while *jail* is often used to describe institutions focused on confining people for shorter periods of time (e.g. for shorter sentences or while waiting for trial / sentencing). Prisons often have facilities that are more designed with long term confinement in mind in comparison to jails.

Prisons can be used as a tool of political repression to punish what are deemed political crimes, often without trial or other legal due process; this use is illegal under most forms of international law governing fair administration of justice. In times of war, prisoners of war or detainees may be detained in military prisons or prisoner of war camps, and large groups of civilians might be imprisoned in internment camps..

The legal definition of Prison, is that, it is a place used for confinement of convicted criminals. Aside from the death penalty, a sentence to prison is the harshest punishment imposed on criminals in the United States. On the federal level, imprisonment or incarceration is managed by the Federal Bureau of Prisons, a federal agency within the DEPARTMENT OF JUSTICE. State prisons are supervised by a state agency such as a department of corrections. Confinement in prison, also known as a penitentiary or correctional facility, is the punishment that courts most commonly impose for serious crimes, such as felonies. For lesser crimes, courts usually impose short-term incarceration in a jail, detention center, or similar facility.

Confining criminals for long periods of time as the primary form of punishment is a relatively new concept. Throughout history, various countries have imprisoned criminal offenders, but imprisonment was usually reserved for pre-trial detention or punishment of petty criminals with a short term of confinement. Using long-term imprisonment as the primary punishment for convicted criminals began in the United States. In the late eighteenth century, the nonviolent Quakers in Pennsylvania proposed long-term confinement as an alternative to Capital Punishment. The Quakers stressed solitude, silence, rehabilitation, hard work, and religious faith. Confinement was originally intended not only as a punishment but as an opportunity for renewal through religion.

## History

The use of prisons can be traced back to the rise of the state as a form of social organization. Corresponding with the advent of the state was the development of written language, which enabled the creation of formalized legal codes as official guidelines for society. The best known of these early legal codes is the Code of Hammurabi, written in Babylon around 1750 BC. The penalties for violations of the laws in Hammurabi's Code were almost exclusively centered on the concept of *lex talionis* the law of retaliation, whereby people were punished as a form of vengeance, often by the victims themselves. This notion of punishment as vengeance or retaliation can also be found in many other legal codes from early civilizations, including the ancient Sumerian codes, the Indian *Manama Dharma Astra*, the *Hermes Trismegistus* of Egypt, and the Israelite Mosaic Law.

A common punishment in Early Modern Europe was to be made a galley slave. The galley pictured here belonged to the Mediterranean fleet of Louis XIV, c. 1694.

Some Ancient Greek philosophers, such as Plato, began to develop ideas of using punishment to reform offenders instead of simply using it as retribution. Imprisonment as a penalty was used initially for those who could not afford to pay their fines. Eventually, since impoverished Athenians could not pay their fines, leading to indefinite periods of imprisonment, time limits were set instead. The prison in Ancient Athens was known as the *desmoterion* place of chains.

The Romans were among the first to use prisons as a form of punishment, rather than simply for detention. A variety of existing structures were used to house prisoners, such as metal cages, basements of public buildings, and quarries. One of the most notable Roman prisons was the Mamertine Prison, established around 640 B.C. by Ancus Marcius. The Mamertine Prison was located within a sewer system beneath ancient Rome and contained a large network of dungeons where prisoners were held in squalid conditions<sup>[8]</sup>, contaminated with human waste. Forced labor on public works projects was also a common form of punishment. In many cases, citizens were sentenced to slavery, often in *ergastula* (a primitive form of prison where unruly slaves were chained to workbenches and performed hard labor.

## **Middle Ages to the 17th century**

During the Middle Ages in Europe, castles, fortresses, and the basements of public buildings were often used as makeshift prisons. The possession of the right and the capability to imprison citizens, however, granted an air of legitimacy to officials at all levels of government, from kings to regional courts to city councils; and the ability to have someone imprisoned or killed served as a signifier of who in society possessed power or authority over others. Another common punishment was sentencing people to galley slavery, which involved chaining prisoners together in the bottoms of ships and forcing them to row on naval or merchant vessels.

However, the concept of the modern prison largely remained unknown until the early 19th-century. Punishment usually consisted of physical forms of punishment, including capital punishment, mutilation, flagellation whipping, branding, and non-physical punishments, such as public shaming rituals (like the stocks). From the Middle Ages up to the 16th and 17th centuries in Europe, imprisonment was rarely used as a punishment in its own right, and prisons were mainly to hold those awaiting trial and convicts awaiting punishment.

However, an important innovation at the time was the Bridewell House of Corrections, located at Bridewell Palace in London, which resulted in the building of other houses of correction. These houses held mostly petty offenders, vagrants, and the disorderly local poor. In these facilities, inmates were given jobs, and through prison labor they were taught how to work for a living. By the end of the 17th century, houses of correction were absorbed into local prison facilities under the control of the local justice of the peace.

## **Modern era**

From the late 17th century and during the 18th century, popular resistance to public execution and torture became more widespread both in Europe and in the United States. Particularly under the Bloody Code, with few sentencing alternatives, imposition of the death penalty for petty crimes, such as theft, was proving increasingly unpopular with the public; many jurors were refusing to convict defendants of petty crimes when they knew the defendants would be sentenced to death. Rulers began looking for means to punish and control their subjects in a way that did not cause people to associate them with spectacles of tyrannical and sadistic violence. They developed systems of mass incarceration, often with hard labor, as a solution. The prison reform movement that arose at this time was heavily influenced by two somewhat contradictory philosophies. The first was based in Enlightenment ideas of utilitarianism and rationalism, and suggested that prisons should simply be used as a more effective substitute for public corporal punishments such as whipping, hanging, etc. This theory, referred to as *deterrence*, claims that the primary purpose of prisons is to be so harsh and terrifying that they deter people from committing crimes out of fear of going to prison. The second theory, which saw prisons as a form of *rehabilitation* or *moral reform*, was based on religious ideas that equated crime with sin, and saw prisons as a place to instruct prisoners in Christian morality, obedience and proper behavior. These later reformers believed that prisons could be constructed as humane institutions of moral instruction, and that prisoners' behavior could be corrected so that when they were released, they would be model members of society.

### ***Transportation, prison ships and penal colonies***

Women in Plymouth, England, Black-eyed Sue and Sweet Poll mourning their lovers who are soon to be transported to Botany Bay 1792. England used penal transportation of convicted criminals and others (generally young and poor) for a term of indentured servitude within the general population of British America between the 1610s and 1776. The Transportation Act 1717 made this option available for lesser crimes, or offered it by discretion as a longer-term alternative to the death penalty, which could theoretically be imposed for the growing number of offenses. The substantial expansion of transportation was the first major innovation in eighteenth-century British penal practice.<sup>[15]</sup> Transportation to America was abruptly suspended by the Criminal Law Act 1776 (16 Geo. 3 c.43 with the start of the American Rebellion. While sentencing to transportation continued, the act instituted a punishment policy of hard labour instead. The suspension of transport also prompted the use of prisons for punishment and the initial start of a prison building program.<sup>[18]</sup> Britain would resume transportation to specifically planned penal colonies in Australia between 1788 and 1868.

### ***Prison reform movement***

Jeremy Bentham's "panopticon" prison introduced many of the principles of surveillance and social control that underpin the design of the modern prison. In the panopticon model, prisoners were housed in one-person cells arranged in a circular pattern, all facing towards a central observation tower in such a way that the guards could see into all of the cells from the observation tower, while the prisoners were unable to see the guards.<sup>[23][24][f]</sup> (Architectural drawing by Willey Reveley, 1791)

John Howard was one of the most notable early prison reformers.<sup>[g]</sup> After having visited several hundred prisons across England and Europe, in his capacity as high sheriff of Bedfordshire, he published *The State of the Prisons* in 1777. He was particularly appalled to discover prisoners who had been acquitted but were still confined because they couldn't pay the gaoler's fees. He proposed wide-ranging reforms to the system, including the housing of each prisoner in a separate cell; the requirements that staff should be professional and paid by the government, that outside inspection of prisons should be imposed, and that prisoners should be provided with a healthy diet and reasonable living conditions. The prison reform charity, the Howard League for Penal Reform, was established in 1866 by his admirers.

Following Howard's agitation, the Penitentiary Act was passed in 1779. This introduced solitary confinement, religious instruction, a labor regime, and proposed two state penitentiaries one for men and one for women. However, these were never built due to disagreements in the committee and pressures from wars with France, and gaols remained a local responsibility. But other measures passed in the next few years provided magistrates with the powers to implement many of these reforms, and eventually, in 1815, gaol fees were abolished.

Quakers were prominent in campaigning against and publicizing the dire state of the prisons at the time. Elizabeth Fry documented the conditions that prevailed at Newgate prison, where the ladies' section was overcrowded with women and children, some of whom had not even received a trial. The inmates did their own cooking and washing in the small cells in which they slept on

straw. In 1816, Fry was able to found a prison school for the children who were imprisoned with their parents. She also began a system of supervision and required the women to sew and to read the Bible. In 1817, she helped found the Association.

### **Development of the modern prison**

The theory of the modern prison system was born in London, influenced by the utilitarianism of Jeremy Bentham. Bentham's panopticon introduced the principle of observation and control that underpins the design of the modern prison. The notion of prisoners being incarcerated as part of their punishment and not simply as a holding state until trial or hanging, was at the time revolutionary. His views influenced the establishment of the first prisons used as criminal rehabilitation centers. At a time when the implementation of capital punishment for a variety of relatively trivial offences was on the decline, the notion of incarceration as a form of punishment and correction held great appeal to reform-minded thinkers and politicians.

In the first half of the 19th century, capital punishment came to be regarded as inappropriate for many crimes that it had previously been carried out for, and by the mid-19th century, imprisonment had replaced the death penalty for the most serious offenses except for murder.

The first state prison in England was the Millbank Prison, established in 1816 with a capacity for just under 1000 inmates. By 1824, 54 prisons had adopted the disciplinary system advocated by the SIPD. By the 1840s, penal transportation to Australia and the use of hulks was on the decline, and the Surveyor-General of convict prisons, Joshua Jebb, set an ambitious program of prison building in the country, with one large prison opening per year. Pentonville prison opened in 1842, beginning a trend of ever increasing incarceration rates and the use of prison as the primary form of crime punishment.<sup>[28]</sup> Robert Peel's Gaols Act of 1823 introduced regular visits to prisoners by chaplains, provided for the payment of gaolers and prohibited the use of irons and manacles.

An 1855 engraving of New York's Sing Sing Penitentiary, which also followed the "Auburn (or Congregate) System," where prison cells were placed inside of rectangular buildings that lent themselves more to large-scale penal labor.

In 1786, the state of Pennsylvania passed a law which mandated that all convicts who had not been sentenced to death would be placed in penal servitude to do public works projects such as building roads, forts, and mines. Besides the economic benefits of providing a free source of hard labor, the proponents of the new penal code also thought that this would deter criminal activity by making a conspicuous public example of consequences of breaking the law. However, what actually ended up happening was frequent spectacles of disorderly conduct by the convict work crews, and the generation of sympathetic feelings from the citizens who witnessed the mistreatment of the convicts. The laws quickly drew criticism from a humanitarian perspective as cruel, exploitative and degrading and from a utilitarian perspective as failing to deter crime and delegitimizing the state in the eyes of the public. Reformers such as Benjamin Rush came up with a solution that would enable the continued use of forced labor, while keeping disorderly conduct and abuse out of the eyes of the public. They suggested that prisoners be sent to secluded houses of repentance where they would be subjected out of the view of the public to

bodily pain, labour, watchfulness, solitude, and silence ... joined with cleanliness and a simple diet

Pennsylvania soon put this theory into practice, and turned its old jail at Walnut Street in Philadelphia into a state prison, in 1790. This prison was modeled on what became known as the Pennsylvania system or separate system, and placed all prisoners into solitary cells with nothing other than religious literature, and forced them to be completely silent to reflect on their wrongs. New York soon built the Newgate state prison in Greenwich Village, which was modeled on the Pennsylvania system,<sup>[31]</sup> and other states followed.

But by 1820 faith in the efficacy of legal reform had declined as statutory changes had no discernible effect on the level of crime and the prisons, where prisoners shared large rooms and booty including alcohol, had become riotous and prone to escapes. In response, New York developed the Auburn system in which prisoners were confined in separate cells and prohibited from talking when eating and working together, implementing it at Auburn State Prison and Sing Sing at Ossining. The aim of this was rehabilitative: the reformers talked about the penitentiary serving as a model for the family and the school and almost all the states adopted the plan (though Pennsylvania went even further in separating prisoners. The system's fame spread and visitors to the U.S. to see the prisons included de Tocqueville who wrote *Democracy in America* as a result of his visit.

The use of prisons in Continental Europe was never as popular as it became in the English-speaking world, although state prison systems were largely in place by the end of the 19th century in most European countries. After the unification of Italy in 1861, the government reformed the repressive and arbitrary prison system they inherited, and modernized and secularized criminal punishment by emphasizing discipline and deterrence.<sup>1</sup> Italy developed an advanced penology under the leadership of Cesare Lombroso (1835–1909).

Another prominent prison reformer who made important contributions was Alexander Paterson who advocated for the necessity of humanising and socialising methods within the prison system in Great Britain and America.

## **Design**

Shita (Shata) Prison in Israel. Many modern prisons are surrounded by a perimeter of high walls, razor wire or barbed wire, motion sensors and guard towers in order to prevent prisoners from escaping.

## **Security**

Prisons are normally surrounded by fencing, walls, earthworks, geographical features, or other barriers to prevent escape. Multiple barriers, concertina wire, electrified fencing, secured and defensible main gates, armed guard towers, security lighting, motion sensors, dogs and roving patrols may all also be present depending on the level of security. Remotely controlled doors,



CCTV monitoring, alarms, cages, restraints, nonlethal and lethal weapons, riot-control gear and physical segregation of units and prisoners may all also be present within a prison to monitor and control the movement and activity of prisoners within the facility.

Modern prison designs have increasingly sought to restrict and control the movement of prisoners throughout the facility and also to allow a smaller prison staff to monitor prisoners directly; often using a decentralized "podular" layout.<sup>[39][40]</sup> (In comparison, 19th-century prisons had large landings and cell blocks which permitted only intermittent observation of prisoners.) Smaller, separate and self-contained housing units known as "pods" or "modules" are designed to hold 16 to 50 prisoners and are arranged around exercise yards or support facilities in a decentralized campus pattern. A small number of prison officers, sometimes a single officer, supervise each pod. The pods contain tiers of cells arranged around a central control station or desk from which a single officer can monitor all the cells and the entire pod, control cell doors and communicate with the rest of the prison.

Pods may be designed for high-security indirect supervision, in which officers in segregated and sealed control booths monitor smaller numbers of prisoners confined to their cells. An alternative is "direct supervision, in which officers work within the pod and directly interact with and supervise prisoners, who may spend the day outside their cells in a central dayroom on the floor of the pod. Movement in or out of the pod to and from exercise yards, work assignments or medical appointments can be restricted to individual pods at designated times and is generally centrally controlled. Goods and services, such as meals, laundry, commissary, educational materials, religious services and medical care can increasingly be brought to individual pods or cells as well.

### ***Inmate security classifications***

Generally, when an inmate arrives at a prison, they go through a security classification screening and risk assessment that determines where they will be placed within the prison system. Classifications are assigned by assessing the prisoner's personal history and criminal record, and through subjective determinations made by intake personnel which include mental health workers, counselors, prison unit managers, and others. This process will have a major impact on the prisoner's experience, determining their security level, educational and work programs, mental health status (e.g. will they be placed in a mental health unit), and many other factors. This sorting of prisoners is one of the fundamental techniques through which the prison administration maintains control over the inmate population, and creates an orderly and secure prison environment. At most prisons, prisoners are made to wear prison uniform.

The levels of security within a prison system are categorized differently around the world, but tend to follow a distinct pattern. At one end of the spectrum are the most secure facilities maximum security, which typically hold prisoners that are considered dangerous, disruptive or likely to try to escape. Furthermore, in recent times, supermax prisons have been created where the custody level goes beyond maximum security for people such as terrorists or political prisoners deemed a threat to national security, and inmates from other prisons who have a history of violent or other disruptive behavior in prison or are suspected of gang affiliation. These inmates have individual cells and are kept in lockdown, often for more than 23 hours per day.

Meals are served through "chuck holes" in the cell door, and each inmate is allotted one hour of outdoor exercise per day, alone. They are normally permitted no contact with other inmates and are under constant surveillance via closed-circuit television cameras.

A minimum security prison in the US.

On the other end are minimum security prisons which are most often used to house those for whom more stringent security is deemed unnecessary. For example, while white-collar crime rarely results in incarceration, when it does offenders are almost always sent to minimum-security prisons due to them having committed nonviolent crimes. Lower-security prisons are often designed with less restrictive features, confining prisoners at night in smaller locked dormitories or even cottage or cabin-like housing while permitting them free movement around the grounds to work or activities during the day. Some countries (such as Britain) also have "open" prisons where prisoners are allowed home-leave or part-time employment outside of the prison. Suomenlinna Island facility in Finland is an example of one such open correctional facility. The prison has been open since 1971 and, as of September 2013, the facility's 95 male prisoners leave the prison grounds on a daily basis to work in the corresponding township or commute to the mainland for either work or study. Prisoners can rent flat-screen televisions, sound systems, and mini-refrigerators with the prison-labor wages that they can earn—wages range between 4.10 and 7.30€ per hour. With electronic monitoring, prisoners are also allowed to visit their families in Helsinki and eat together with the prison staff. Prisoners in Scandinavian facilities are permitted to wear their own clothes.

### **Common facilities**

The crowded living quarters of San Quentin Prison in California, in January 2006. As a result of overcrowding in the California state prison system, the United States Supreme Court ordered California to reduce its prison population (the second largest in the nation, after Texas).

Modern prisons often hold hundreds or thousands of inmates, and must have facilities onsite to meet most of their needs, including dietary, health, fitness, education, religious practices, entertainment, and many others. Conditions in prisons vary widely around the world, and the types of facilities within prisons depend on many intersecting factors including funding, legal requirements, and cultural beliefs/practices. Nevertheless, in addition to the cell blocks that contain the prisoners, also there are certain auxiliary facilities that are common in prisons throughout the world.

### ***Kitchen and dining***

Prisons generally have to provide food for a large number of individuals, and thus are generally equipped with a large institutional kitchen. There are many security considerations, however, that are unique to the prison dining environment. For instance, cutlery equipment must be very carefully monitored and accounted for at all times, and the layout of prison kitchens must be designed in a way that allows staff to observe activity of the kitchen staff who are usually prisoners. The quality of kitchen equipment varies from prison to prison, depending on when the

prison was constructed, and the level of funding available to procure new equipment. Prisoners are often served food in a large cafeteria with rows of tables and benches that are securely attached to the floor. However, inmates that are locked in control units, or prisons that are on lockdown where prisoners are made to remain in their cells all day have trays of food brought to their cells. It is said that prison food of many developed countries is adequate to maintain health and dieting.

### *Healthcare*

Prisons in wealthy, industrialized nations provide medical care for most of their inmates. Additionally, prison medical staff play a major role in monitoring, organizing, and controlling the prison population through the use of psychiatric evaluations and interventions (psychiatric drugs, isolation in mental health units, etc.). Prison populations are largely from poor minority communities that experience greater rates of chronic illness, substance abuse, and mental illness than the general population. This leads to a high demand for medical services, and in countries such as the US that don't provide free healthcare, prison is often the first place that people are able to receive medical treatment (which they couldn't afford outside).

Prison medical facilities include primary care, mental health services, dental care, substance abuse treatment, and other forms of specialized care, depending on the needs of the inmate population. Health care services in many prisons have long been criticized as inadequate, underfunded, and understaffed, and many prisoners have experienced abuse and mistreatment at the hands of prison medical staff who are entrusted with their care.

In the United States, mental health services in prison aren't available in providing treatments for criminals; most prisoners have an untreated mental disorder and psychiatric care or treatment is expensive for the mentally ill. 64 percent of jail inmates, 54 percent of state prisoners, and 45 percent of federal prisoners in the US report having mental health concerns.

Despite the fact that studies reveal more than 50% of those incarcerated are likely to suffer from at least one mental illness or condition, the verdict of "not guilty by reason of insanity" is exceedingly rare according to a 2014 Scientific American article. In the United States, a million people who are incarcerated suffer from mental illness without any assistance or treatment for their condition and the tendency of a convicted criminal to reoffend, known as the rate of recidivism, is unusually high for those with the most serious disorders. Analysis of data in 2000 from several forensic hospitals in California, New York and Oregon found that with treatment the rate of recidivism was "much lower" than untreated mentally ill offenders. Treatment works to lower crime among those who are mentally ill, but public support is often shaded by stigmas. Without public support, funding is restricted and the cycle of recidivism that feeds the U.S. prison system is perpetuated. The issue of health care for prisoners with mental illness is not a moral issue, it is a psychological issue, and if treatment were readily available, crime would decrease as would the rate of recidivism among those who are mentally ill who are essentially trapped in a prison system that offers little to no relief.

### ***Library and educational facilities***

Some prisons provide educational programs for inmates that can include basic literacy, secondary education, or even college education. Prisoners seek education for a variety of reasons, including the development of skills for after release, personal enrichment and curiosity, finding something to fill their time, or trying to please prison staff (which can often secure early release for good behavior). However, the educational needs of prisoners often come into conflict with the security concerns of prison staff and with a public that wants to be "tough on crime" (and thus supports denying prisoners access to education). Whatever their reasons for participating in educational programs, prison populations tend to have very low literacy rates and lack of basic mathematical skills, and many have not completed secondary education. This lack of basic education severely limits their employment opportunities outside of prison, leading to high rates of recidivism, and research has shown that prison education can play a significant role in helping prisoners reorient their lives and become successful after reentry.

Many prisons also provide a library where prisoners can check out books, or do legal research for their cases.<sup>[j]</sup> Often these libraries are very small, consisting of a few shelves of books. In some countries, such as the United States, drastic budget cuts have resulted in many prison libraries being shut down. Meanwhile, many nations that have historically lacked prison libraries are starting to develop them.<sup>[58]</sup> Prison libraries can dramatically improve the quality of life for prisoners, who have large amounts of empty time on their hands that can be occupied with reading. This time spent reading has a variety of benefits including improved literacy, ability to understand rules and regulations (leading to improved behavior), ability to read books that encourage self-reflection and analysis of one's emotional state, consciousness of important real-world events, and education that can lead to successful re-entry into society after release.<sup>[59][60]</sup>

### ***Recreation and fitness***

Many prisons provide limited recreational and fitness facilities for prisoners. The provision of these services is controversial, with certain elements of society claiming that prisons are being "soft" on inmates, and others claiming that it is cruel and dehumanizing to confine people for years without any recreational opportunities. The tension between these two opinions, coupled with lack of funding, leads to a large variety of different recreational procedures at different prisons. Prison administrators, however, generally find the provision of recreational opportunities to be useful at maintaining order in the prisons, because it keeps prisoners occupied and provides leverage to gain compliance (by depriving prisoners of recreation as punishment). Examples of common facilities/programs that are available in some prisons are: gyms and weightlifting rooms, arts and crafts, games (such as cards, chess, or bingo), television sets, and sports teams.<sup>1</sup> Additionally, many prisons have an outdoor recreation area, commonly referred to as an "exercise

## **NIGERIA PRISONS**

At the apex of the NPS sits the Controller-General of the Nigerian Prisons Service. He is the Chief Executive Officer and is responsible for the formulations and implementation of penal policies in Nigeria. He is responsible to the President through the Minister of Interior and the

Civil Defence, Fire, Immigration and Prisons Services Board which the Minister heads. But in matters of prison policy he takes direct responsibility for policy implementation. He is assisted by six (6) Deputy Controllers-General (DCGs) who head the six broad administrative divisions called Directorates into which the Service is broken for efficient management.

The origin of modern Prisons Service in Nigeria is 1861. That was the year when conceptually, Western-type prison was established in Nigeria. The declaration of Lagos as a colony in 1861 marked the beginning of the institution of formal machinery of governance. At this stage the preoccupation of the colonial government was to protect legitimate trade, guarantee the profit of British merchants as well as guarantee the activities of the missionaries. To this end, by 1861, the acting governor of the Lagos colony and who was then a prominent British merchant in Lagos, formed a Police Force of about 25 constables. This was followed in 1863 by the establishment in Lagos of four courts: a Police court to resolve petty disputes, a criminal court to try the more serious cases, a slave court to try cases arising from the efforts to abolish the trade in slaves and a commercial court to resolve disputes among merchants and traders. The functioning of these courts and the police in that colonial setting necessarily means that prison was needed to complete the system. And it was not long in coming for in 1872, the Broad Street prison was established with an initial inmate capacity of 300. In the Niger Delta, the relationship between the local people and the British merchants had before then been moderated by special courts of merchants backed by the British Navy especially with the appointment of John Beecroft as a consul in 1849. The need for a merchant court was underscored by the fact that most conflicts between the merchants and the local people were in the main commercial. Although there was evidence of prison in Bonny at this time, not much is known about its size and content. But those who were later to oppose British rule were usually deported as happened in the case of Jaja of Opobo and King Dappa of Bonny. However, the progressive incursion of the British into the hinterland and the establishment of British protectorate towards the end of the 19th century necessitated the establishment of the prisons as the last link in the Criminal Justice System. Thus by 1910, there already were prisons in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba and Lokoja. The declaration of protectorates over the East, West and North by 1906 effectively brought the entire Nigeria area under British rule. However, that did not mark the beginning of a unified Nigerian Prisons. Had that been so, it would have negated official colonial policy for that would have required funds which the colonial power was not prepared to expend. Even so, the colonial prison at this stage was not designed to reform anyone. There was no systematic penal policy from which direction could be sought for penal administration. Instead prisoners were in the main used for public works and other jobs for the colonial administration. For this reason there was no need for the recruitment of trained officers of the prisons. Hence colonial prisons had no trained and developed staff of their own and instead the police also performed prison duties. As time went on ex-servicemen were recruited to do the job. They were also very poorly run and the local prison conditions varied from one place to another in their disorganization, callousness and exploitation. But so long as they served the colonial interests of ensuring law and order, collecting taxes, and providing labour for public works, they were generally left alone. The result was that the prisons served the purpose of punishing those who had the guts to oppose colonial administration in one form or the other while at the same time cowing those who might want to stir up trouble for the colonial set up.

The Prison regulation was published in 1917 to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes for the prisons. These processes were limited in one very general sense. They were not geared towards any particular type of treatment of inmates. Instead they represent just policies of containment of those who were already in prison. Besides, they were limited in application to those who were convicted or remanded in custody by criminal courts of the British-inspired supreme or provincial types. Those remanded or convicted by the Native courts were sent to the Native Authority prisons. The prison regulation also distinguished between Awaiting Trial and convicted inmates and even stipulated the convict – category to be found in each type of prison. But the limited application of this general rule to the national Prison while the native Authority Prison went their own way effectively stultified the appearance of a national Prison goal-orientation in terms of inmate treatment

It was not until 1934 that any meaningful attempt was made to introduce relative modernization into the Prison Service. It was at this time that Colonel V. L. Mabb was appointed Director of Prisons by the then Governor Sir Donald Cameron. Although a military officer, Mabb had an understanding of what prisons should be. And he went on to do his best. What he seemed to have focused his attention on was the formation of a unified Prison structure for the whole country but he failed. Yet he succeeded in extending the substantive Director of Prisons' supervisory and inspectorial powers over the Native Authority Prisons by this time dominant in the North. It was also during his tenure that the Prisons Warders welfare Board was formed. His efforts were to be continued by his successor R. H. Dolan (1946 – 55). Mr. Dolan was a trained prison officer and when he assumed duties in Nigeria he already had a wealth of experience in prison administration in both Britain and the colonies. Although a scheme for the introduction of vocational training in the National Prisons had been introduced in 1917 and it failed except in Kaduna and Lokoja prisons where it was functioning in 1926, Mr. Dolan reintroduced it in 1949 as a cardinal part of a penal treatment in Nigeria. He also made classification of prisoners mandatory in all prisons and went on to introduce visits by relations to inmates. He also introduced progressive earning schemes for long term first offenders. He also transferred the Prisons Headquarters formerly in Enugu to Lagos to facilitate close cooperation with other Department of State. He also introduced moral and adult education classes to be handled by competent Ministers and teachers for both Christian and Islamic education. Programmes for recreation and relaxation of prisoners were introduced during his tenure as well as the formation of an association for the care and rehabilitation of discharged prisoners. But above all, he initiated a programme for the construction and expansion of even bigger convict prisons to enhance the proper classification and accommodation of prisoners. On manpower development, he was instrumental to the founding of the Prison Training School, Enugu in 1947. He also saw to the appointment of educated wardresses to take charge of the female wings of the prisons and he generally tried to improve the service conditions of the prison staff. In addition, he took classification a step further when in 1948 he opened four reformatories in Lagos and converted part of the Port-Harcourt prisons for the housing and treatment of juveniles. Five years later he was to build an open prison in Kakuri - Kaduna to take care of first offenders who had committed such crimes as murder and manslaughter, and who are serving terms of 15 years or more. The idea was to train them with minimum supervision in agriculture so that on discharge they could employ themselves gainfully. In fact, Dolan's tenure represented a very high point in the evolution of Nigeria Prisons Service.

## **NIGERIA PRISONS TODAY:**

The abolition of Native Authority prisons in 1968 and the subsequent unification of the Prisons Service in Nigeria therefore marked the beginning of Nigerian Prisons Service as a composite reality. Prior to this, the prisons in the North were under the general supervision of the Northern Inspector General of Police who was ex-officio Director of Prisons. In the same vain the Director of Prisons was in charge of the prisons in the south. The Gobir report put an end to all that. As a consequence of that report Native Authority prisons were abolished with effect from 1st April, 1968. However, due to the vagaries of the civil war then raging in the country, it was not until 1971 that the government white paper on the reorganization of the prisons was released. It was followed in 1972 by Decree No.9 of 1972 which spelt out the goals and orientation of the Nigerian Prisons Service. The Prisons was charged with taking custody of those legally detained, identifying causes of their behaviour and retraining them to become useful citizens in the society. From the foregoing it seems clear that though the Decree makes secure custody the first role of the prisons, it also makes it explicit that reform and rehabilitation are the ultimate aims of the Prisons Service. And to achieve this objective the administration of the prisons became streamlined. The service which had hitherto been generally administered under one Director, now had in addition to the Director “three principal agencies or divisions performing different roles to enable (the prisons) execute its programme expeditiously and achieve its goal. These divisions are Technical, Inspectorate and Welfare with each unit under a Deputy Director of Prisons. The idea was that in consonance with the stipulations of Decree 9 of 1972, there was the need to introduce specialized units to take care of specific areas of the Prisons Service. The Technical Division for instance was charged with the responsibility of general administration and the provision of logistics to addition to supervising the farms and industries. The Inspectorate Division was to oversee staff deployment, training, discipline, promotion and recruitment. The welfare division was to be the pivot of the new prison order. It was to see to inmate treatment, training and rehabilitation. It also oversees the medical needs of the prisons in addition to liaising between the prisons and voluntary and humanitarian organizations who assist in the treatment and rehabilitation of the prisoners. Following from this was the need to employ skilled manpower especially in the social welfare unit. To this end between 1974 and 1980 a group of officers, mostly pivotal teachers was recruited as social welfare officers to take on adjustment-related programmes and rehabilitation of prisoners. In addition professional Nurses and Doctors were recruited to beef up the medical staff strength as well as expertise. Besides between 1972 and 1974 over three hundred graduates were recruited into the Service as general duty officers to see to the day to day running of the Prisons. It was hoped that their enlightenment will help direct other staff towards the goals of the prisons which are in the main treatment of offenders. There have been massive transformations in the Service since 1972. It has undergone some reorganization from its modest three Directorates in 1980 to six Directorates in 1993. There was the 1986 reorganization of the Prisons consequent upon the creation of the Customs, Immigrations and Prisons Board and centralization of the administrations of these paramilitary Services in the Board. There was also the removal of the Services from the Civil Service in 1992. It now has a command structure that boast of 8 Zonal commands, 36 State Commands, 1 FCT Command, 144 Prisons including farm centres and 83 Satellite Prisons. It also has four Training Schools, one Staff College and 2 Borstal Institutions. At the level of manpower the Service now boasts of more men of the professions than at any

other time in its history. There are among the officers, medical, environmental health officers, sociologists/psychologists, lawyers, general administrators, engineers etc. As for professional spread, the full complement of these officers is on ground to ensure that the goal of inmate reform is attained.

In the last ten years no less than 12 new satellite prisons and 3 prison hospitals have been built. The purpose being to modernize and create the enabling environment for proper treatment and training of offenders. There is also no doubt that the Special Prison Reform Programme of the Federal Government in 1999 made a lot of difference to the structure of Prisons.

## Theories of punishment and criminality

A variety of justifications and explanations are put forth for why people are imprisoned by the state. The most common of these are:<sup>[107]</sup>

- **Rehabilitation:**<sup>[m]</sup> Theories of rehabilitation claim that the experience of being imprisoned will cause people to change their lives in a way that will make them productive and law-abiding members of society once they are released. However, this is not supported by empirical evidence, and in practice prisons tend to be ineffective at improving the lives of most prisoners.<sup>[108]</sup> As Morris and Rothman (1995) point out, "It's hard to train for freedom in a cage. While the view of prisons as centers of rehabilitation was popular during the early development of the modern prison system, it is not widely held anymore, and has mostly been replaced by theories of *deterrence*, *incapacitation*, and *retribution*."<sup>[109]</sup>
- **Deterrence:** Theories of deterrence claim that by sentencing criminals to extremely harsh penalties, other people who might be considering criminal activities will be so terrified of the consequences that they will choose not to commit crimes out of fear. In reality, most studies show that high incarceration rates either increase crime, have no noticeable effect, or only decrease it by a very small amount. Prisons act as training grounds for criminal activity, form criminal social networks, expose prisoners to further abuse (both from staff and other prisoners), foster anti-social sentiments towards society (law enforcement and corrections personnel in particular), fragment communities, and leave prisoners with criminal records that make it difficult to find legal employment after release. All of these things can result in a higher likelihood of reoffending upon release.
- **Incapacitation:** Justifications based on *incapacitation* claim that while prisoners are incarcerated, they will be unable to commit crimes, thus keeping communities safer. Critics point out that this is based on a false distinction between "inside" and "outside", and that the prisoners will simply continue to victimize people inside of the prison (and in the community once they are released), and that the harm done by these actions has real impacts on the society outside of the prison walls.
- **Retribution:** Theories of *retribution* seek to exact revenge upon criminals by harming them in exchange for harms caused to their victims. These theories do not necessarily focus on whether or not a particular punishment benefits the community, but are more concerned with ensuring that the punishment causes a sufficient level of misery for the prisoner, in proportion to the perceived seriousness of their crime. These theories are based upon a belief that some kind of moral balance will be achieved by "paying back" the prisoner for the wrongs they have committed.



## **Challenges of nigerian prisons**

### **Overpopulation**

This is a major factor that makes life very unbearable for prison inmates. At the Owerri Federal Prisons, there are approximately 2,000 inmates, plus or minus 100. Out of this number, only about 10 per cent are convicts serving their various jail terms. The remaining ones are 'awaiting trial' inmates. The cells at the prisons are usually over crowded. For example, my cell (1 ward 2 cell) measuring 32 feet in length and 28 feet in width has approximately 100 inmates staying there. Ordinarily, not more than 40 inmates are supposed to be there. The 100 people use only one bathroom and two toilets. This makes it easy for one to contact diseases, especially skin rashes, *Apollo* (conjunctivitis), chicken pox, small pox, measles, etc. I was lucky, I did not contact any. (It is not a laughing matter.

### **Poor quality of food**

The quality of food being served the inmates is nothing to write home about. Their soup is called *chakpadim*. This is because it is too watery. The beans is *averagely* okay. The rice and gari is *something else*. The sizes of meat and fish served the inmates are as small as Tom-Tom sweet. Due to the poor quality of food served the inmates in general, they look malnourished. I never ate prisons' food; neither did I drink their water. My wife and I were on self-feeding throughout our stay.

### **Lack of adequate health care**

The health facilities in Prisons are not adequate. It can only take care of minor health challenges like headache, typhoid fever, measles, small pox, chicken pox, etc. Also Retroviral drugs for HIV positive inmates are available. Health facilities at the prisons cannot take care of inmates with sight (eyes) problems, tooth aches, kidney problems, liver problems, mentally deranged fellows, pregnant female inmates, and serious cases that require surgery etc. Hence occasionally, deaths occur among the inmates, due to lack of adequate health facilities.

### **Poverty and inability to hire lawyers**

This is a major factor frustrating many inmates and has deprived many of them from securing their freedom. As a result many of them waste up to 10 years in prison awaiting trials without going to court.

### **Over 90 per cent inmates are awaiting trial**

This is a major factor because our criminal justice system is not effective. It is very fraudulent.

### **Absence of household items**

The Nigerian Prisons Service do not provide essential items such as soaps, tooth brush, tooth paste, chewing sticks, tissue papers, sanitary pads, body creams, detergents, inner wears (pants

and singlet), slippers etc, for the inmates. They only provide food, as I mentioned earlier. This simply means that inmates are left to fend for themselves on these essential items. While the rich ones manage to provide these items, the poor ones simply end up as shadow of themselves.

### **Absence of judges in courts**

This is a notorious fact. In Imo State, there are about 15 high courts in Owerri Judicial Division, but only three or four high courts are functional with judges. The remaining courts are empty and under lock and key. Yet, thousands of cases were criminally assigned to them, just to ensure that people (inmates) remain permanently in prison. I want to be proved wrong. If I am challenged on this, I will give details.

### **Conspiracy**

There must be a conspiracy between State Counsel and complainants, to ensure that cases are given long adjournments. This factor is self-explanatory, and it is the truth. At least, it is happening in Imo State.

There is equally a conspiracy between judges and complainants to ensure that cases are given long adjournments. This is a notorious fact. In Imo State, it is happening. Such judges are called political and business judges. They are shameless. In extreme cases, the dishonourable judges adjourn cases *sine-die* to justify the money they collected from complainants (mostly government house officials), thereby keeping innocent people (inmates) permanently in prison. If I am challenged, I will give details.

### **Missing case files**

This is equally a notorious fact. Many innocent inmates at the Owerri Federal Prisons do not know the whereabouts of their case files. Police officers of the Imo State Police Command who were the Investigating Police Officers are reportedly guilty of this debilitating wickedness. I want to be proved wrong.

### **Mental illness among inmates**

It is a notorious fact that there are inmates who are not organised, disciplined and God-fearing, who engage in Indian hemp smoking.

### **Children born by female inmates undergo psychological torture**

This is an acknowledged fact. Most of these female inmates were impregnated by their Investigating Police Officers who promised to assist them out of the case when they were detained at their respective police stations. Unfortunately, they merely used them to satisfy their sexual desires. Some female inmates are married and might have been pregnant before being remanded at the prisons. Yet, others might have been impregnated inside prison premises “under special arrangement” to satisfy sexual desires of female inmates. Also, some female inmates might have had their babies shortly before being arrested by the police, taken to court and

thereafter remanded in prisons for alleged crimes earlier committed. The resultant effect is that children born by the female inmates suffer from lack of love, home-training, psychological torture, and unaware of the existence of life outside the walls of prisons. Ninety per cent of children born inside prisons grow up to fight the society.

### **Sexual abuses among inmates**

This is a notorious fact. Homosexuality and lesbianism among inmates are rampant. Having stayed in prison for so long and without the opportunity to have sex with the opposite sex, some inmates resort to the evil practice of homosexuality and lesbianism. However, prisons authorities at the Owerri Federal Prisons have placed adequate measures to check this abnormal method of sexual satisfaction. Any inmate or inmates caught in this satanic act is (are) given punishment. For example, when two people are caught in homosexual act, they are usually flogged, stripped naked and charcoal dust poured on them. After that, they would be made to undergo *black wedding* and driven in a wheel-barrow around the prison yard. After that, they would be made to under-go another round of punishment, which I will not like to disclose in this piece. For me, I support even stiffer and harder punishment for any inmate caught in homosexual act.

### **Drug abuse**

This is a notorious fact, and it is self-explanatory.

## **THE RIGHTS OF PRISONERS**

all prisoners have the basic rights needed to survive and sustain a reasonable way of life. most rights are taken away ostensibly so the prison system can maintain order, discipline, and security. any of the following rights, given to prisoners, can be taken away for that purpose:

the right to:

- not be punished cruelly or unusually
- due processes
- administrative appeals
- access the parole process (denied to those incarcerated in the federal system)
- practice religion freely
- equal protection (fourteenth amendment)
- be notified of all charges against them
- receive a written statement explaining evidence used in reaching a disposition
- file a civil suit against another person
- medical treatment (both long and short term)
- treatment that is both adequate and appropriate
- a hearing upon being relocated to the mental health facility.
- personal property such as: cigarettes, stationery, a watch, cosmetics, and snack-food
- visitation
- privacy
- food that would sustain an average person adequately.

- bathe (for sanitation and health reasons).

many rights are taken away from prisoners often temporarily.<sup>[citation needed]</sup> for example, prison personnel are required to read and inspect all in-going or out-going mail, in order to prevent prisoners from obtaining contraband. the only time a prisoner has a full right to privacy is in conversations with their attorney.

## **The Structure of the Nigerian prison**

At the apex of the NPS sits the Controller-General of the Nigerian Prisons Service. He is the Chief Executive Officer and is responsible for the formulations and implementation of penal policies in Nigeria. He is responsible to the President through the Minister of Interior and the Civil Defence, Fire, Immigration and Prisons Services Board which the Minister heads. But in matters of prison policy he takes direct responsibility for policy implementation. He is assisted by six (6) Deputy Controllers-General who head the six broad administrative divisions called Directorates into which the Service is broken for efficient management. The Deputy Controllers-General who head the Directorates report to the Controller-General and constitute together with the Controller-General the highest decision-making body in the Administration of the Nigerian Prisons Service. The Directorates are specialized divisions charged with the responsibility of coordinating specific areas of prison administration. They are:

1. Operations
2. Administration and Supplies
3. Health and Social Welfare
4. Finance and Budget
5. Inmates' Training and Productivity
6. Works and Logistics

The origin of modern Prisons Service in Nigeria is 1861. That was the year when conceptually, Western-type prison was established in Nigeria. The declaration of Lagos as a colony in 1861 marked the beginning of the institution of formal machinery of governance. At this stage the preoccupation of the colonial government was to protect legitimate trade, guarantee the profit of British merchants as well as guarantee the activities of the missionaries. To this end, by 1861, the acting governor of the Lagos colony and who was then a prominent British merchant in Lagos, formed a Police Force of about 25 constables. This was followed in 1863 by the establishment in Lagos of four courts: a Police court to resolve petty disputes, a criminal court to try the more serious cases, a slave court to try cases arising from the efforts to abolish the trade in slaves and a commercial court to resolve disputes among merchants and traders. The functioning of these courts and the police in that colonial setting necessarily means that prison was needed to complete the system. And it was not long in coming for in 1872, the Broad Street prison was established with an initial inmate capacity of 300. In the Niger Delta, the relationship between the local people and the British merchants had before then been moderated by special courts of merchants backed by the British Navy especially with the appointment of John Beecroft as a consul in 1849. The need for a merchant court was underscored by the fact that most conflicts between the merchants and the local people were in the main commercial. Although there was evidence of prison in Bonny at this time, not

much is known about its size and content. But those who were later to oppose British rule were usually deported as happened in the case of Jaja of Opobo and King Dappa of Bonny. However, the progressive incursion of the British into the hinterland and the establishment of British protectorate towards the end of the 19th century necessitated the establishment of the prisons as the last link in the Criminal Justice System. Thus by 1910, there already were prisons in Degema, Calabar, Onitsha, Benin, Ibadan, Sapele, Jebba and Lokoja. The declaration of protectorates over the East, West and North by 1906 effectively brought the entire Nigeria area under British rule. However, that did not mark the beginning of a unified Nigerian Prisons. Had that been so, it would have negated official colonial policy for that would have required funds which the colonial power was not prepared to expend. Even so, the colonial prison at this stage was not designed to reform anyone. There was no systematic penal policy from which direction could be sought for penal administration. Instead prisoners were in the main used for public works and other jobs for the colonial administration. For this reason there was no need for the recruitment of trained officers of the prisons. Hence colonial prisons had no trained and developed staff of their own and instead the police also performed prison duties. As time went on ex-servicemen were recruited to do the job. They were also very poorly run and the local prison conditions varied from one place to another in their disorganization, callousness and exploitation. But so long as they served the colonial interests of ensuring law and order, collecting taxes, and providing labour for public works, they were generally left alone. The result was that the prisons served the purpose of punishing those who had the guts to oppose colonial administration in one form or the other while at the same time cowing those who might want to stir up trouble for the colonial set up. The Prison regulation was published in 1917 to prescribe admission, custody, treatment and classification procedures as well as staffing, dieting and clothing regimes for the prisons. These processes were limited in one very general sense. They were not geared towards any particular type of treatment of inmates. Instead they represent just policies of containment of those who were already in prison. Besides, they were limited in application to those who were convicted or remanded in custody by criminal courts of the British-inspired supreme or provincial types. Those remanded or convicted by the Native courts were sent to the Native Authority prisons. The prison regulation also distinguished between Awaiting Trial and convicted inmates and even stipulated the convict – category to be found in each type of prison. But the limited application of this general rule to the national Prison while the native Authority Prison went their own way effectively stultified the appearance of a national Prison goal-orientation in terms of inmate treatment

It was not until 1934 that any meaningful attempt was made to introduce relative modernization into the Prison Service. It was at this time that Colonel V. L. Mabb was appointed Director of Prisons by the then Governor Sir Donald Cameron. Although a military officer, Mabb had an understanding of what prisons should be. And he went on to do his best. What he seemed to have focused his attention on was the formation of a unified Prison structure for the whole country but he failed. Yet he succeeded in extending the substantive Director of Prisons' supervisory and inspectoral powers over the Native Authority Prisons by this time dominant in the North. It was also during his tenure that the Prisons Warders welfare Board was formed.

His efforts were to be continued by his successor R. H. Dolan (1946 – 55). Mr. Dolan was a trained prison officer and when he assumed duties in Nigeria he already had a wealth of experience in prison administration in both Britain and the colonies. Although a scheme for the introduction of vocational training in the National Prisons had been introduced in 1917 and it failed except in Kaduna and Lokoja

prisons where it was functioning in 1926, Mr. Dolan reintroduced it in 1949 as a cardinal part of a penal treatment in Nigeria. He also made classification of prisoners mandatory in all prisons and went on to introduce visits by relations to inmates. He also introduced progressive earning schemes for long term first offenders. He also transferred the Prisons Headquarters formerly in Enugu to Lagos to facilitate close cooperation with other Department of State. He also introduced moral and adult education classes to be handled by competent Ministers and teachers for both Christian and Islamic education. Programmes for recreation and relaxation of prisoners were introduced during his tenure as well as the formation of an association for the care and rehabilitation of discharged prisoners. But above all, he initiated a programme for the construction and expansion of even bigger convict prisons to enhance the proper classification and accommodation of prisoners. On manpower development, he was instrumental to the founding of the Prison Training School, Enugu in 1947. He also saw to the appointment of educated wardresses to take charge of the female wings of the prisons and he generally tried to improve the service conditions of the prison staff. In addition, he took classification a step further when in 1948 he opened four reformatories in Lagos and converted part of the Port-Harcourt prisons for the housing and treatment of juveniles. Five years later he was to build an open prison in Kakuri Kaduna to take care of first offenders who had committed such crimes as murder and manslaughter, and who are serving terms of 15 years or more. The idea was to train them with minimum supervision in agriculture so that on discharge they could employ themselves gainfully. In fact, Dolan's tenure represented a very high point in the evolution of Nigeria Prisons Service.

#### **4.0 SUMMARY**

Prisons have four major purposes. These purposes are retribution, incapacitation, deterrence and rehabilitation. Retribution means punishment for crimes against society. Depriving criminals of their freedom is a way of making them pay a debt to society for their crimes. Incapacitation refers to the removal of criminals from society so that they can no longer harm innocent people. Deterrence means the prevention of future crime. It is hoped that prisons provide warnings to people thinking about committing crimes, and that the possibility of going to prison will discourage people from breaking the law. Rehabilitation refers to activities designed to change criminals into law abiding citizens, and may include providing educational courses in prison, teaching job skills and offering counselling with a psychologist or social worker. The four major purposes of prisons have not been stressed equally through the years. As a result, prisons differ in the makeup of their staffs, the design of their buildings and their operations.

#### **5.0 CONCLUSION**

As a rule we have very hazy ideas indeed as to the proper function and the requisite efficiency of the prison as a social institution. So general is the impression that prisons are a necessary part of our social machinery that for the time being we will accept that impression as true, and consider only the questions of function and efficiency. In a general way we agree that prisons should serve a threefold purpose: they should be places of social vengeance where we punish persons who break the law; they should be safe places to segregate unpleasant and dangerous persons; and they should be places where some indefinite thing called "reformation" is achieved by some unknown and mysterious process.

## 6.0 TUTOR-MARKED ASSIGNMENT:

1. Explain the historical development of the Nigerian prison service and discuss five main functions of prison in Nigeria.
2. Discuss the at least four theories of punishment of the Nigerian prisons

## 7.0 REFERENCE /FOR FURTHER READING

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