COURSE GUIDE

JIL112
LEGAL METHODS II

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INTRODUCTION

Legal Methods I and II is a two-semester course. You would have taken the first part, Legal Methods III in the first semester. The second part, Legal Methods II is a foundation-level course. It will be available to all students towards fulfilling core requirements for the degree in law.

The course will discuss basic law principles. The material has been developed to suit students in Nigeria by adapting practical examples from within our jurisdictions.

This course guide tells you briefly what the course is about, what course materials you will be using and how you can work your way through these materials. It suggests some general guidelines for the amount of time you are likely to spend on each unit of the course to complete it successfully. It also gives you some guidance on your tutor- marked assignments (TMAs). Detailed information on TMAs is found in the separate assignment file, which will be available to you in due course.

There are regular tutorials and surgery classes that are linked to the course. You are advised to attend these sessions.

What you will learn in this course

The overall aim of LAW112 is to introduce the fundamental principles and applications of sources of law. During this course, you will learn about primary sources of law, secondary sources, letters, speeches, interviews, periodicals and newspaper and foreign materials as sources of law. You will also learn how these materials serve as sources of law.

COURSE AIMS

The aim of the course can be summarised as follows: this course aims to give you an understanding of general principles of law and how they can be used concerning other branches of law.

This will be achieved by aiming to:
1. Introduce you to the basic sources of law;
2. Use of source materials;
3. Cite cases;
4. Take a brief and write legal letters.

COURSE OBJECTIVES

To achieve the aims set out above, the course sets overall objectives. In addition, each unit also has specific objectives. The unit objectives are

always included at the beginning of a unit; you should read them before you start working through the unit. You may want to refer to them during your study of the unit to check on your progress. You should always look at the unit objectives after completing a unit. In this way, you can be sure that you have done what was required of you by the unit.

Set out below are the wider objectives of the course as a whole. By meeting these objectives, you should have achieved the aims of the course as a whole.

On successful completion of this course, you will be able to:

i. Explain the various sources of law;
ii. Differentiate the difference between statutory and judicial materials;
iii. Use of source materials;
iv. Report and cite cases;
v. Write legal letters;
vi. Explain different styles of essay writing;
vii. Divide topics into chapters in project writing;
viii. Apply legal rules to social matters;
ix. Explain the structure of courts in contemporary English legal system; and
x. List the hierarchy of the judiciary in the legal system.

WORKING THROUGH THIS COURSE

To complete this course, you are required to read the study units, read set books and other materials. Each unit contains self-assessment exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course is a final examination. The course should take you about 12 weeks or more in total to complete. Below you will find listed all the components of the course, what you have to do and how you should allocate your time to each unit to complete the course successfully on time.

COURSE MATERIALS

The major components of the course are:

1. Course guide;
2. Study units;
3. Textbooks;
4. Assignment file; and
5. Presentation schedule.

In addition, you must obtain the set book; these are not provided by NOUN, and obtaining them is your own responsibility. You may purchase your own copies. You may contact your tutor if you have problems obtaining these textbooks.

STUDY UNITS

Module 1

Unit 1	Sources of Law
Unit 2	Secondary Sources of Law
Unit 3	Uses of Source Materials

Module 2

Unit 1	Legal research
Unit 2	Indexing and identification of library materials
Unit 3	Cases, citation of cases and reports
Unit 4	Methods and approaches in essay writing

Module 3

Unit 1	Analysis and note-taking in legal matters
Unit 2	Authoritative elements in books and judicial opinion
Unit 3	Application of legal rules in social matters
Unit 4	The structure of courts in the contemporary English legal system
Unit 5	The hierarchy of the judiciary in the English legal system
Unit 6	Legal Reasoning
Unit 7	Methods of Social Control through Law

Each unit contains several self-tests. In general, these self-tests question you on the materials you have just covered or require you to apply them in some way and, thereby, help you gauge your progress and reinforce your understanding of the material. Together with TMAS, these exercises will assist you in achieving the stated learning objectives of the individual units and the course.

REFERENCES

There are some books you should purchase for yourself:

Dada, T. O. (1998). General Principles of Law, T.O. Dada & Co. Lagos, Nigeria

Imiera, P. P. (2005). Knowing the Law FICO Nig. Ltd, (FMH) Lagos, Nigeria

Obilade, A.O. (1994). The Nigerian Legal System, Sweet & Maxwell, London.

ASSIGNMENT FILE

In this file, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment file itself and later in this course guide in the section on assessment. You are to submit five assignments, out of which the best four will be selected and recorded for you.

PRESENTATION SCHEDULE

The presentation schedule included in your course materials gives you the important dates for this year for the completion of TMAS and attending tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

ASSESSMENT

There are two aspects to the assessments of the course. First are the TMAs, second, there is a written examination.
In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor for formal assessment following 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 course mark.

At the end of the course, you will need to sit for a final written examination for three hours duration. This examination will also count for 70% of your total course mark.

TUTOR-MARKED ASSIGNMENTS (TMAS)

There are five tutor-marked assignments in this course. You only need to submit four of five assignments. You are encouraged, however, to submit all five assignments, in which case the highest four assignments count for 30% towards your total course mark.

Assignment questions for the units in this course are contained in the Assignment file. You will be able to complete your assignments from the information and materials contained in your set books, reading, and study units. However, it is desirable in all degree-level education to demonstrate that you have read and researched more widely than the required minimum. Using other references will give you a broader viewpoint and may provide a deeper understanding of the subject. When you have completed each assignment send it together with a TMA form to your tutor. Make sure that each assignment reaches your tutor on or before the deadline given in the presentation schedule and Assignment file. 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 there are exceptional circumstances.

FINAL EXAMINATION AND GRADING

The final examination for LAW 102 will be of two hours duration and have a value of 70% of the total course grade. The examination will consist of questions that reflect the types of self-testing, and tutor-marked problems you have previously encountered. All areas of the course will be assessed.

Use the time between finishing the last unit and sitting for the examination to revise the entire course. You might find it useful to review your self-assessment exercises, TMAs and comments by your tutorial facilitator before the examination.
The final examination covers information from all parts of the course.

COURSE MARKING SCHEME

The following table lays out how the actual course mark allocation is broken down:

Table 1 course-marking scheme

Assessment	**Marks**
Assignments 1- 4	Four assignments, the best three marks of the four count at 30% of course marks.
Final examination	70% of overall course marks
Total	100% of course marks

COURSE OVERVIEW

This table brings together the units, the number of weeks you should take to complete them and the assignments that follow them.

Table 2-Course organiser

Unit	Title of work	Weeks activity	Assessment (end of unit)
	Course Guide	Week 1	
1.	Sources of Law	Week 1	
2.	Secondary Sources of Law	Week 2	Assignment 1
3.	Uses of source materials	Week 3	
4.	Legal research	Week 4	
5.	Indexing and identification of library materials	Week 5	Assignment 2
6.	Cases, citation of cases and reports	Week 6	
7.	Methods and approaches in essay writing	Week 7	Assignment 3
8.	Analysis and note-taking in legal matters	Week 8	
9.	Authoritative elements in books and judicial opinion	Week 9	
10.	Application of legal rules in social matters	Week 10	Assignment 4
11.	The structure of courts in the contemporary English legal system	Week 11	
12.	The hierarchy of the judiciary in the English legal system	Week 12	Assignment 5
	Revision	Week 13	
	Examination	Week 14	

HOW TO GET THE MOST FROM THIS COURSE

In distance learning the study units replace the university lecturer. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suit you best. Think of it as reading the lecture instead of listening to a lecturer. In the same way that a lecturer might recommend some reading, the study units tell you when to read recommended books or other material, and when to undertake practical work. Just as a lecturer might give you an in-class exercise, your study units provide exercises for you to do at appropriate times.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit you must go back and check whether you have achieved the objectives. If you make a habit of doing this you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your recommended books or from a reading section. Self-assessment exercises are interspersed throughout the units, and answers are given at the end of units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each self-assessment exercise as you come to it in the study unit. There will also be numerous examples given in the study units; work through these when you come to them, too.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutorial facilitator or visit your study centre. Remember that your tutor's job is to help you. When you need help, don't hesitate the call and ask your tutor.

1. Read this course guide thoroughly.
2. Organise a study schedule. Refer to the 'Course overview' for more details. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the semester is available. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.
3. Once you have created your own study schedule, do everything you can to stick to it. The major reason that students do not perform well is that they get behind with their coursework. If you get into difficulties with your schedule, please let your tutor know before it is too late for help.

TUTORS AND TUTORIALS

There are 10 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone numbers of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and assistance will be available at the study centre. You must submit your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or during tutorial sessions if you need to. The following might be circumstances in which you would find help necessary.

Contact your tutor if:

1. You do not understand any part of the study units or the assigned readings.
2. You have difficulty with the self-assessment exercises.
3. You have a question or problem with an assignment or with your tutor's comments on an assignment or with the grading of an assignment.
4. You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussions actively.

Some of the questions you may be able to answer are not limited to the following:

1. What are the differences between primary and secondary sources of law?
2. What are the major points of departure between the English and Nigerian hierarchy of courts?
3. Why legal research is important to academic and legal development?
4. What is the major reason why legal practitioners take notes when interviewing clients?
5. Why are citations of cases important during court proceedings?
6. Why are legal textbooks having authoritative elements not binding on the court?
7. How do courts apply legal rules in social matters?

SUMMARY

Of course, the list of questions that you can answer is not limited to the above list. To gain the most from this course you should try to apply the principles that you encounter in everyday life. You are also equipped to take part in the debate about legal methods.

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

MAIN COURSE

Contents

MODULE 1

UNIT 1 SOURCES OF LAW

Unit Structure

1.1 Introduction

A law may be defined as an assemblage of signs declarative of a violation conceived or adopted by the law maker in a state concerning the conduct to be observed in a certain case by a certain person or class of persons. Thus, such volition trusting for its accomplishment to the expectation of certain events which is intended, such declaration should upon occasion be a means of bringing to pass the prospect of which it is intended and should act as a motive upon those whose conduct is the question. In modern times, the functioning of the law has been closely associated with the idea of sovereign power located m each particular state and possessing authority to make or unmake laws as it pleases. This theory has had important consequences both regarding national legal systems and in the international sphere. For example, if a state is sovereign, how can such a state in itself be subject to an overriding system of international law? Apart from the association of the functioning of the law with the idea of a sovereign, the role of the judiciary in a modern legal system is of immense social significance in the development of sources of law. Law is in a constant process of flux and development and though much of this development is due to the enactments of the legislature, the judges and the courts have an essential role to play in developing the law and adapting it to the needs of their society. The nature of the welfare state is such that some form of legal regulating has infiltrated into almost every conceivable aspect of man's social and economic affairs.

The enormous importance of the idea of law as a factor to human culture serves to emphasise how great is the duty upon those who are concerned

with its exposition as well as with its application in practice, to strive continuously to refurbish that image, to keep it bright, and to subject it to constant re-analysis to keep it in touch with the social realities of the period.

1.2. Learning Outcomes

By the end of this unit, you will be able to:

- define the term "source of law"
- identify various sources of law
- distinguish between statutory source of law and judicial source of law.

1.3 Sources of Law

1.3.1 Meaning of the phrase “Sources of law”

The phrase "sources of law" may be interpreted in many ways. The phrase can mean the ultimate origin of the whole body of a legal system. In this context the phrase may refer to the National Assembly or the State Assemblies who are charged with the responsibility of enacting laws. The phrase maybe interpreted to mean the historical background of a country's legal system. Common law, doctrine of equity and statutes of general application are received English laws forming part of Je sources of Nigerian legal system. For instance, common law one of the historical sources of English jurisprudence.

Additionally, the phrase may be interpreted to mean the materials containing the rules of law. In this context, the laws of the Federation of Nigeria 2004, the Laws of Northern Nigeria 1963, the Laws of Western Nigerian 1959 and the Laws of Eastern Nigeria 1963 are examples of source materials containing laws applicable in each case.

Self-Assessment Exercise (SAE)1

Discuss the meaning of the phrase “Sources of Law”

1.3.2 Categories of Sources of Law

More often than not, the practical problem of a law student is one of selection of legal source materials. Similarly, beginners in the legal profession are usually faced with the problem of which legal source materials can be used when making submission. Furthermore, another

problem facing beginners in the legal profession is one of selection of which source materials are binding on the courts and which are persuasive.

Basically, there are two sources of law, namely
1. Primary sources of law
2. Secondary sources of law

1.3.3 Primary Sources

The primary sources of law may be sub-categorised into two, namely:
- Legislation; and
- Judicial precedent.

I. Legislation

Legislation is a formal statement of the legislative organs in the society. In a simple term, legislation is an enactment such as the Companies and Allied Matters Act, Civil Aviation Act, the Penal Code Law and the Criminal Code, etc. Because of the imperialist domination which prevented an independent development of a legal super structure, Received English Laws form part of the primary source of Nigerian legal system even though the application of the Received English Laws is subject to local circumstances.

The application of Received English Laws has found anchorage under the various regional reception laws. These regional reception laws provide in identical terms to the effect that:
... except so far as other provision is made by any Federal or State enactment, the common law of England, the doctrines of Equity together with the statutes of General Application that were in force in England shall be in force in Nigeria.

It is important to note that the statute of General Application with respect to matters within the legislative competence of the National Assembly and the State Houses of Assembly shall be in force in so far only as the limit of local jurisdiction and local circumstances shall permit and subject to any Federal or State law, for the time being. For the purpose of facilitating the application of the imperial laws, they are to be read and applied with such formal verbal alterations not affecting the substance as to the means, localities, courts, officers, persons, monies penalties and otherwise as may be necessary to render them applicable to the circumstances. While the reception provisions applicable in the then Northern Nigeria, Eastern Nigeria and Lagos State are substantially identical in wordings, section 3 of the Law of England (Application) Law, Cap. 60, Laws of Wester. Nigeria did not receive the English statutes of General Application. Section 3 of the said Law provides:

- *From and the commencement of this law and subject to the provisions of any written law, the common law of England, and the doctrines of Equity observed by Her Majesty's High Court of Justice in England shall be in force throughout the Region.*

There are several bodies and institutions charged with the responsibility of lawmaking. The National Assembly under the 1999 Constitution of the Federal Republic of Nigeria shall have power to make laws for the peace, order and government of the Federation while the House of Assembly of a state shall have power to make laws for the peace, order and good government of the state. It is important to note that apart from the National Assembly or the State House of Assembly there are other lesser bodies that may be delegated the power to make laws. These lesser bodies are:

- Government departments
- Government boards
- Government parastatals

These bodies are usually delegated the power to make laws on specific subject matters that have direct impact on such bodies. The laws made by such bodies are referred to as delegated legislation or subsidiary legislation. In Nigeria, the law-making power of the National Assembly and the State Houses of Assembly must necessarily comply with the Provisions of the Constitution to the extent that any law which is made by the National Assembly or State House of Assembly which is at variance with any provision of the constitution; the law so made, shall to the extent of its variance, or inconsistency be declared as null and void. In the context of the Nigerian constitutional framework; there is the supremacy of the Constitution. In the United Kingdom, the contrary is the case by reason of the fact that there is the supremacy of the Parliament as opposed to the supremacy of the Constitution.

In line with the practice of federalism, all laws made by the National Assembly are referred to as Acts of the National Assembly while laws made by the State Houses of Assembly are referred to as laws. Legislation have become the most important and predominant sources of law. Consequently, in spite of the complexity in legislative processes because of the complex character of the society, there are certain advantages of legislation viz:

1. Legislations are easily identifiable and hence more available and accessible than the other sources of law.
2. Legislations are usually prescribed and contained in specific document and can be easily obtained.
3. Legislations are the most dynamic sources of law by reason of the fact that they can be easily modified to meet prevailing changing circumstances. In this context, legislations have an overwhelming

advantage over judge- made laws. Thus, when a case is decided by a court, the decision remains binding even if it is unjust until such a decision in a case with similar facts and legal issues sets it aside.

II. Judicial Precedent

The general theory of case law is that judges do not make laws but rather declare and apply them to the facts of cases presented in courts. This assertion may be true in theory but in practice, the assertion may not be completely true. Judges do more at times than merely applying existing rules. Consequently, judicial precedent which is binding under common law cannot be said to be mere evidence of the law but a veritable, source of it. In Nigeria and other common law countries, that operates the common law jurisprudence, judicial precedent is a necessary judicial practice. The concept postulated that the decisions of superior courts in the system are binding and must be followed by lower courts. Consequently, to have an effective and meaningful operation of the concept of judicial precedent, there must be in existence an acceptable hierarchical order of courts and an easily accessible and reliable system of law reports where the decisions of the superior courts will be reported. The special character of the practice of judicial precedent is that lower courts are under, an obligation to follow previous decisions of the superior courts regardless of the perversity of such decisions. In Salako v. Salako Adefarati J. observed that he did not approve the Yoruba custom of "idiigi"*, he, nevertheless ordered its application because of the Supreme Court decision in the case of "Danmole v Dawodu" in upholding the custom.

A practical problem that new people in the legal profession do face is the determination of which aspect of a decision of a court operates as precedent. When it is said that a court is bound by a previous decision of a superior court, it means that the court is under an obligation to apply the "ratio decidendi" of the case to the one being decided, unless the court is able to anguish the facts and issues of the previous decision from the being decided. The sanction for breach of such an action rather nebulous in that a judge who persistently refuses to follow previous decisions of superior courts by which he is bound, stands the risk of being removed. The advancement of such a judge to a higher bench may be impeded' and his conduct may attract adverse comment from the superior courts.

Judicial precedent is considered as one of the primary sources of law because under the Nigerian Constitutional framework, courts are charged with the responsibility of interpreting the laws. The pronouncements of judges of superior courts can be seen as constituting a significant source of law by reason of the fact that in practice, the courts do elaborate upon, and give meaning and effect to laws. In this regard, it follows that whenever there is a difficulty in the appreciation of a text of a law, it is the meaning given by the courts in the process of interpretation that

determines the intention of the lawmaker. The relevance of judicial precedent cannot be overemphasised in that courts in practice give shape to the laws. A critically striking issue at this point is: why should the pronouncement of judges of the superior courts in the process of interpretation of statutes be regarded as a distinct source of law than the statutes themselves giving the fact that courts m the process of interpretation, the courts are not saying anything other than what the text of the law is? The underlying jurisprudential basis for treating the pronouncements of superior court judges as distinct source of law essentially lies in the fact that:

i) Judicial pronouncements are not merely elaboration of the statutes but are authoritative comments on the statutes,
ii) ii. Courts of their day-to-day functions make decisions, thereby creating new principles of law on issues not covered by the text of a law.

Without doubt, the doctrine of judicial precedent forms one of the distinctive characters of the Anglo-American Jurisprudence with certain practical advantages.

In this regard, the doctrine of judicial precedent has the advantage of:

i. Affording guidance to the future judicial conduct; thereby eliminating the tendency of trial and error. The doctrine of judicial precedent reduces the risk of trial and error,
ii. Saving time. Every judicial decision involves some hard mental effort which can be avoided when there is a precedent to follow. Thus, by the existence of the doctrine of judicial precedent, time and effort of the courts are generally saved by the challenges that will be posed by the absence of a precedent.

Notwithstanding, the manifestly obvious merits of judicial precedent, it has, certain disadvantages as well. Consequently, unless the precedent to be followed is good, a strict adherence to it may be a perpetuation of vice and injustice. In this regard, the ignorance and foolishness of the past may be repeated in the present. Similarly, a strict adherence to the doctrine of judicial precedent may prevent progress and dampen the spirit of judicial creativity and activism. That is, strict adherence to the doctrine of judicial precedent lies the potentiality of stultifying judicial experimentation, creativity and activism.

In Text Question: Explain the primary sources of law, sub-categorised into legislation and judicial precedent.

1.4 Reasons for Studying Sources of Law

1. It affords an understanding of the various means by which the law governing the society is made or through which it comes into existence, e.g. through formal Legislative processes in parliament or through judicial precedents
2. It affords the means by which authoritative written materials are derived. This constitutes the literary source such as are represented by the statute books and the various compilations of the annual laws and the statutes in force including textbooks and monographs, with which a lawyer should be thoroughly familiar.
3. The study of the sources of law facilitates an understanding of the process by which law derives its validity. This refers to formal sources of law such as reflected in the constitution of a country and the activities of enacting bodies like the National Assembly.
4. A mastery of the sources of law of a given society also enhances an understanding of the historical factors that have influenced the evolution of the laws to such a direction as it had taken. By delving into such historical sources, it may be possible to trace the nature and content of the law with a view to arriving at the stuff of which the law was made. For instance:

- The historical fact that it is difficult, if not really impracticable to divest customary law and Islamic law from the culture, religion and traditions of the people.
- Similarly, by mere fact of history that Nigeria, for example, evolved from a unitary state to a federal state under a colonial domination, which spanned over a hundred years.
- The consequence of the great impact of English law on The Nigeria Legal System.
- The fact of the multi-ethnic structure and political heterogeneity resulting in the plurality of laws and the concomitant complex legal system;
- The resultant proliferation of court to cater for the various dimensions exhibited in the ensuing polity.

Self-Assessment Exercise (SAE) 2

In your opinion, why do law students study sources of law?

1.6 SUMMARY

Source of law means the origin from which the system derives its validity, be it the electorate, a special body, the general will or the will of a dictator. It also means the historical origin of a rule of law. Statutes books, law reports and textbooks are sources of law in any legal system. Examples of legal sources of law are legislation and judicial precedents. In this unit,

you have also learnt about the primary source of law, statutory materials as a source of law, judicial materials as a source of law and reasons for studying the sources of law.

1.7. References/Further Readings/Web Sources

Cap. C30, Laws of the Federation of Nigeria 2004.

Cap. 89, Laws of Northern Nigeria 1963.

The Received English Laws consist of the Common Law, Doctrines of Equity and the Statutes of General Application.

These various regional reception Laws are as follows: Section 2 of the Law Miscellaneous Provisions, Laws of Lagos State, Cap. 65 of 1975, Section 15 of the High Court Laws of Eastern Nigeria 1963, Section 28 of the High Court, Laws of Northern Nigeria 1963 arid Section 3 of the England (Application) Law, Laws of Western Region of Nigeria Cap. 60 of 1959

Sylvester S. Shikyil & Maxwell M. Gidado (2016). *The Province of Legal Method*. Jos University Press.

1.8 Possible Answer to Self-Assessment Exercise

The phrase "sources of law" may be interpreted in many ways. The phrase can mean the ultimate origin of the whole body of a legal system. In this context the phrase may refer to the National Assembly or the State Assemblies who are charged with the responsibility of enacting laws. The phrase maybe interpreted to mean the historical background of a country's legal system. Common law, doctrine of equity and statutes of general application are received English laws forming part of the sources of Nigerian legal system.

UNIT 2 SECONDARY SOURCES OF LAW

Unit structure

2.1 Introduction

We examined primary sources of law and effect in judicial proceedings. Here, we shall examine secondary sources of law and their effects in judicial proceedings.

Basically, secondary sources of law include the following:

- Subsidiary Law
- Customs
- Books
- Journals/periodicals
- Legal encyclopedia

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- identify the secondary source of law
- discuss the various materials falling or classified as secondary source of law
- conduct research on secondary source of law.

2.3 Secondary Sources of Law

2.3.1 Subsidiary Law

In the context of the constitutional framework of Nigeria, laws made by the National Assembly and the State Houses of Assembly are referred to as "parent laws". But the intricacies and complexities of the modern system governments are such that the principal legislative organs in the society have neither the time nor the expertise to make laws that will cover the entire affairs of a modern state. It has become the usual practice of the principal legislative organs to delegate their law-making power to government officials, departments or other public authorities to make subsidiary laws in the form of orders, regulations or rules to supplement their own enactment. In this regard, subsidiary legislation, may be defined as those legislations made by government officials, departments or other public authorities in the exercise of a power conferred by a law made by the principal legislative organ in the society.

The underlying jurisprudential basis of the idea of subsidiary legislations is anchored on the premise that the principal legislative organs, being too much pressured by time cannot consider all the details of a particular legislation, particularly, when the text of the legislation is too technical for effective handling on the floor of the house or a matter may require some measure of flexibility so as to take care of future contingencies and unforeseen supervening developments in the execution of government. It becomes imperative in situations aforesaid for the legislative organs in the society, to delegate their law-making powers to the appropriate government officials or departments to make rules, regulations and orders that will assist to bring to effect the law in question. Thus, it is in realisation of the relative significance of subsidiary legislations in the practice of modern government, that such legislations are considered as forming part of the sources of law. In practice legislations and therefore, there applications must necessarily be consistent with the text and spirit of intendment of the parent legislation.

2.3.2 Customs

The point must be made from the beginning that custom and cultures are normally used interchangeably. In law, the appropriate and conventional term used for the practices of a given people or community is "custom". When a person has been doing a thing regularly over a substantial period of time, it is usual to say that he has grown accustomed to doing it. In the line vein, when a large section of the populace is in the habit of doing a thing over a very long period, it may become necessary for courts to take notice of it. The reaction of the people themselves may manifest itself in

mere unthinking adherence to a practice which they simply follow because it is done. In the case of Dang Pam v. Sale Dang Gwom, The Supreme Court of Nigeria adopted the definition of customary law in the case of Oyewusi v. Ogunsesan, as:
Customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is the mirror or the culture of the people.

From the foregoing, a custom may simply be defined as a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habits, has become compulsory and has acquired the force of law with respect to the place or subject matter to which it relates. A custom result from a long series of actions constantly repeated which have by such repetition and by uninterrupted acquiescence acquired the force of a tacit and common consent. Customs are undoubtedly the oldest forms of sources of law but, in the modern times customs are only binding on the members of a community, and are enforceable by the state only when they are absorbed or made into law. The application of customs in our courts finds statutory flavour in the various State High Court laws Section 34(1) of the High Court Law of Northern Nigeria provides:
The High Court shall observe and enforce the observance of every native law and custom which is applicable and not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force and nothing in this Act deprived of any native law and custom.

Section 16(1) of the Evidence Act states that a custom may be adopted as part of the law governing particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence. The general attitudes of the courts in Nigeria on the requirement that a custom may be observed and enforced by the courts provided that the custom in question is' not repugnant to natural justice, equity and good conscience is to eliminate the application of certain customs that may be barbarous and lacking in civility. For instance, in the case of Edet v. Essien the plaintiff paid dowry for a woman and married her. She later left him and entered into a new marriage with another man by whom she subsequently had two children. The plaintiff now alleged that by a rule of native law and custom, he was entitled to the custody of these children since his dowry had not been repaid to him. The court refused to observe and enforce the native law and custom on the basis that the custom was repugnant to natural justice, equity and good conscience. The underlying philosophy and policy implication of the decision is that to hold otherwise, will be tantamount to depriving the children of their natural father. In the case of

Alajemba Uke & ANor V. Albert Iro, the Court of Appeal had to determine the Igobo native law and custom by which male children are more acceptable than the female children. Its preferential treatment necessarily creates an atmosphere of discrimination on the basis of sex contrary to Section 42 (1) of the 1999 Constitution.

The court held that:
By virtue of Section 39(1) of the 1979 Constitution which is now Section 41(1) (sic) of the 1999 Constitution, a citizen of Nigeria of a particular community,; ethnic group, place of origin, sex, religion or political opinion shall not by reason that he is such a person be subjected either expressly by or in the practical application of any law in force in Nigeria or any-executive action of the government to disability or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not subject, or be accorded any privileged (sic) or advantage not accorded to other citizen of other communities, ethnic groups, places of origins, sex religion or political opinion.

The constitutionality of a custom which deprives a woman of her constitutionally guaranteed rights is otiose and same offends the provisions that guarantee equal protection under the law as it offends all decent norms of application in a civilised society. A custom that flies against decency and is not consonant with the notions, beliefs or practice of what is acceptable in a court where the rule of law is the order of the day shall not find its way in the courts and same shall be discarded, disregarded and dismissed as amounting to nothing. In the main, the basis of the treatment of customs as secondary sources of law is that customs unlike legislation and judicial precedent are not observed and enforced by the courts as rights in that for custom to be observed and enforced, it must be valid and certain.

Self-Assessment Exercise (SAE)1

…It has become the usual practice of the principal legislative organs to delegate their law making power to government officials, departments or other public authorities to make subsidiary law. Discuss.

2.3.3 Book of Authority

The use of textbooks raises the questions of whether statements made by authors can be cited as authoritative pronouncements of what the law actually is, In Greenlands Limited V. Whilmshurts & Ors, it was held by Vaughan Williams that:
No doubt Mr. Odger's book (on the law of libel) is a most admirable work which we all use, but I think we ought in this court still to maintain the

old idea that counsel are not entitled to quote living authors as authorities for a preposition they are putting forward, but they may adopt the author's statements as part of their argument.

The view that simply being alive intrinsically disqualifies statements of authors from legal textbooks from being authoritative rests of the fact that living authors can change their minds as to what they think the law is, whereas dead ones clearly cannot do so. This argument is transparently unconvincing if we compare authors with judges. Judicial pronouncements as noted earlier are treated as sources of law in spite of the fact that the individual Judges can and do change their minds. Sir Robert Megarry identified the true reason for some judges' skepticism of some authors as:
the passage of years and the activities of those who edit the books of the departed tend to produce criticism and sometimes the elimination of frailties and so give greater confidence in what remains Further, many books by dead authors represent mature views after a life time of studying and often, practising in the particular branch of the law concerned, whereas all too many books by the living are written by those who, laudably enough, have merely hoped to learn the rudiments of a subject by writing a book about it. Finally, it must be admitted that there are a number of living authors whose appearance and demeanor do something to sap any confidence in their conscience which the, printed page may be instilled; the dead, on the other hand, so often leave little clue to what manner of men they were, save the majestic skill with which they have arranged the learning of centuries and exposed the failings of the bench.

A particular problem arises in connection with the works of authors who also happen to be judges. A more particular problem arises when a counsel cites the judges own writings. In the case of Cordell V Second Clanfield Properties, Megarry dealt with the problems thus:
The process of authorship is entirely different from that of judicial decision. The author... has the benefit of a broad and comprehensive study of his chosen subject... But he is exposed to the perils of yielding to the preconceptions and the lacks the ... sharpening of focus which the detailed facts of a particular case bring to the judge. Above all, he has to form his ideas without the aid of the purifying ordeal of skilled argument on specific facts of a contested case ... and i would, therefore, give credit to the words any reputable author... a expressing tenable and arguable ideas, as fertilisers of thought, and as conveniently expressing the fruits of research in print... But I would expose those views to the testing and refining process of argument.
In Spiliada Maritime Corporation v. Consulex Ltd, Lord Goff described academic authors as "pilgrims with us on the endless road to unattainable perfection." What is obviously discernable from the foregoing is that opinion of text writers is generally not authoritative statement. In Nigeria

and other common law countries, statement of authors in textbooks do not form significant source of law in the sense that statements of authors in legal textbooks have no binding force. In practice, the courts are not bound to adopt a statement of an author in the same way as they are bound to apply the provisions of a statute or a previous decision of a superior court. The true position, as any substantial reading of a law report will show, is that the courts will use the views of authors, but will not be bound by them. Textbooks are not digests of cases but repositories of principles. They are written by men who have studied the law as a science with more detachment than is possible to men engaged in busy practice. Nonetheless, it must be said that certain academic opinions especially by eminent scholars are treated with great respect by judges and legal practitioners and in, some cases, such opinions have often found their way into the, observations of judges.

IN TEXT QUESTION: In Nigeria and other common law countries, statement of authors in textbooks do not form significant source of law. Discuss

2.3.4 Journals and Periodicals

Legal journals and periodicals are other secondary sources of law. Legal journals and periodicals do reflect the law as it is and as it is tending to or ought to be. The sources of legal journals and periodicals are indicative of their quality and point of view. Legal journals and periodicals usually contain articles written by legal scholars on topical legal issues. Journals and periodicals like textbooks are not digest of cases but are repositories of principles of law representing the views and opinions of, the' authors of the articles regarding what current state of the law ought to be. Statements or views or opinions of authors expressed in articles as contained in journals and periodicals are not binding on the courts but are merely persuasive and are occasionally cited in judicial pronouncements.

Although statement of authors and editors of legal journals and periodicals are merely persuasive, there can be no doubt that the legal profession and the courts would both find life practically impossible if they are left only with the primary sources of law. Lord Bridge in the case of R v. Shivpuri, deserves commendation for judicial candour. The background to the case of R v. Shivpuri was that in Anderton v. Ryan [1985] 2All E.R. p- 355, the House of Lords formulated a principle which had aroused the almost universal wrath of academic criminal law lawyers. The House had the opportunity of returning to the point in Shivpuri, when it decided to overrule its previous decision. Lord Bridge who was in the unenviable position of being a member of the House on both occasions observed in the following words:

I have had the advantage, since conclusion of argument in this appeal, of reading an article by Professor Glanville Williams... The language in which he criticises the decision in Anderton v. Ryan is not conspicuous for its moderation, but it will be foolish, on that account, not to recognise the force of the criticism and childish not to acknowledge the assistance I have derived from it.

Self-Assessment Exercise (SAE) 2
Discuss legal journals and periodicals as secondary sources of law.

2.3.5 Legal Encyclopedia

Legal encyclopedias are other secondary sources of law. Legal encyclopedia are frequently used by legal practitioners and judges but they are not authoritative sources Legal encyclopedia are useful as finding tools to primary sources of law.

2.6 Summary

In this unit, you have learnt about other sources of law, falling under the secondary sources.

2.7 References/Further Readings/Web Sources

Dada, T. O. (1998). General Principles of Law, T.O. Dada & Co. Lagos, Nigeria

Imiera, P. P. (2005). Knowing the Law FICO Nig. Ltd, (FMH) Lagos, Nigeria

Obilade, A.O. (1994). The Nigerian Legal System, Sweet & Maxwell, London.

See Section 4(2) and (7) of the 1999 Constitution of the Federal Republic of Nigeria.

See Section 1(3) of the 1999 Constitution which proclaims the supremacy of the Constitution over any other enactment.

[1965] L.L.R. p. 136
[1958] 3 F.S.C. p.48

See Section 27(1) of the High Court Law of Lagos State, Section 22 of the High Court Law of Eastern Nigeria and Section 12(10 of the High Court Law of Western Nigeria.

Sylvester S. Shikyil & Maxwell M. Gidado (2016).

The Province of Legal Method Jos University Press.

1.8 Possible Answer to Self-Assessment Exercise

Legal journals and periodicals are other secondary sources of law. Legal journals and periodicals do reflect the law as it is and as it is tending to or ought to be. The sources of legal journals and periodicals are indicative of their quality and point of view.

UNIT 3 USE OF SOURCE MATERIALS

Unit structure

3.1 Introduction

Source materials are those major items or institutions used in carrying out legal research. These source institutions include the law libraries, the Nigerian Institute of Advanced Legal Studies and the Nigerian Institute of International Affairs. You shall learn about the library as a source material in legal research or about libraries as a major aspect of an educational organisation.

3.2 Learning Outcomes

By the end of the unit, you will be able to:

- use the library
- use the library catalogue
- explain the organisation of the library
- discuss the reference services.

3.3 Use of Source Materials

3.3.1 Law library

Law libraries are very essential to the proper study of law. You should be familiar with the cataloguing and shelving systems used in the library to which you have access. Usually, university law libraries classify books by subject and shelve them in accordance with that classification. In order to enable you find easily books required by you, a law library usually has at least one general card catalogue. A general card catalogue lists all the

books in the library. There is at least one card in the catalogue for each book. If only one card catalogue is available it may be arranged by author or by author and title or by subject. In an author - title catalogue, there are at least two cards for each book - one for the author and the other for the title of the book. There may be two general card catalogues - one on author - title catalogue and the other a subject catalogue. In addition to general card catalogue there are, usually, special catalogue which list books of a special class. For instance, there may be a separate special catalogue for each of the following classes of materials: law reports, periodicals, legislation and microfilms. In general, books other than textbooks may be classified for shelving purpose as follows:

Fig 3.1. A well-organised law library with labeled shelves and a study area

1. Legal periodicals
a) Nigerian Legal Periodicals
b) English Legal Periodicals
c) Other Legal Periodicals arranged by country

2. Statute books
a) Nigerian Statute Books
b) English Statute Books
c) Other Statute Books arrange by country

3. Law reports

a) Nigerian law reports
b) English law reports
c) Other law reports arranged by country

4. Digests
a) Nigerian law digests
b) English law digests
c) Other law digests arranged by country

1. Encyclopedia
2. Reference books

Generally, textbooks may be similarly divided into three classes, namely:
1. Nigerian law textbooks;
2. English law textbooks; and
3. Other textbooks.

The textbook within each group is usually arranged by subject for e.g. textbooks on the law of contract are separated from textbooks on criminal law. There may be in a law a reserve section containing rare books in very high demand. Normally, books in a reserve section are not to be borrowed. Some reserve sections are open to only a restricted class of readers. A good study of the cataloguing, and shelving systems used in a law library is only a starting point in legal research.

Self-Assessment Exercise (SAE) 1
Briefly discuss the shelving of legal textbooks in the law library.

3.3.2 The Library Catalogue

Fig 3.2: library catalogue

Libraries are of various sizes ranging from those with very few books and other materials to the very large ones with several thousands of materials.

The former are very easy to cope with. The contents of such libraries could be known by heart. But in the larger libraries, a formal organisation of their contents is imperative to make their use beneficial and less frustrating.

The catalogue is therefore a record of materials held by the library ranging from books, magazine/journals, documents, theses, and dissertations to non-print media sources. The catalogues, therefore, is the key to the library holding since it contains entries, representing each material in the library. It is a vital tool to the use of the library because of the functions it performs.

Functions of the Catalogue

1. The catalogue allows access to the collection and provides service to its users.
2. It enables you to find a book or other library material if you know any of the following:

a) Author's name;
b) Title of the work;
c) The subject;
d) It enables you to know the following:
e) All the works of a given author held in the library
f) The editions of any work

In Text Question: Discuss the library catalogue and the functions if performs.

3.4 Organisation of Library

1. Acquisition Department

In the Acquisitions department books and other materials are acquired and processed. Books, pamphlet, government publications and audiovisual materials are received in the Acquisition Department. These materials may be acquired by purchase, gift and by legal deposit especially if the library has been made a depository by the government. The National Library of Nigeria as you know receives three copies of all publications in the country because it is the legal depository for the whole country. The University of Lagos Library by the Edict of Lagos State 1973 is a depository library for the state. All publishers in the state must deposit three copies of their publications to the library. Some libraries in Nigeria are legal depository libraries for state and for some international organisations like WHO, UNESCO and ILO. Libraries receive gifts from the friends of the library and the gifts are processed in the Acquisitions Department.

Self-Assessment Exercise (SAE) 2
Why do you think that the Acquisitions Department of a library cannot be dispensed with?

2. Reference Services

The Reference Department of the library is very important in the library. It is in this section that the library staff answers reference questions and also provides bibliographic services to the library patrons. Books in this part of the library cannot be borrowed like books in the open shelves; they can only be used or consulted in the library. Books that are housed in this part of the library have the inscription *"REFERENCE ONLY, NOT TO BE TAKEN OUT OF THE LIBRARY"*.

The major characteristics of reference materials are:

1. The materials are meant to be consulted in the library only;
2. The library usually buys one copy or in rare cases two copies;
3. They are not meant to be read from cover to cover. Users usually look for specific information. They contain factual information;
4. They are housed in a separate section within the library;
5. The arrangement of each material may be made to suit the peculiarity of that material. The arrangement in the dictionary is alphabetical chronological, for works on history, it could be chronological; and
6. They are revised from time to time so as to keep abreast of recent developments.

Reference services in the library may involve the provision of personal assistance to you. The type of service required may be simple information in where to find books on a particular subject. They may be questions on directions within the library. At other times, the services may involve assistance on how to find the information on a subject which may not be well known to you.

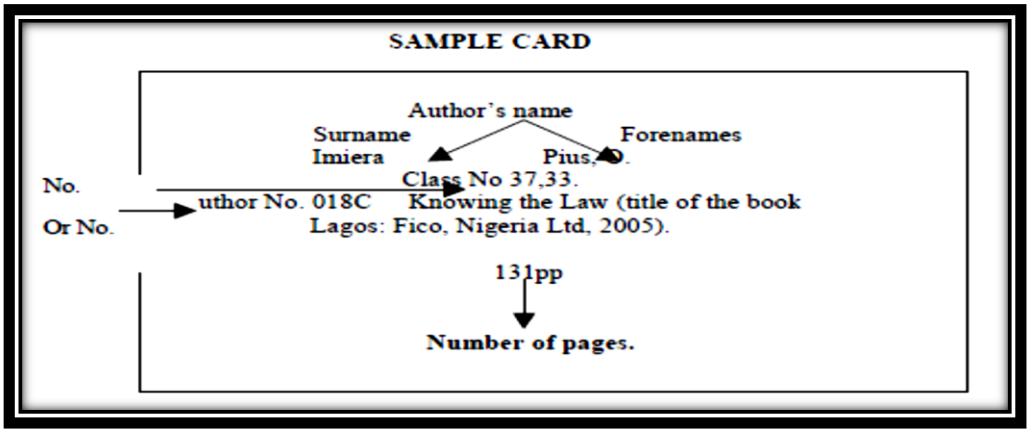
Self-Assessment Exercise (SAE) 3
Certain books cannot be taken away from the library. Name some of these books and the reason they are not taken away from the library.

3.5 Why do you use the library?

The use of the library can be divided into three broad headings, namely: go to a library to borrow books. You also go to a library to consult reference materials, and for general study.
Let us assume that you have been given the author and title of a certain book, which has been assigned to you to read. You would like to borrow it from the library, because it makes you sometime to read it. The first thing you do when you go to a library is to check whether or not the book

is in stock and be sure it is available for lending. The next thing is to locate the book where it is in the library.

To locate a book in the library, you need to take the following steps:
Consult the right card catalogues. For example, if you know the name of the author of the book, you should consult author or name catalogue. Author or name catalogue consists of the name of the author on cards arranged in alphabetical order according to the author's surname, institution or editor, by which the book is best known.



The library is very important. You should make constant use of it. A lot of information stored in the library can be of great benefit to you.

3.6 Summary

In this unit, you have learnt about:

- The use of source materials; the library;
- The library catalogue;
- Organisation of the library;
- Reference service in the library;
- That libraries are for lending out useful and relevant books, for consulting reference works and for getting recent information; and
- For effective study, you must use the library.

3.7 References/Further Readings/Web Sources

Olanlokun, S.O. and Salisu, T.M. (1993), Understanding the Library, Published by University of Lagos, Lagos, Nigeria.

See also the case of Federal Administrator General Adesola [1960] WNLR p.53 where Charles J. discredited the decision of the West African Court of Appeal but nevertheless followed it for he was bound the decision.

- [2000] F.W.L.R. p. 1 at p.15
[- 1980] 3 N.W.L.R. (Part 135) p. 182 at p. 207

See also Section 27(1) of the High Court Law of Lagos State, Section 22 of the High Court Law of Eastern Nigeria and Section 12(1) of the High Court Law of Western Nigeria. 2011

3.8 Possible Answer to Self-Assessment Exercise (2)

In the Acquisitions department books and other materials are acquired and processed. Books, pamphlet, government publications and audiovisual materials are received in the Acquisition Department. These materials may be acquired by purchase, gift and by legal deposit especially if the library has been made a depository by the government.

MODULE 2

UNIT 1 LEGAL RESEARCH

Unit Structure

1.1 Introduction

Many people encounter the legal system in a variety of ways on a variety of occasions. Whether they are seeking redress or are being accused of something, the legal system appears like the system to use. Others think it is the preserve of professionals. These professionals are assumed to have particular skills and knowledge that the non-professionals are prepared to pay a fee for. There is, however, some debate as to what these skills are and what the nature of this knowledge is. This is the question this unit intends to answer.

As a law student, you may encounter the legal system predominantly through texts, or words. How to work with those words, how to approach the way they are collected is an essential skill you should learn. Learning the law is, in this respect at least, like learning a new language. Training to be a lawyer is accordingly, partly akin to learning the location of meanings, the grammar and structure of the language.

This unit refers you to a minimal amount of reading and contains a number of exercises. It introduces you to basic principles or the process of legal research as it impacts on the professional task of finding and arguing the law.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- state the principles of Legal research

- explain methods of Legal research
- identify tools of Legal research.

1.3 Legal Research

1.3.1 Principles of Legal Research

Legal research is at the centre of professional legal skills, but the question is what we mean by legal research.
In simple terms legal research is the search for material necessary to support legal argument and decision-making. In a broader sense, legal research is a process that begins with:

- Analysing the facts of a problem that is brought to a lawyer;
- Identifying the relevant legal issues to be addressed;
- Separating the factual and legal problems to be resolved;
- Finding the law that is relevant to the legal problems; and
- Concluding, applying and communicating the results of the search and analysis.

Legal research should not be seen as merely preparatory. Law is an argumentative process and research is directed to an argument. The results of the research need to be communicated effectively and put into an argumentative structure.

For example, persons who have suffered loss as a result of an injury want to know if they can claim damages. They outline a chain of events to you as the lawyer; the lawyer seeks to identity if there are indeed grounds to launch a claim and whom it would be against. The lawyer is looking out identify a "cause of action" and this might be due to a breach of contract, negligence or some other claims. In the broad area of tort (i.e. obligations between parties independent of contracts) a common claim is that the loss was occasioned by the negligence of a third party.

As the lawyer, you will have a working set of assumptions as to the state of the law of negligence and where to find the precise articulations of the law that will serve as your working knowledge as you listen to your client. Importantly, you will understand that the third party must owe some form of a "duty of care" towards your client.

You will know that the basic principles of the law of negligence are such that where an injury has been caused by the negligent behaviour of another person; the injured person may bring an action for damages against that third party. You will be primarily interested in the law, as it

has worked out for other lawyers. Tort actions have moral and economic purposes behind them, namely that it is just and fair to compel the negligent third party to reimburse the injured party for any loses that the client suffered as the result of his injury and to compensate him for the pain he has suffered.

For the action to succeed, you as the lawyer must establish a set of claims as to:

- The law accepted as valid;
- The facts accepted as true;
- How the events were interconnected, this must be proved according to the degree of proof required, which in civil cases is on the balance of probability.

Specifically, for negligence, you as the lawyer must show that:

- The other person owned a duty of care recognised by the law to the plaintiff;
- The third party was in breach of that duty; and
- The injured suffered by the plaintiff was caused by the breach of duty.
- But the question is how will all of the above be achieved? This will be achieved by the process of legal research, which is usually laid out in a series of steps.

These involve separating facts from law. You will need to:

- Identify and analyse the significant facts;
- Frame the legal issues to be researched; and
- Research the issues.

In the course of your studies, preparing for problem questions will presuppose the steps of legal research.

Self-Assessment Exercise (SAE) 1

What do you understand by the term legal research and what are the processes that legal research must begin with?

1.3.2 Methods of Legal research

Various approaches are used in retrieving necessary information for the purpose of solving a given problem that has occasioned the conduct of legal research. These include the approach by means of Author, Title, Subject, the case method, by statute, by words and phrases as the case may be.

Where the author or title of a book is known, you need only to consult the Author/Title catalogue for guidance as to the location of the particular material on the shelf.

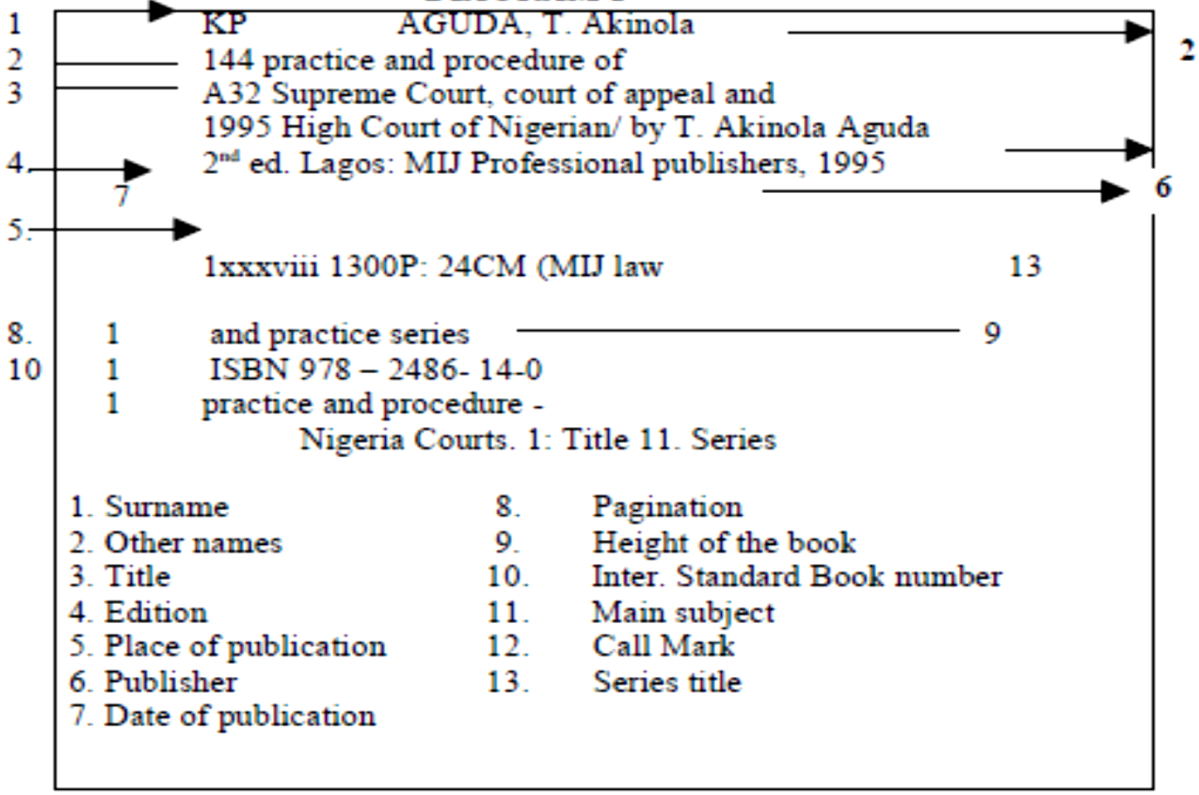
There are many classification schemes used in law Libraries but the most commonly used scheme is the Moy's classification scheme, which was in use for major libraries. The subject structure of the Moy's scheme upon which the call Mark is based is as follows:

K - Journals and Reference Books
KA - Jurisprudence
KB - General and comparative law
KC - International law
KD - Religious Legal systems
KE - Ancient and Medieval law
KF - Primary Materials - British Isles
KG - Primary Materials- Canada, U.S West Indies
KH - Primary Materials- Australia, New Zealand
KL - General
KM - Public Law
- **Constitutional and Administrative Law**
- **Criminal Law and Procedure**
KN - Private Law
KP - Own Country (Optional e.g. NIGERIAN LAW)
KR - Africa
KS - Latin America
KT - Asia and Pacific
KV - Europe
KW - European Communities
KZ - Non- Legal Subjects.

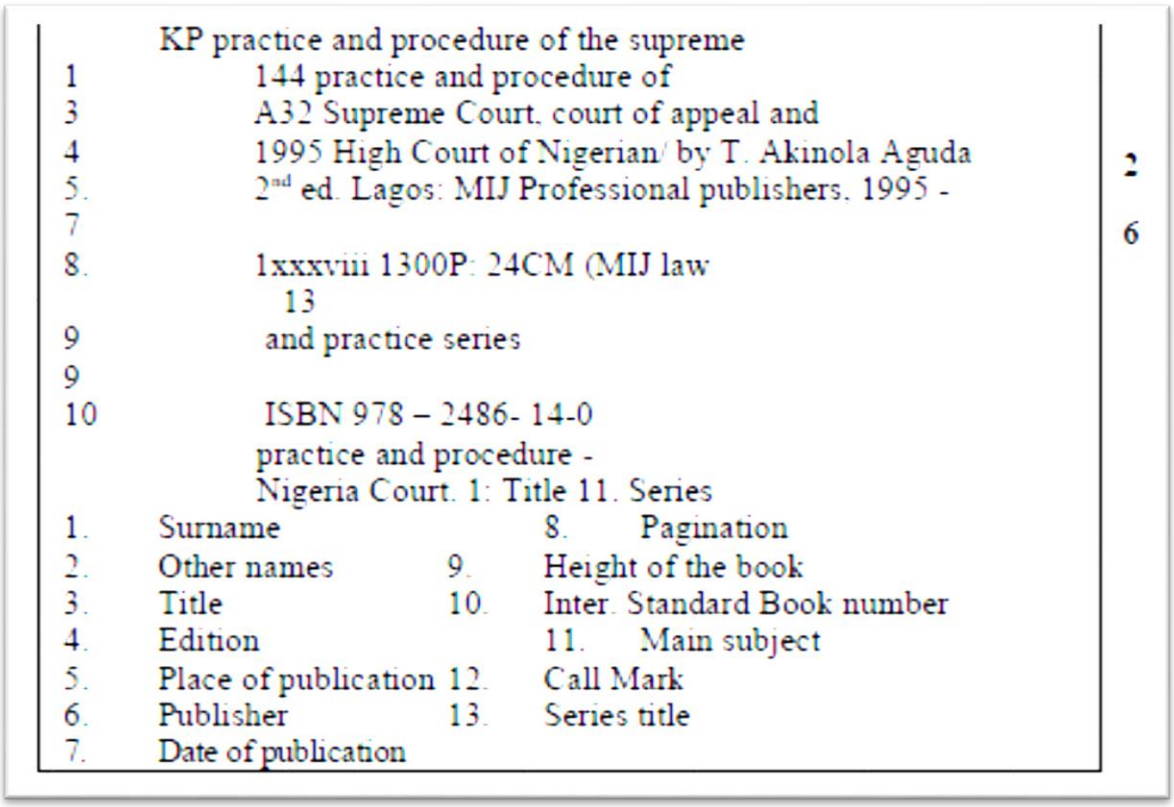
The following are samples of the Author, Title and Subject Methods.

AUTHOR CARD

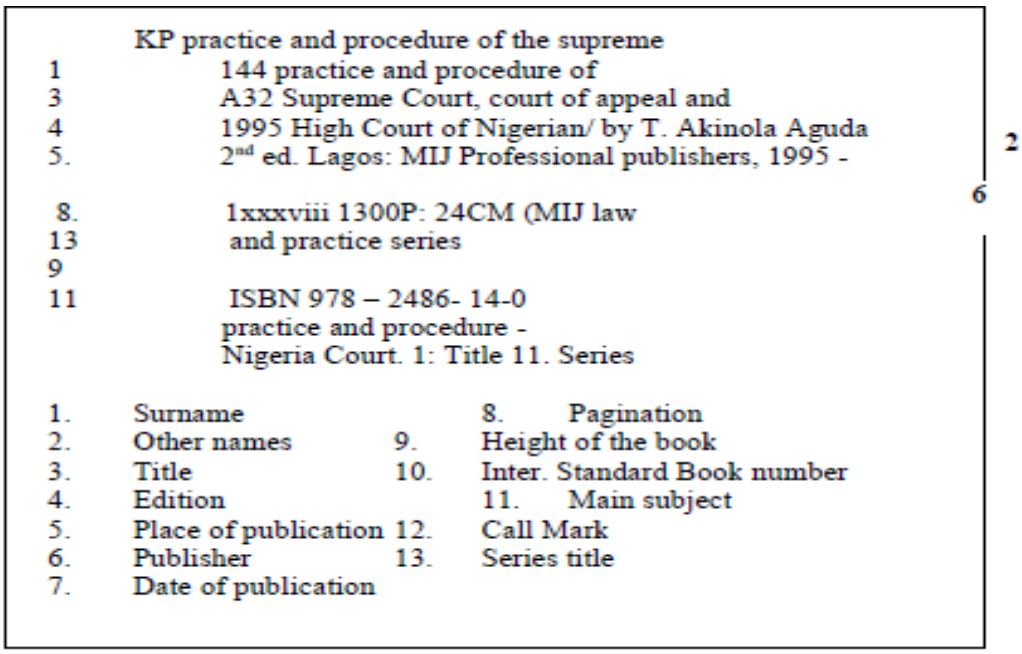
DIAGRAM 1



TITLE CARD
DIAGRAM II



SUBJECT TITLE DIAGRAM
DIAGRAM III



Cards are arranged alphabetically in the library's catalogue cabinet. Author and Title are usually filed together in a long alphabetical sequence. It is important for you to know that these manual ways of operations are gradually being replaced by modern and retrieval techniques.

IN TEXT QUESTION: Conduct a research work on the subject; take note of cases, words, phrases, approaches, and methods in legal research (Note: diagram, not required).

1.3.3 Tools of Legal Research

The conduct of legal research entails the identification of and the ability to use the various finding aids to discover the vital research materials scattered all over the legal collection. These basic tools of legal research consist of a mixture of primary and secondary source materials. Primary materials include such items of laws, or acts collectively called statutes, as well as law reports, law Journals, digests and indexes, secondary materials include works, commentaries and treaties on law. An understanding of the content of these materials facilitates effective research into the various aspects of law.

Self-Assessment Exercise (SAE) 2
Using a well-labelled diagram, show samples of the Author, Title and subject card in conducting Legal Research

1.3.4 Legal Textbooks and Monographs

These constitute the bulk of the stock of a law library and can therefore be regarded as the most important single entity available for the conduct of legal research. Legal textbooks consist of scholarly views, opinions, commentaries and authoritative expositions in certain subject areas. The audience or the status of people to which they are directed like undergraduate, postgraduates, academic researchers, practitioners and other topical issues that are foreign or local, have virtually become synonymous and identifiable with certain subject areas of law, categorises such textbooks.

Examples include, Williams on Wills, Phipson on Evidence; Chitty on contracts, Benjamin's Sale of Goods and Palmer's Company Law. Similarly, some legal series have become household names in academic and professional legal parlance. An example is the common law Library series made up of standard and quite authoritative legal textbooks. Other notable modern legal text writers include Lord Denning M.R. on the general aspects of law and practice, Schwazenberger in the field of International Law, Street and Jolowicz on torts; Cheshire and FiteFoot on contracts, Roscoe Pound, Hart and Fuller on Jurisprudence and legal theory, Megarry and Wade on property.

The Nigerian local scene can also boast of an impressive array of distinguished legal text writers whose publications are as authoritative in every material respect and who have attained international recognition. Late Honourable Justice T.O Elias formerly of the World Court at The Hague, Netherlands, was a Pace-setter. For many years he bestrode the entire legal publishing scene in Nigeria and abroad covering such fields as Constitutional Law, International Law, Customary Law and virtually all recognised fields of legal endeavours. Other notable legal writers include Professor Ben Nwabueze, Dr. T. Akinola Aguda, Dr. Olakunkle Orojo, Justice Karibi- Whyte, Professor Nwogugu, Professor Okonkwo, Professor Peter Oluyede, Justice C. Oputa, Professor ItseSagay, Professor Akintunde Obilade, Justice Kayode Eso, and most recently Dr. G.I. Oyakhirome and Pius Imiera. Legal publishing is still however, yearning to come of age in Nigeria.

The main snag about legal textbooks as tools of research is that they might not always be current with the conditions of the prevailing times. In some cases, the facts contained in a monograph might have been overtaken by events, which were not anticipated by the author when he began to gather his thoughts together to write. Such examples include a sudden change from civilian to military regime and vice versa or an unanticipated repeal or re- enactment of certain laws in the land.

Self- Assessment Exercise (SAE) 3
Conduct a research work on any well-known law textbook stating the date or year of publication, place of publication, name of publisher, number of pages, the ISBN, and a summary of chapter four of the book.

Self- Assessment Exercise (SAE) 4
What do you consider as the main snag about legal textbooks as tools of legal research? What solutions would you suggest?

In this unit, you have been exposed to the rudimentary aspects of legal research. The effort here is to show you that legal research is important in the study of law and in being a successful legal practitioner.

1.6 Summary

In this unit, you have been exposed to the rudimentary aspects of legal research. The effort here is to show you that legal research is important in the study of law and in being a successful legal practitioner.

Finding the law on a particular topic or issue is said to be a key skill of the lawyer. The common saying that "a lawyer does not know the law but he knows where to find it" expresses the importance of this reference or research ability.

The process of legal research is one of the human elements that provide glue for the legal system. A legal system is in constant danger of being anything but a 'system'! Like many judges, the legal theorist Ronald Dworkin argues that it is the task of legal personnel, including legislators, to uphold and develop the systematic aspect of law in order to achieve consistency, due process and deal with people in ways that achieve substantive fairness. How is this achieved? In some part by legal research, by developing techniques of interpretation and relating to the texts that is called case reports, statutes or legal arguments.

7.0 References/Further Readings/Web Sources

Morrison, W.J. and A. George, K. Malisons, (2004). Common Law Reasoning and Institutions. University of London Press: UK.

Dada, T.O. (1998). General Principles of Law, T.O Dada & Co.: Lagos, Nigeria.

Imiera P.P, (2005). Knowing the Law, Fico Nigeria Ltd, (FMH): Lagos, Nigeria

1.8 Possible Answer to Self-Assessment Exercise (4)

The main snag about legal textbooks as tools of research is that they might not always be current with the conditions of the prevailing times. In some cases, the facts contained in a monograph might have been overtaken by events, which were not anticipated by the author when he began to gather his thoughts together to write.

UNIT 2 INDEXING AND IDENTIFICATION OF LIBRARY MATERIALS

Unit structure

2.1 Introduction

Indexes serve as keys for the effective use of any given publications and they are in various forms. They may precede the main chapter as in the case of table of contents, table of cases and table of statutes or may be at the end of the book in the form of subject indexes.

2.2 Learning Outcomes

By the end of this unit, you will be able to:
identify various types of indexes such as:

- Education Index
- Science Citation Index, 1961
- British Humanities Index
- Social Science Index

2.3 Indexing and Identification of Library Materials

2.3.1 Indexing and Identification of Library Materials

An index has been described as a table, which enables information to be retrieved quickly. There are periodical indexes and subject indexes. The card catalogue can also be regarded as an index. Most books have indexes at the end. Periodical indexes help one to trace materials that have been published on a particular subject. It is possible to trace an author by using an index to locate the name of the author and his published works. All this depends on the condition that what he

published is indexed by any of the commercial indexing publishers. Some of the periodical indexes are published at times monthly or quarterly. They are then cumulated yearly for easy use. Some newspapers also have indexes. There is the New York Times Index and the Times Index. Some publishing Firms publish indexes on several subjects. H.W. Wilson publishes the Applied Science Technology Index, Education Index and Art Index. The following are some types of indexes:

a) Education Index
This is published monthly; it contains a subject entry to over 200 periodicals in the field of education.

b) **Applied Science and Technology Index**
This is published by H.W. Wilson, New York. It is a cumulative index to English Language periodicals. It contains subject entries to periodicals articles arranged alphabetically. Subjects covered in the index include mathematics, metallurgy, aeronautics, space science, computer science and engineering. It is devoted to periodicals in science and technology.

c) **Science citation index, 1961**
Pa. Institute for Scientific information, 1963- three quarterly issues plus annual cumulative volumes.
This index provides information on what has been published, who and in what publication in the field of science. Olaitan, M.O: Cases on Nigerian Law index 1880-1970- Lagos: Lagos University Library, 1978. This index contains information on cases decided in Nigerian courts during this period.

d) British Humanities index
This is published by the Library Association of Great Britain. The index is arranged alphabetically by subject heading. It has author index in the annual cumulative volume. It has an international coverage in scope.

e) Social Science index
This is published by H.W. Wilson, New York. It supersedes the social science and Humanities index. The index consists of author and author and subject entries to periodicals in economics, anthropology, medical sciences, political sciences, public administration and other related subjects.

Self-Assessment Exercise (SAE) 1
In brief discuss the various types of indexes available.

IN TEXT QUESTION: Discuss briefly the various types of library materials.

2.4 Types of Library Materials

The library stocks host legal and non-legal reference materials for the use of researchers. Such materials are standard works to which reference could always be made. These include the following:

a. Dictionaries

Dictionaries are indispensable aids to legal research. To this end, the law library keeps some Standard English Language Dictionaries and lexicons. These include, among other, the Oxford English Dictionaries, Chamber's English Dictionary and Webster's International English Dictionary. Such Dictionaries help not only in verifying the meanings of words and phrases; they also assist in the use of appropriate study, construction and training legal sentences to elucidate some precision conciseness, simplicity and clarity all of which are salient hallmarks of any research report or findings.

Legal Dictionaries may either be exclusively in English language or bilingual. Examples of Standard English language legal dictionaries include Black's Law Dictionary; and Stroud's Judicial Dictionary. There also exist some specialised dictionaries covering specific subject areas as well as other topical issues. Bi-lingual legal dictionaries are most helpful for deciphering certain words or phrases especially Latin or French, which have been unavoidably used in a passage. Most of such words have Roman and Anglo-Saxon origins and have become part of today's legal writings to drive home certain principles and legal maxims. Examples of Bi-lingual dictionaries may include English - Latin and English- Arabic dictionaries.

b. Words and Phrases defined

Another unique and invaluable materials for legal research are the multi-volume works titled, "Words and Phrases Defined". This covers wide areas of definition and interpretation of legal expressions. Onamade's Guide to Words Phrases and Doctrine in Nigerian Law (1988) is also a most useful local effort.

c. Encyclopedias and Precedent books

General encyclopedias, which the legal research library stocks, are different from legal encyclopedias. General works such as Encyclopedia Britannica and Encyclopedia Americana cover wide subject area of law; History, Jurisprudence and Legal Theory, Legal Biography and political theory. They therefore provide valuable reference materials for the effective conduct of legal research.

There is no doubt that no successful research work or practice of law can be embarked upon without the use of some legal encyclopedic works

and precedents. Among these are the Butter-worth's Encyclopedia of Forms and Precedents (5th edition) which covers extensive areas of solicitors work and the Atkin's Courts forms which deals with the forms, contents and procedure in civil matters. Other basic reference materials include the famous Halsbury's Law of England and the Halsbury's Statutes of England. There are also standard compendia, which are of immense research value. An example is American Juris Secundum, which is an encyclopedic digest of American cases and Statutes.

d. Directories and Guides

These can be aptly described as pathfinders. They are most useful sources of names, addresses and other relevant details about individuals, constitution or groups. Legal directories cover only matters of professional interest to the legal profession. Typical examples include the Nigerian Lawyer's Diary published annually. It consists of the normal day-to- day spaces for recording events as well as other useful details as the Roll Call of all the Lawyers in Nigeria and their dates of enrolment and the list of statutes in force. An example is Gani Fawehinmi's Bench and Bar in Nigeria (1988). Other directories include the Directory of Incorporated Companies in Nigeria. The Vanguards' Yellow Pages, the NIALS Directory of Law Teachers in Nigeria (1995) and Vanguards' Directory of Lawyers in Lagos State (1995).

e. Handbooks

These are publications provided specially for the purpose of giving general information about the scope, purpose and happening at a place or institution or a group of establishments. A very good example is the Nigerian Company Handbook, an annual publication, which consists of basic information data about listed companies operating in various locations in Nigeria.

f. Yearbooks and Annuals

These categories of publications also contain basic research information about a country, state, institutions or bodies. They are produced each year to reflect certain changes and remarkable Landmarks that have occurred in the preceding year. Typical examples are the Nigerian Yearbook and the West African Annual.

g. Bibliographies and General references

Any research work in law should commence with a detailed bibliographic search, that is, a look into related works; Bibliographies serve as the most useful aid in this respect. A bibliography is a publication that lists the topics or titles of materials available in a given subject. A development from ordinary bibliography is the use of Bibliography of Bibliographies, a special publication that lists specific or some subject matters.

Bibliographies are mere listing of available materials and nothing more. However, in certain cases such materials may be briefly described as to the nature, scope and content of the publication. This is then called an "Annotated Bibliography". Such a development helps legal researchers to decide immediately on the benefit of the materials to their work.

Compilation of legal bibliography is the preserve of the Professional Law Librarian. It may be solicited in which case it comes in the form of completion of a reading list on given subject. On the other hand, it may be unsolicited and takes the form of professional routine compilation to which the attention of interested researchers may be directed through the process of selective dissemination of information to the effective Consultation of the Laws of the Federal Republic of Nigeria (1990), and the annual cumulative volumes.

Typical examples of legal bibliographies, general or specific include Jegede's Nigerian Legal Bibliography (1995), which is a detailed listing of invaluable research materials on the various aspects of the Nigerian law. Arrangement is by broad subject groupings and it lists laws, statutes, articles, conference papers, treaties and textbooks. Another is Jegede's Bibliography on the Constitutions of Nigeria (1993), which is an invaluable source book for any research into the Nigerian constitutional law. General references usually at the end of chapter in a book or at the end of an article or paper assist in legal research by offering directives as to further sources of information. Such general references have become universally acknowledged standards for legal writings and are highly valuable.

Self-Assessment Exercise (SAE) 2

1. What are the uses of an Encyclopedia and precedent books?
2. What are Bibliographies? Why are they important in legal research?

2.6 Summary

This unit prepares you on how to identify materials through indexing during your legal research. This unit helps you to identify education index, science citation index, British Humanities index and social sciences index as types of indexes available. You have been exposed to indexing and identification of library materials and types of library materials. You also learnt about some books, which serve as legal materials, such as dictionaries, Encyclopedias, and precedent books and bibliographies.

2.7 References/Further Readings/Web Sources

Dada, T.O. (1998). General Principles of Law, T.O Dada & Co.: Lagos, Nigeria.

Imiera P.P, (2005). Knowing the Law, Fico Nigeria Ltd, (FMH): Lagos, Nigeria.

2.8 Possible Answer to Self-Assessment Exercise 2(2)

Bibliographies are mere listing of available materials and nothing more. However, in certain cases such materials may be briefly described as to the nature, scope and content of the publication. This is then called an "Annotated Bibliography". Such a development helps legal researchers to decide immediately on the benefit of the materials to their work.

UNIT 3 CASES, CITATION OF CASES AND REPORTS

Unit structure

3.1 Introduction

An efficient system of law reporting is essential to the proper operation of the doctrine of judicial precedent. A case report published or edited in Nigeria usually begins with the title of the case. This is followed by the name of the court and the names of the judges constituting the court.

3.2 Learning Outcomes

By the end of this unit, you will be able to:

- cite relevant cases
- report cases
- make reference to Nigerian law reports.

3.3 Cases, Citation of Cases and Reports

3.3.1 Cases and Citation of Cases

After the name of the court, the next thing is the catchwords. Catchwords indicate the subject matter of the case and, sometimes, the issues to be determined. The head note appears immediately after the catchwords. It is a summary report of the case. In includes what the reporter considers to be the ratio decidendi of the case. It lists cases referred to in the case and states how they are dealt with. For example, it states whether a case was distinguished, followed, not followed or overruled. Where a case in on appeal, the head note states, as

appropriate, that the judgment of the lower court was affirmed or reversed or that it was set aside and a retrial ordered.

The head note, also states whether an appeal was allowed or dismissed. The head note, is usually followed immediately by a statement of the nature of the proceedings, an account of how the case reached the court including the essential facts and the names of counsel who appeared for the parties. Then follows the actual judgment usually reported verbatim. Where three or more judges constitute a court and there is a dissenting judgment, the dissenting judgments, the dissenting judgment is reported after the major judgments. The actual judgment is followed by a brief statement of the court's decision in the case, e.g. judgment for the defendant. Regular law reporting started in Nigeria in 1916 with the established of the Nigeria Law Reports series by the judicial department.

Self- Assessment Exercise (SAE) 1
Briefly discuss the reporting of cases on Nigeria. When did law reporting start in Nigeria?

3.4 Nigerian Law Report

Nigerian law reports are reports of cases, whenever published or edited, decide by Nigerian courts. They include "English Law Reports" a number of local and foreign periodicals containing case reports, and various cyclostyled reports including loose-sheet (unbound) series.
The only cases reported in the law reports are selections from cases decided by the superior courts, for example the Supreme Court of Nigeria, and High Courts. On the other hand, cases decided by inferior courts, for example magistrate courts, are not reported.

IN TEXT QUESTION: Why do you think that cases decided by magistrate courts are not reported?

3.5 Identification of issues, principles and application of rules in legal problems

Issues are the problems to be resolved in legal matters or problems. Principles are merely reason whose cogency has been acknowledged in a given legal system and which must be taken into account when they are relevant to a case. Courts are not bound to apply a principle in the same way as a rule. So, even if it is a principle that no man should be allowed to profit from his wrong doing, there are many cases in which a court will allow a man to do just that; not because it thinks that the principle is not applicable, but because other principles or rules may be given preference in the relevant case.

The following are examples of principles, some of which are given a traditional formulation "courts will not permit themselves to be used as instruments of injustice, caveat emptor, violenti non fit injuria, the "neighbour principle" "there should not be liability without fault" the principle of freedom of contract, in probate law whenever possible effect should be given to the wishes of the deceased.

It has been said that "we decide under rules but in the light of principles". This illustrates the point that a rule either applies a case or it does not, and if it applies then case has to be decided as the rule prescribes. Principles, on the other hand, can be compared to proverbs. Several apparently contradictory proverbs can apply to the same situation. A person considering how many people should work on "given project could be told two things that "many hands" make light work" and that "too many cooks spoil the broth". He is not expected to apply any of these proverbs blindly; their function is rather to alert him to different relevant considerations whose effect on the specific situations confronting him he should carefully consider.

Ronald Dworkin has explained that:
All that is meant, when we say that a particular principle is a principle of our law is that the principle is one which official must take into account, if it is relevant, as a consideration inclining in one direction or another.

R. Cotterell, in The Politics of Jurisprudence, has offered the example of the equitable maxims such as "equity regards as done that which ought to be done" "equity will not perfect an imperfect gift", and "equity will not allow a statute to be used as an instrument of fraud". Each of these maxims may suggest a different result when applied to the same case; the judge's task will be to assess their relative weight in the particular circumstances and decide which should prevail.

How do we identify the principles of Nigerian law? According to Dworkin, if we were challenged to back up our claim that some principle is a principle of law, we would mention any prior cases in which that principle was cited; or figured in the argument. We would also mention any statute that seemed to exemplify that principle... Unless we could find some such institutional support, we would probably fail to make out our case, and the more support we found, the more weight we would claim for the principle.

An example of how the court will base its decision on a principle in the absence of a rule clearly covering the case is provided by **the case of Home Office vs. Dorset Yatch Ltd (1970) A.C. 1004.** The facts of the case were that some boys living in a Borstal home escaped during one

night, and did extensive damaged in the respondent's club. The question was whether the Home Office owed any duty of care to members of the public to prevent the escape of boys from foster homes. There was no previous authority for the existence of such a duty, but a majority of the House of Lords took the "neighbour principle" as being enough supporting ground for a decision in the respondent's favour, even though the statement of the "neighbour principle" in **Donoghue vs. Stevenson (1935) A.C 562**, is not part of the reasons of the case and therefore is not a rule of law in a strict sense.

At the same time, because the "neighbour principle" is only a principle and not a rule, a court may decide not to apply it particularly when it thinks that other competing principles should be given preference in a given situation. An example of this is provided by the decision of the House of Lords in **Rondel vs. Worsley (1969) A.C. 191**. The question that had to be decided in that case was whether a barrister owed a duty of care to his client in respect of this presentation of the client's case in the court. In spite of the existence of the "neighbour principle", the court decided that there were other important principles and reasons which should be given priority in the circumstances of that type of case, like the need to have finality in litigation and the need to protect the position of the barrister as an officer of the court.

When the courts have to decide a case for which there is no clear pre-existing rule of law, they may sometimes reason by analogy from the decision reached in a similar case or line of prevention of cases, without invoking explicitly any principle. Thus, for instance, in **D. vs National Society for the cruelty of children (1978) A.C 17**, the House of Lords had to decide whether the society was entitled to refuse to disclose the identity of one of its informers despite the fact that this information was needed for the plaintiff to institute an action for negligence against the society. The law at the time was believed to be that a person in the position of the plaintiff was entitled to obtain the information he required and there was no rule of law authorising a society to refuse to disclose that information. However, the House of Lords upheld the society's claim to withhold its source of information. In reaching this decision the court reasoned by analogy from the rule of law which allows government departments to withhold relevant evidence when its disclosure will harm public interest in the proper and efficient functioning of government. Even though the society was not a government department the court reasoned that the functions it carried out justified extending to its sources of information similar special protection as that enjoyed by, for instance police informers.

Self-Assessment Exercise (SAE) 2

1. What will the courts do in situations where there are no pre-existing rules to decide a case before the court?
2. Differentiate between a principle of law and a rule.
3. State three maxims of equity known to you.

3.6 Summary

Indeed, this is a very important unit. Many lawyers have lost cases because relevant cases where not cited in court during the court proceedings. Our suggestion in this unit is that as you proceed in your study, you should read cases and learn how to cite them.

At the end of this unit, you have learned how to

- Cite of cases;
- Use the Nigerian law reports
- The history of case reporting in Nigeria
- Apply rules and principles in cases, and
- How courts decide in cases when there are no pre-existing rules.

3.7 References/Further Readings/Web Sources

Imiera, P. P. (2005). Knowing the Law FICO Nig. Ltd, (FMH) Lagos, Nigeria

Obilade, A.O. (1994). The Nigerian Legal System, Sweet & Maxwell, London.

Elegido, J.M. (1994). Jurisprudence, Spectrum Law Publishing: Ibadan, Nigeria.

3.8 Possible Answer to Self-Assessment Exercise

Three equitable maxims include : "equity regards as done that which ought to be done" "equity will not perfect an imperfect gift", and "equity will not allow a statute to be used as an instrument of fraud".

UNIT 4 METHODS AND APPROACHES IN ESSAY WRITING

Unit structure

4.1 Introduction

The essence of essay or letter writing is to communicate message to the recipient and this involves, the style or methods. The most effective words should be used in the most appropriate order so that the choice of words can create effect. There are no strict rules about style in essay writing, the idea is that the style to be adopted depends on whether the letter/essay meant to simply convey information, or persuade the addressee to act or retain from an act.

4.2 Learning Outcomes

By the end of this unit, you will be able to:

- identify and write informative letters/essays
- identify and write persuasive letter/essays
- describe letter/essays' layout and style
- correctly use punctuation marks.

4.3 Methods and Approaches in Essay Writing

4.3.1 Methods and Approaches in Essay writing

There are no strict rules concerning the style/method adopted in essay writing, or the layout of a letter. The choice is a matter of style. The

style or layout of letters/essays has continued to improve with technological aids.

Method/Style

1. Blocked and semi-blocked method/style

The difference is that the blocked styled paragraph starts from the same left hand margin of the essay/letter head paper, while the semi-blocked style has the recipient's address and the main body of the letter set to the left-hand margin with indented paragraph openings.

2. Open and Close Punctuation

Open punctuated letters omit virtually all punctuation marks (but not apostrophes) in the address sections of the letter. Close punctuated letters are generous with punctuations; for example, a comma is inserted at the end of each line of the address. Modern letters/essays combine the blocked and open punctuation style to achieve elegance and economy of words.

Self- Assessment Exercise (SAE) 1

1. Is there any hard and fast rule in the style adopted in essay/letter writing? If not, why?
2. Write two essays, using the methods or style discussed above for each.

4.3.2 Checklists on the Form of a Letter

a) **Letter references,** for example" our ref" or " my ref" and "your ref". They are usually pre-printed on letter headed paper, and inserted mainly for filing purposes and cross- referencing.

b) **Date:** For example, 4th April 2001 not 4/4/2001.
The North American style is April 4, 2001. The convention in Nigeria is to use the British style, but whichever style is adopted; it is important that you are consistent.

c) **Name and address of the recipient:** Official letters should use the official title of the recipient, for example, "The Managing Director". But depending on the familiarity, you may address the recipient by his name before writing the postal address e.g. Mr. Dele Ayo. Better still, you may combine both the name and the title e.g. Mr. Dele Ayo, Chairman/Chief Executive Officer. There are no strict rules and the style adopted depends on your level of contact with the recipient. You may choose to adopt the open or closed punctuation style, provided you are consistent.

d) **Salutation:** This should depend on the gender and the relationship between you and the recipient. The convention is to use opening salutation formulae such as "Dear Sir" Dear Madam:

Dear Dr. John, Messrs John & James, Gentlemen". The choice of salutation depends on how you perceive the recipient, and whether the letter/essay is formal or personal. Modern essays/letters are not restricted to the formal and traditional "Dear Sir", they are more informal and personal. It is important to note that the salutation will eventually determine the closing salutation, "Yours sincerely, Yours faithfully" and so on.

e) **Body of the letter:** This is the most important part of a letter/essay. This is where the message is communicated to the recipient; the idea is to put the message in a concise and straightforward language, one main idea per paragraph. In line with the modern drafting technique, a letter/essay should be short, precise and intelligible. The interest of the recipient is paramount, even where the letter is to threaten the recipient to do or retain from doing an act. Unless the message is understood clearly by the recipient, the letter/essay will not achieve the desired result. Sometimes one paragraph will be sufficient to communicate the message, yet it may well require several paragraphs, hence the length of a letter is determined by the message.

f) **Signature space:** The letter/essay must be signed by the writer. There should be space to append a hand written signature. It is good practice to ensure that no letter/essay is signed without first reading it to correct common errors.

g) **Writer's name and firm's name:** You should append your signature above your name typed in full.

If you are a sole practitioner, you should adopt it this simple style: _____
Haruna, Ibrahim
If you are writing on behalf of a firm, that is you have consistently used "we" you may sign either as:
Signed:_____
Haruna, Ibrahim
OR
Haruna, Ibrahim & Co
Signed:_____
Haruna, Ibrahim

IN TEXT QUESTION: Discuss brief five of the checklists when writing letter/essay.

4.3.3 Punctuation

This is a useful tool by which accuracy and clarity in legal writing is achieved. The way you punctuate a sentence can determine how well you communicate with the reader. Punctuations like words are symbols

that by convention are used to stand for certain things. There is no inextricable connection between these symbols and what they stand for. But unlike words, which consist of alphabets, punctuations are symbols; they include the comma, colon, semi colon, question mark, exclamation mark, bracket and full stop. The grammarian (and broadcasters) use punctuations to indicate the length of pause, but the concern of legal writers/lawyers about punctuations is how they can be used to aid clarity and understanding. There was a time when it was thought that punctuations were unnecessary in legal documents because they may mislead, it was expected that the reader should supply them to suit his needs. This view is supported by Sanford Vs. Raikes (1918) A.C. 337, where the Master of the Rolls said:

"It is from the words and the context not from the punctuation that the sense must be collected.

It is true that traditional formal legal documents were without punctuations but modern legal document departs from this dry style of writing. It is desirable to use punctuations to achieve elegance; they have been described as "traffic signals to your readers". It will be absurd to find a long sentence that is not punctuated.

In Nigeria, the relevance of punctuations in legal documents is settled. Section 3 (1) of the Interpretation Act provides:

"Punctuations forms part of an enactment and regard shall be had to it accordingly in construing the enactment".

In **Shell- BP Vs. Federal Board of Inland Revenue**, a tax case, the Federal Revenue Court upheld the contention of the appellant that the commas in the definition are meaningful and must be given their meanings in accordance with the provision of section 3 (1) of the Interpretation Act, 1964.

The use of comma (,) colon (:) question mark (?), exclamation mark (!) and full stop (.) are fairly understood by most writers, but the semi-colon (;) and ellipsis (...) are largely abused. While colon is generally used to introduce a list, a semi colon is used to separate two complete but related sentences and it is not (subject to limited exceptions) followed by a capital letter as in the case of a full stop. Ellipsis is used to stand for one or more omitted words, when the omission occurs at the end of a sentence, the ellipsis appears together with a full stop. Under no circumstance should ellipsis be used in a legal document or drafting, in other words there should be no omission. Another punctuation that is commonly abused is the hyphen (-), it should be used when it is intended that two or more words should be read together as a compound word, for examples, "Barrister -at- Law" should be "Barrister- at- Law"

It is not possible in a course guide of this nature to discuss all the punctuations and the rules governing their usage. What is expected of

you is that you should be careful in the use of punctuations because punctuations form part of legal document and they are relevant for the purpose of interpretation.

Self-Assessment Exercise (SAE) 2
Why are the uses of punctuation important in legal document? Support your answer with case law and statutory provision.

4.4 Uses of Certain Punctuation Marks

1. **Comma (,):** It may be used in any of the following situations: -
a) To mark off items in a list. For e.g. "remove the tables, chair, and bed".
b) To mark off a group of short clauses. For e.g. "I went to court, filed the appeal, and bought a law report".
c) To mark off enclosing words. For e.g. "every lawyer, in or outside the court, must be well behaved".
d) Used in direct quotation. For e.g. "the Judge said, every lawyer must be present".

2. Semi colon (;): It may be used in any of the following situations:
a) To mark off independent parts of sentence. For e.g. "I was called to Bar in 2003; and I have since then paid for my practicing fees".
b) To compare two sentences. For e.g. "It is better to buy now than later; though it may cost more".

3. Colon (:) It may be used in any of the following situations: -
a) To introduce a list. For e.g. "every lawyer must buy: a wig, gown, collar, and tie.
b) It is used instead of a full stop between two sentences, where the second sentence gives more explanation to the first. For e.g. "The lawyer is a good advocate: he masters the facts of his cases and present them in a logical order".

4. Full stop (.): It may be used in any of the following situation: -
a) To end a complete sentence; except where the sentence is a question or exclamation.
b) To mark abbreviations. For e.g. LL.B or Mr.

Self-Assessment Exercise (SAE) 3
Briefly discuss in what situations the following punctuations mark will be used: Colon, Full Stop, Semi Colon, Exclamation and Questions.
Legal writing is part of your work as a student of law in NOUN. It is also very important in law practice; you are therefore advised to take your writing skill very seriously. Familiarise yourself with the various types of punctuation marks and practice how to use them.

4.6 Summary

At the end of this unit, you have learnt:

- About types of essays/letters
- The layout/style in letter/essay writing
- Punctuations marks
- Uses of certain punctuations mark.

4.7 References/Further Readings/Web Sources

S.O. Imhanobe, (2002). *Understanding Legal Drafting and Conveyance*.

Academy Press PLC: Lagos, Nigeria Imiera, P. P. (2005). *Knowing the Law*. FICO Nig. Ltd, (FMH) Lagos, Nigeria.

4.8 Possible Answer to Self-Assessment Exercise (2)

This is a useful tool by which accuracy and clarity in legal writing is achieved. The way you punctuate a sentence can determine how well you communicate with the reader. In Nigeria, the relevance of punctuations in legal documents is settled. Section 3 (1) of the Interpretation Act provides:
"Punctuations forms part of an enactment and regard shall be had to it accordingly in construing the enactment".
Shell- BP Vs. Federal Board of Inland Revenue, a tax case.

MODULE 3

UNIT 1 ANALYSIS AND NOTE TAKING IN LEGAL MATTERS

Unit Structure

1.1 Introduction

Analysis and note taking is a kind of instructions given by a client to his lawyer. The lawyer will have to ask the client questions that will enable him understand the client's instructions. The lawyer takes down notes as the client responds to question, after which the lawyer analyses those instructions to enable him do his legal work properly. You have to learn about this at the early stage of your studies.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- analyse legal instruction
- take notes as a law student
- scrutinise, edit and check the note you have taken.

1.3 Analysis and Note Taking in Legal Matters

1.3.1 Analysis and Note Taking

Analysis involves the classification of the notes or instructions you have taken into the proper legal category. It may even involve consulting another colleague. Ordinarily, the analysis of note taking should be a simple process. But in practice or reality, it is not as easy and

straightforward as it appears. Even where the analysis is straight forward, your note should be properly taken.
A legal practitioner who wants to persuade the court over his case should be able to cite authorities to buttress his case. An authority in legal argument simply refers to citing of cases and statutory provisions. Cases are cited in courts during legal tussle. The judge refers to those cases cited in his chambers or office in order to determine and write his judgment. The most convincing cases cited and that are relevant to the case at hand is most likely to obtain judgment in his favor.

Authorities are also cited in legal writing. Legal writing includes legal textbooks, legal letters, periodicals, law journals, etc. Case law and Statutory provisions are used in legal writing in order to support a rule or a principle of law. This makes it more authoritative and convincing.
For example, the case of **Carlill Vs. Carbolic Smoke Ball Co. (1893)** can be used to back up argument on what amounts to offer and acceptance.

The facts of the case:
Mrs. Carlill made a retail purchase of one of the defendant's medicinal products: the '"Carbolic smoke Ball". It was supposed to prevent people who used it in a specified way (three times a day for at least two weeks) from catching influenza. The company was very confident about its product and placed an advertisement in a paper, the Paul Mall Gazette, which praised the effectiveness of the smoke ball and promised to pay £100 (a huge sum of money at that time) to:
... any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, having used the ball three times daily for two weeks according to the printed directions supplied with each ball.

The advertisement went on to explain that the company had deposited £100 with the Alliance Bank, Regent Street, London as a sign of its sincerity in the matter. Any proper plaintiffs could get their payment from that sum. On the faith of the advertisement, Mrs. Carlill bought one of the balls at the chemists and used it as directed, but still caught the flu. She claimed £100 from company, but was refused it, so she sued for breach of contract. The company argued and said there was no contract for several reasons, but mainly because:

- The advert was too vague to amount to the basis of a contract- there was no time limit and no way of checking the way the customer used the ball;
- The plaintiff did not give any legally recognised value of the company;
- One cannot legally make an offer to the whole world, so the advert was not a proper offer;

- Even, if the advert could be seen as an offer, Mrs. Carlill had not given a legal acceptance of that offer because she had not notified the company that she was accepting, and
- (iv) The advert was a mere puff, that is, a piece of insincere sales talk not meant to be taken seriously.

The Court of appeal found that there was a legal enforceable agreement, a contract, between Mrs. Carlill and the company. The company would have to pay damages to the plaintiff.

Also statutory provisions, apart from case law can be used to support legal argument. For instance, sections 33-40 of the 1999 Constitution of the Federal Republic of Nigeria may be used to support argument on fundamental human rights depending of course on the right being enforced.

Self-Assessment Exercise (SAE) 1

Analysis and note taking in legal matters are as important as the use of authorities in legal argument and writing. Discuss.

1.3.2 Legal writing

You can be engaged in legal writing on a daily basis. This could be in form of letter writing, drafting of Wills, deed of assignment, quit notice and negotiation or settlement letters. Writing good legal documents is an art that cannot be taken for granted? A common erroneous believe is to assume that legal writing does not require preparation. This is not true. What is committed to a letter is a permanent record and sometimes cannot be restated or recalled. A letter reveals a lot about the writer and the course of a legal transaction may depend on the letter exchanged by the parties. Apart from letter or legal writing, there are other aspects of general communication you may wish to know:

- Memorandum
- Reports, and
- Opinions

The difference between a letter and other forms of communication is that a letter is 'out of house' communication while the other forms of communication are 'in house' communication. Before writing a letter, you must first consider whether it is absolutely necessary to do so, this is because a meeting or a phone call may serve you better. Once you have decided to write, you must ensure that you communicate the message. The legal writing or letter writing tells a lot about the relationship between you and the addressee. You should therefore consider three basic things before writing any type of letter:

- The opinion of the law on the issue to be communicated;
- The psychology of the recipient; and

- Recent correspondence with the recipient (if any) to bring yourself up-to- date.

The class of prospective recipients varies; they often include:

a) Your client
b) A vendor or purchaser;
c) Other colleagues or lawyers;
d) Opponents, and
e) The bench i.e. judges of courts of law, including the magistrates.

As the classes of recipients vary, so do their psychology. There are some issues that may assist you in fashioning your approach to the recipient and choosing your language:

- Recipient's age;
- Recipient's educational background;
- Recipient's professional interest;
- Recipient's taste and preference; and
- Recipient's prejudices.

The essence of legal writing is to communicate a message to the recipient and this involves the various styles. The most effective words should be used in the most appropriate order so that the choice of words can create effect. There are no strict rules about styles, the idea is that the style to be adopted depends on whether the letter is meant to simply convey information, or persuade the recipient to act or retain from an act.

Legal writing by a lawyer is different from any form of writing by a linguist. Why is this so?

1.3.3 Letter Headed Papers

This is the printed part of the letter sheet, usually A4 or A5 paper. The design is important hence you may use a skilled graphic designer and quality paper, preferably the conqueror paper. This portrays a good image of the person or firm to the recipient of your letters.

Neither the Legal Practitioner Act nor the Rules of Professional conduct provides for the contents of a legal/letter headed paper, however, inference may be drawn, from sections 278 (1) and 631 (1) (C) of the Companies and Allied Matters Act. (CAMA) Section 278 (1) provides that: "Every company to which this section applies shall, in all business letters in which the company's name appears... state in legible character in respect to each director, the following particulars.

a) His present forename;
b) Any former names and surname; and
c) His nationality, if not a Nigerian;

Section 631 (1) provides that:
"Every company, after incorporation shall:
Section 631 (1) (c) provides that:
"Have its name and registration number mentioned in legible character in business letter of the company"
Though the above provisions deal with companies, the standard letter headed paper provides for certain basic information. Generally, it should contain the firm's name, address, and telephone numbers, Fax, E-mail and Names of the partners or associates.

IN TEXT QUESTION: Is there any legal requirement for letter headed paper?

Self-Assessment Exercise (SAE) 2

1. What was the bone of contention in the case between Gani Fawehinmi Vs. Legal Practitioners Disciplinary Committee (LPDC) (1985), 2, W.N.L.R. pt7. P. 300.
2. Write a letter to a colleague asking for settlement out of court.

1.6 Summary

This is a very important unit. This is so because one way or the other, you are engaged in legal/letter writing. A good mastery of legal writing will assist you in your legal practice and as a student of the NOUN studying law.
In this unit, you have learnt:

- How to analyse note taking in interviewing a client;
- About legal writing; and
- About the legal requirements for letter headed paper.

1.7 References/Further Readings/Web Sources

Imiera, P. P. (2005). Knowing the Law FICO Nig. Ltd, (FMH) Lagos, Nigeria.

S.O. Imhanobe, (2002). Understanding Legal Drafting and Conveyance. Academy Press PLC: Lagos, Nigeria

1.8 Possible Answer to Self-Assessment Exercise

Analysis involves the classification of the notes or instructions you have taken into the proper legal category. It may even involve consulting another colleague. Ordinarily, the analysis of note taking should be a simple process. But in practice or reality, it is not as easy and straightforward as it appears. Even where the analysis is straight forward, your note should be properly taken.

UNIT 2 AUTHORITATIVE ELEMENTS IN BOOKS AND JUDICIAL OPINION

Unit Structure

2.1 Introduction

Books constitute the stock of a law library and can be regarded as the most important single entity available for the conduct of legal research and thereby serve as authoritative elements in legal works. Legal textbooks consist of scholarly views, opinions, commentaries and authoritative expositions in certain subject areas, such textbooks are categorised by the audience or the status of people to which they are directed like undergraduates, postgraduates, academic researchers, practitioners and other topic issues that are foreign or local.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- identify some legal textbooks as authoritative and persuasive
- explain what is meant by judicial opinions
- describe how courts its opinion on a particular case before it
- list types of legal textbooks that are authoritative.

2.3 Authoritative elements in books and Judicial Opinion

2.3.1 Authoritative Elements in Books

When a court is unable to locate a precise or analogous precedent, it may refer to legal textbooks for guidance such books are subdivided depending on when they were written. In strict terms, only certain works are actually treated as authoritative. Amongst the most important of these works are those by Glanville from the 12th century, Bracton from the 13th century, Coke from the 17th century and Blackstone from the 18th century. The courts look at the most eminent works by accepted experts in particular fields in order to help determine what the law is or should be. For example, the citation of Sherbet's "Judges on Trial" and De Smith, Wolf and Jewell, Judicial Review of Administrative Action, in Lord Browne- Wilkinson's statutory Interpretation in Wilson vs. Secretary of State for Trade and Industry (2003).

The Nigerian local scene can also boast of an impressive array of distinguished legal text writers whose publications are authoritative in every material respect and who have attained international recognition. Late Honorable Judge T.O. Elias formerly of the World Court at The Hague, Netherlands, was a pace-setter. His works cover such areas as constitutional law, international law, customary law and virtually all recognised fields of legal devours. Other notable legal writers, whose works are authoritative are Professor Ben Nwabueze, Dr. A. Aguda, Dr. Olakunle Orojo, Justice Karibi-Whyte, Professor Nwogugu Professor Okonkwo, Professor Peter Oluyede, Justice C. Oputa, Professor Itse Sagay, Professor A.O. Obilade and Justice Kayode Eso.

Apart from citations in various academic papers, the opinions and views of some of the legal textbook writers have been referred to with approval in court proceedings. For instance, authoritative texts like Johnson's History of the Yourbas; Coker's Family Properly Among the Yourbas, Obi's Ibo Land Law and Ajayi's History of West Africa have had certain prevailing customary practices in some societies. The same applies to Elias' Nature of African customary law (1956).

Self-Assessment Exercise (SAE) 1

Legal textbooks have authoritative elements in them. However, this does not make them binding. Discuss.

2.4 Judicial Opinion

If, within limits, courts have a choice to decide which way decisions are to go, what is it, if anything, that governs or controls that choice? Certainly, not ordinary logical dedication or inference in the sense of syllogistic reasoning, for legal rules, ideas and concepts are expressed in words, whose uncertain sphere of operating precedes the statement of legal reasoning in the rigidly defined terms by which conclusions may be logically deduced from stated premises. ***Nor is this surprising,*** for not only do legal rules and concepts depend for their usefulness on their very indefiniteness and flexibility, but as Oliver wended Holmes remarked, the life of the law is not logic but experience.

Ordinarily, language, in which law is necessarily expressed is not an instrument of mathematical precision but possesses what has been described as an open texture. Some part of the meaning of words is given by ordinary usage, but this does not carry far in those peripheral problems, which law courts have to solve by applying words, and legal rules expressed in words. Rules of law are not linguistic or logical rules but to a great extent rules for deciding.

The essence of legal reasoning is in all essentials, save that the lawyer engages in a more searching inquiring for precise reasons for his decisions, comparable to the process of reasoning or practical problems. Thus, when a court decides that something is good or desirable, beautiful or ugly, this is judicial opinion or court expressing judgments. This opinion may be intended as a mere expression of a subjective emotion, but more after it involves implicitly or explicitly the idea that one can give reasons in support of that judgment.

Moreover, courts, like ordinary people, may and generally do employ differing criteria, reflecting varying altitudes towards the solution of the problems with which they are called upon to deal. No analogy is compelling in a purely logical sense as leading to a necessary conclusion, but as a practical matter, human beings do reason by analogy, and find this in many instances useful way of arriving at normative or practical decisions. The basis of this approach is primarily human experience of the efficiency and utility of analogical reasoning. This is a judicial opinion.

IN-TEXT QUESTION: Explain what you understand by judicial opinion.

2.5 Judicial Reasoning

You may want to know to what extent Judges use logical reasoning in reaching their decisions in particular cases and to determine which forms, if any, they make use of Some statutory provisions and also some common law rules can be expressed in the form of a syllogism. For example, the offence of theft may be reduced into such a formulation.
If 'A' dishonestly appropriates B's property to permanently deprive B of it, then 'A' is guilty of theft.
'A' has done this,
Therefore, 'A' is guilty of theft.

This however, represents an oversimplification of the structure of the statute, but more importantly, the effect of concentrating on the logical form of the offence tends to marginalise the key issues concerning its actual application. The great majority of cases are decided on the trust of the premises rather than the formal validity of the argument used. In other words, the argument will concentrate primarily on whether 'A' actually did the act or not and, secondly, on whether 'A' appropriated the property either dishonestly or to permanently deprive B of it.

In looking for a precedent on which to base a decision, judges are faced with a large number of cases from which to select. It is extremely unlikely that judges will find an authority which corresponds precisely to the facts of the case before them. What they have to do is find an analogous case and use its reasoning to decide the case before them. This use of analogy to decide cases is prone to some shortcomings. The major difficulty is the need to ensure the validity of the analogy made if the conclusion drawn is to be valid.

Thus, the apparent deductive certainty of the use of precedence is revealed to be on the much less certain use of inductive reasoning and reasoning by analogy, with even the possibility of personal views of the judges playing some part in deciding. This latter factor introduces the possibility that judges do not use any form of logical reasoning to decide cases, but simply deliver decisions based on an intuitive response to the parties involved. The suggestion has been made that judges decide the outcome of the case first of all and only then seek some post hoc legal justification for their decision; and given the huge number of precedents from which they can choose, they have no great difficulty in finding such support as they require. The process of logical reasoning can be compared to the links in a chain, one following the other, but a more fitting metaphor for judicial reasoning would be to compare of with the legs of a chair; faced into place to support the weight of a conclusion reached a prior. Some critics have even gone so far as to deny the existence of legal reasoning altogether as a method of determining

decisions, and have suggested that references to such are no more than a means of justifying the social and political decisions that judges are called upon to make.

In conclusion, however, it is not suggested that legal reasoning does not employ the use of logic, but neither can it be asserted that it is only a matter of logic. Perhaps the only conclusion that can be reached is that legal reasoning as exercised by the judiciary is an amalgam; part deductive, part inductive, part reasoning by analogy, with an added mixture of personal intuition, not to say personal prejudice.

Self-Assessment Exercise (SAE) 2

What are the major differences between judicial reasoning and judicial opinions?
How do courts or judges decide by deductive reasoning?
With good examples, differentiate between deductive, inductive and analogical types of reasoning.
Legal textbooks form the bulk of a law library and therefore, it can be said that books by authoritative legal writers are essential for any successful legal practice. Authoritative books are both foreign and local and the courts rely on them in situations where there are no pre-existing rules to decide a particular case before. Although these authoritative legal textbooks, are not binding on the courts, they are persuasive.

2.6 Summary

In this unit, you have been exposed to:

- Authoritative elements in legal textbooks;
- Judicial opinion;
- Judicial reasoning; and
- How courts arrive at decisions by amalgamation of the different types of logical reasoning.

2.7 References/Further Readings/Web Sources

Dada, T.O. General Principles of Law (1994), T.O Dada & Co.: Lagos, Nigeria.

Freeman, M.D.A (1994). Lloyd's Introduction to Jurisprudence (1994) 6th ed; Sweet & Maxwell: London

Imiera, P.P. Knowing the Law (2005). Fico Nigeria Ltd (FHM): Lagos, Nigeria

Slapper & Kelly, (2004). The English Legal System 7th ed. Cavendish Publishing Ltd: London.

2.8 Possible Answer to Self-Assessment Exercise

1. When a court is unable to locate a precise or analogous precedent, it may refer to legal textbooks for guidance such books are subdivided depending on when they were written. In strict terms, only certain works are treated as authoritative. The courts look at the most eminent works by accepted experts in particular fields in order to help determine what the law is or should be.

UNIT 3 APPLICATION OF LEGAL RULES IN SOCIAL MATTERS

Unit Structure

3.1 Introduction

One of the most characteristic features of 20th-century jurisprudence has been the development of sociological approaches to law. The social sciences have an influence this century almost comparable to that of religions in earlier periods. Legal thought has tended to reflect the trends to be found in sociology. More recently conflict theories have tended to dominate the sociological stage and these have been reflected in legal thinking.

3.2 Learning Outcomes

By the end of this unit, you will be able to:

- explain how legal rules are applied to social or societal problems
- explain the roscoe pond social engineering doctrine
- describe the role of law in reconciling conflicts in society.

3.3 Legal rules in social matters

3.3.1 Application of Legal Rules in Social Matters

For Roscoe Pound, jurisprudence or the theory of law is not so much a social science as a technology, and the analogy of engineering is applied to social problems. Pound was concerned primarily with the effect of law upon society and only to a lesser extent with questions about the social determination flaw. Little attention is paid to conceptual thinking. The creative role of the judiciary is at the forefront, as is the need for a

new legal technique directed to social needs. The call is for a new functional approach to law.

Pound's view of the law is that law is a reconciler of conflicting interests in the application of legal rules to social matters. So for Roscoe Pound, the law is an ordering of conduct to make the goods of existence and the means of satisfying claims go round as is possible with the least friction and waste. Pound regards these claims as interests that exist for recognition and security. The law recognises some of these interests, giving them effects within defined interests. Pound attempted to expound and classify the categories of interests, which are thus acknowledged in a modern democratic society. In this approach, Pound rather recalls the methods of Aristotle's distributive justice. This seems to ignore the extent to which existing law is based on giving effect to vested rights.

Pound's approach to the application of legal rules to social matters was somewhat infertile. He looks to actual assertions of claims in a particular society, especially as manifested in legal proceedings and legislative proposals; whether accepted or rejected very much on the state of the law discourages litigation on doubtful new points. The failure of English law to develop more than a rudimentary corpus of social security case-law is an example. It must be stated therefore that there are interests not only in the sense of what people want but in the sense of what may be good for them regardless of their actual desires.

Pound sees law or legal rules as adjusting and reconciling conflicting interests. It is an instrument, which controls interest according to the requirements of the social order. It therefore follows that law represents the consciousness of the whole society. Ultimately, it only serves those interests that contribute to the good of the whole society. So Pound identifies the task of the good of the whole society. So Pound identifies the task of the lawyer as that of a "social engineer; (who) formulates a programme of action, and attempts to gear individual and social needs to the valves of Western democratic society. Law should be placed in its social context, using these methods, to recognise that many traditional jurisprudential questions are empirical and not purely conceptual.

Roberto Unger in his law in modern society claims that each society reveals through its law the innermost secrets of how it holds men together. Unger's study of the legal order is directed towards showing why citizens of liberal society find it both necessary to subscribe to the rule of law and impossible to achieve it by applying it to social matters. The disintegration of traditional types of legality and legal thought reveals far-reaching changes in society and culture.

Self-Assessment Exercise (SAE) 1

What do you understand by Roscoe Pound's "social Engineering"?

3.3.2 Division of Topics into Chapters, Sections and Subsections

In Essay or project writing, a topic is chosen as the title of the project. The length of the project determines the number of chapters to be written. For example, a project topic title, "The Law Relating to Job Security in Nigeria" may consist of the following characterisation:

Chapter One:	Introduction Chapter
Chapter Two:	Literature review
Chapter Three:	Job security in Nigeria
Chapter Four:	Comparative studies of job security in Nigeria and other jurisdictions
Chapter Five:	Conclusion/suggestion/recommendation

Each of the chapters above may also consist of sections and subsections, e.g. chapter one above:

1.1 Introduction
1.2 Objective of study
1.3 Background of job security
1.4 Unfair dismissal of employee

All other chapters can be subdivided into sections and subsections. The method and approach adopted are purely subjective. This entirely depends on the choice of the project writer.

Also, statutes can be divided into chapters and subsections. A good example is the Nigeria 1999 constitution. It contains chapters, sections, and subsections. For example, parts of a statute may consist of the following parts;

- Short title
- Long title
- The preamble
- Commencement or extent clause
- The Enacting clause
- The operative section
- Proviso
- Marginal notes
- Interpretation clause
- Explanatory notes
- Consequential provisions
- Schedules or tables
- Transitional provisions
- Signature or assent

Topics are divided into chapters, sections and subsections for easy reading and understanding. When essays or projects are two lengthy, they become boring and verbose. A reader may easily lose interest in studying or reading the work; to this end, it becomes necessary and in line with modern educational trends to divide topics into chapters, sections and subsections, with proper academic references or footnoting.

IN TEXT QUESTION: Why is it necessary or important to divide projects into chapters?

3.4 The Legal Profession

The legal profession in Nigeria is over a hundred years old. The profession has also had a somewhat chequered development. Law is no doubt, one of the earliest professions in the world. The legal profession is made up of law officers as well as judicial officers. The law officers are the practising lawyers who are at the bar and the judicial officers are those who preside over the courts as judges and magistrates. These are known as members of the Bench.

The Bench consists of judges of the High Court appointed through special procedure laid down in the Constitution of the Federal Republic of Nigeria. Judges are appointed by the president on the recommendation of the Advisory Judicial Committee with the approval of the law-making body. The Chief Justice of Nigeria is appointed by the president in Consultation with the approval of the National Assembly. He must be a legal practitioner with not less than fifteen years of experience and must be of good character.

Justices of the Court of Appeal are expected to possess a minimum of twelve years of experience while judges of the High Court shall have ten- year of experience. Judges are expected to retire at the age of 70 years and earn their salaries for life. When judges retire, they cannot appear in any court as legal practitioners. They could also be removed only through a a specially laid down procedure, e.g., due to a serious misconduct unbecoming of a person of that status or due to ill health or unsound mind.

Unlike a judge, however, magistrates are regarded as members of the lower Bench and they are appointed by the Public Service Commission on the advice of the Chief Judge of a state. Upon retirement or resignation, magistrates can still practice as legal practitioners, unlike a judge of the higher Bench.

All members of the Bench are given wide powers to enable them to to perform their duties without fear or favour, for example, the contempt

powers which enable them to deal firmly with any act of indiscipline outside or inside their courts.

The Bar consists of legal practitioners. The Attorney-General of the Federation is the official leader of the Nigerian Bar. Any legal practitioner is entitled to practice as a barrister and as a solicitor. This means that the profession is fused in Nigeria, unlike England, where one is either a qualified Barrister or a solicitor.

A Barrister goes to court to do advocacy or conduct litigation. A solicitor does not go to court; he merely renders advisory services and prepares legal documents. When a legal practitioner has acquired a wide range of experience, he could be appointed as a Senior Advocate of Nigeria (SAN) as a mark of honour and respect. This status entitles him to certain rights and privileges in the field of legal practice. For instance, there are minimum limits to the briefs he could take in terms of value. His cases shall be mentioned or called first before appearing in court and he must always be accompanied by a Junior.

The Licensing of lawyers is done by the Council of Legal Education and the Body of Benchers both of which are established by law, while the Body of Benchers does the call and admits lawyers into the legal profession.

The Council of Legal Education was established by the Council of Legal Education Act 1962. Its main function is to arrange for the education of persons seeking to become members of the legal profession. The council established the Nigerian law school for this purpose and essentially offers professional courses for the award of B.L. (Barrister at law). The council is also charged with the responsibility of continuing education for members of the legal profession in Nigeria.

The Nigerian law school offers courses in specialised areas of the Barrister's and Solicitor's functions. To be admitted into the school, the person must have obtained a pass degree in law from an approved university. The NLS has an absolute right to admit and recommend to the Body of benchers persons whom it deems fit and proper to be members of the legal profession in Nigeria. The locus classicus is the case of Dr. Okonjo vs. Council of Legal Education (1979) Digest of Appeal Cases 28.
The council also accredits institutions or facilities of law preparing students wishing to become lawyers with regards to their facilities like lecture rooms, staffing, library and other vital educational materials.

The Body of Benchers consists of:

1. The Chief Justice of Nigeria and all the Justices of the Supreme Court;
2. The Attorney-General of the Federation;
3. The President of the Court of Appeal;
4. The President of the Federal High Court;
5. Chairman of Council of Legal Education;
6. The Attorneys - General of all the states;
7. The President of the NBA;
8. Members of the NBA of not less than fifteen years post-call experiences.

The Chief Registrar of the Supreme Court of Nigeria keeps and maintains a registrar-containing roll of legal practitioners. Only those called to the Bar and produce certificates of all to the Registrar are enrolled on the same day when the seniority ranks start to run.

The legal profession is regulated by strict rules of consult and attitude contained in the Legal Practitioners Act 1975 (as amended). A legal practitioner must pay his practicing fees before he can appear in any law court. Law also regulates the fees charged by lawyers to their clients.

Legal practitioners are also entitled to certain privileges like being appointed notaries public and SAN. The signature of a notary public is recognised all over the world. A Senior Advocate of Nigeria is to have taken "the silk" upon appointment. It is the equivalent of the 'Queen's counsel (Q.C)" in England. He leads the court. He must appear with a junior always. His matters are accorded priority attention on the court's cause list.

Self-Assessment Exercise (SAE) 2

1. What is the difference between the Bench and the Bar?
2. What are the major functions of the Council of Legal Education and the Body of Benchers?
3. Read the case of Dr. Okonjo vs. Council of Legal Education, state the facts of the case, the issues and the decision of the court.

3.6 Summary

Indeed, this is a very important unit. The unit enables you to know how legal rules are applied to social matters and the doctrine of social engineering as propounded by Roscoe Pound. A brief study of the legal profession in Nigeria was also discussed. We suggest that you study more on this unit on your own in the recommended texts below.

In this unit, you have learnt about the following:

- The application of legal rules in social matters;
- Division of topics, into chapters, sections and subsections;
- The legal profession;
- The council of legal education;
- The Bench; and
- The Bar and Constitution of the Body of Benchers.

3.7 References/Further Readings/Web Sources

Dada, T.O. General Principles of Law (1994), T.O Dada & Co.: Lagos, Nigeria.

Freeman, M.D.A (1994). Lloyd's Introduction to Jurisprudence (1994) 6th ed; Sweet & Maxwell: London.

Imiera, P.P. Knowing the Law (2005). Fico Nigeria Ltd (FHM): Lagos, Nigeria.

3.8 Possible Answer to Self-Assessment Exercise 2 (1)

The Legal profession is made up of law officers as well as judicial officers. The law officers are the practicing lawyers who are at the bar and the judicial officers are those who preside over the courts as judges and magistrates. These are known as members of the Bench.

Unit 4 The Structure of Courts in the Contemporary English Legal System.

Unit Structure

4.1 Introduction

A work knowledge of the English court structure is required for the understanding of the location of adjudication, the types of dispute handled and the interaction of culture and personnel. This is important because Nigeria inherited her legal system from the English system. You should learn the jurisdiction of each type of English court just like Nigerian courts, how it fits into the hierarchy of courts, how it compares with other courts in terms of workload and how it is organised. The relevant English courts are, beginning with the lowest:

1. Magistrates Courts;
2. County Courts;
3. the High Courts;
4. the Court of Appeal;
5. the House of Lord;
6. the Judicial Committee of the Privy Council; and
7. The European Court of Justice

4.2 Learning Outcomes

By the end of this unit, you will be able to:

- explain the essential nature of an English court and the particular kind of decision-making;
- identify the main types of courts currently used in the English legal system and outline the nature of their jurisdiction; and
- highlight the distinguishing features in the operation of a court from arbitration and mediation.

4.3 The Structure of Courts in the Contemporary English Legal System

Structure of English Court

1. Magistrates' Courts

Magistrates' courts in the English system have a wide and varied jurisdiction. They are involved in some way in virtually all criminal prosecutions, magistrates hear cases concerning young persons when constituted as a youth court, family or domestic proceedings, as well as enforcement of income tax or local tax.

Magistrates' courts are therefore of enormous importance in the English system in the criminal justice decision-making process. They also grant or refuse licenses for the sale of alcoholic liquor, betting, etc. Aside from their breadth of jurisdiction, the most important feature of the English magistrate courts is the extensive involvement of lay people (non - professionals) as judges.

There are approximately 26,000 magistrates who sit as unpaid, part-time lay judges, in Inner London, by contrast, there are Professional Stipendiary Magistrates', who are also called judges and Magistrates Court, who are advised by a professionally qualified clerk.

2. The County Courts

There are almost 250 County Courts in England and Wales. As a result, most medium-sized and large towns contain this court of first instance in the civil justice process. The bulk of cases heard before them are routine attempts at debt collection. The modern county courts date from 1846. Their jurisdiction has always been subject to both financial and geographical limits, but within those limits, jurisdiction has generally been concurrent with that of the High Court.

As of January 1999, while actions for certain sums may begin in the county court and more on the High court, the county court will normally hear cases in contract and torts to a limit of £25,000, and certain property and other matters to a limit of £30,000. Claims in contract or tort between £25,000 and £50,000 can either be heard in the county court or High Court, while claims over £50,000 will be heard in the High Court. Most of the work in the county courts is conducted by District Judges of whom there are around 370 in England and Wales.

Self-Assessment Exercise (SAE) 1

Discuss briefly the jurisdiction of the Magistrates and county courts under the English Legal System.

3. The Crown Court

Although predominantly a court of first instance, for the trial of the more serious criminal offences, the Crown Court also has significant appellate and civil business. The most controversial aspect of the crown court's jurisdiction concerns the extent to which an accused person should have the right to insist upon trial by jury.

4. The High Court

The High Court is based in London, with various provincial branches. The High Court has three branches:

- **The Chancery**

The court of chancery mainly deals with trust matters, conveyances, mortgages, contested probate, intellectual property other than that covered by the Patent Court, bankruptcy and appeals from decisions of commissioners of Inland Revenue.

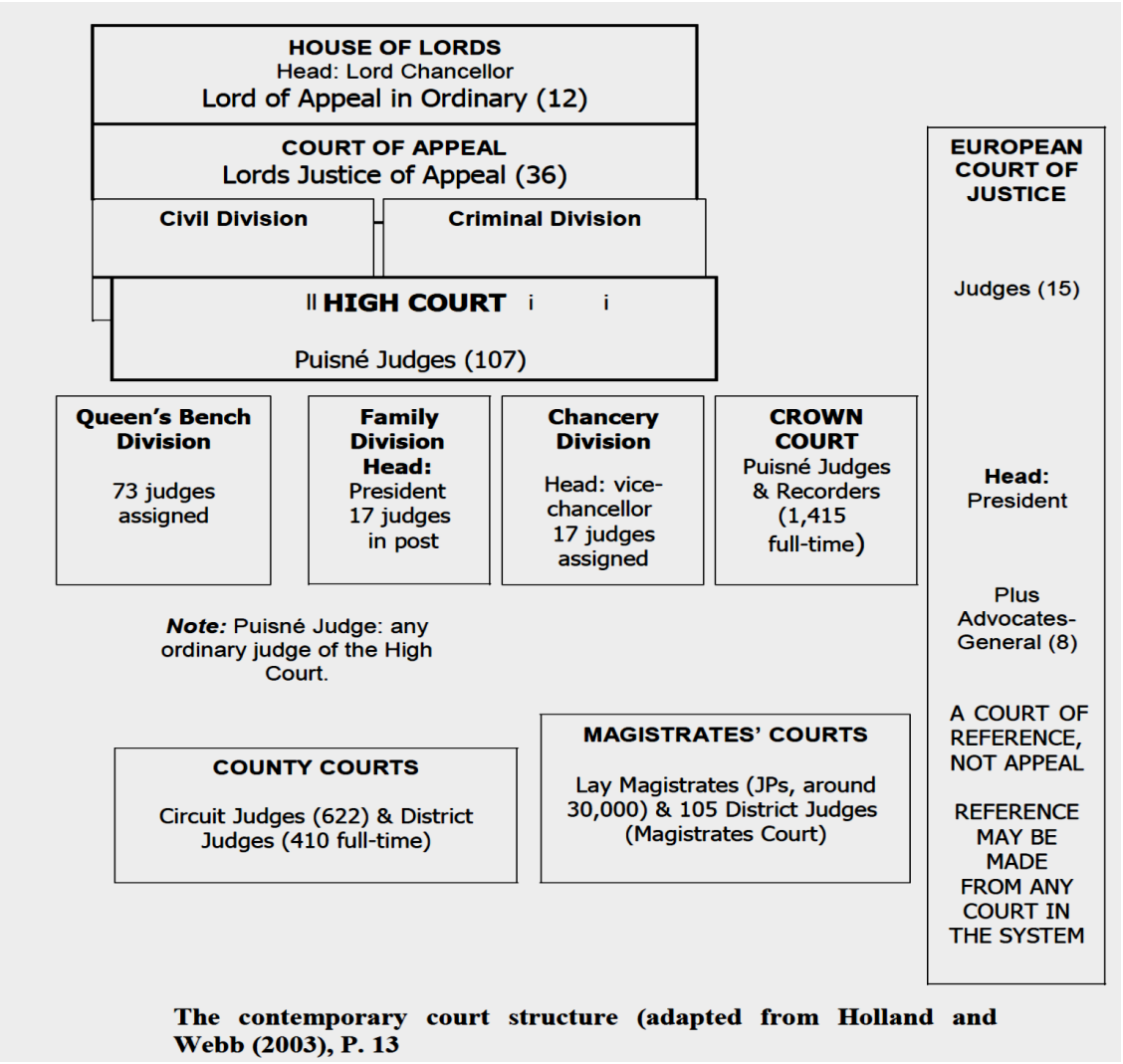
- **The Queen's Bench**

This court deals mainly with personal injury, contract and tort claims.

- **The Family Division**

This court hears divorce cases and ancillary matters, and Children Act cases.

IN TEXT QUESTION: What do you think is the basic difference between the English High Court and the Nigerian High Court?



The contemporary court structure (adapted from Holland and Webb (2003), P. 13

5. The Court of Appeal

The Court of Appeal was established by the Judicature Act (JDA) in 1873. Together with the High Court of Justice, the Court of Appeal forms the Supreme Court of Justice.

Senior judges serve the Court of Appeal currently 35, termed Lords Justices of Appeal. Additionally, the Lord Chancellor, the President of the Family Division of the High Court, the Vice Chancellor of the chancery Division and High Court Judges can sit. The court hears appeals from the three divisions of the High Court, the Divisional Courts, the county courts, the Employment Appeal Tribunal, the Lands Tribunal and the Transport Tribunal. The most senior judge is the Master of the Rolls. Usually, three judges will sit to hear an appeal, although for every important case, five may sit. In the interests of business efficiency, two judges can hear some matters. These include:

- Applications for leave to appeal;
- An appeal where all parties have consented to the matter being heard by just two judges; and

- Any appeal against an interim order or judgment.

6. The House of Lords

Acting in its judicial capacity, as opposed to its legislative one, the House of Lords is the final court of appeal in civil as well as criminal law. Its judgments govern the courts in England, Wales and Northern Ireland. They can also govern civil law in Scotland. Most appeals reaching the House of Lords come from English civil cases.

The appeals are heard by Lords of Appeal in ordinary, of which there are currently 12. Two of these must be from Scotland and one from Northern Ireland. Other senior judges like the Lord Chancellor sometimes sit to hear appeals. It is customary only for peers with distinguished legal and judicial careers to become Law Lords. In most cases, five Law Lords will sit to hear the appeal, but seven are sometimes convened to hear very important cases.

7. The European Court of Justice

The European Court of Justice (ECJ) sits in Luxembourg. Its function is to ensure that in the interpretation and application of this treaty (The EEC Treaty 1957) the law is observed. The ECJ is the ultimate authority on European law. As the Treaty is widely composed in general terms, the court is often called upon to provide the necessary detail for European law to operate. By the European Communities Act 1972,
European law has been enacted into English law, so the decisions of the court have direct authority in the English jurisdiction.

The ECJ hears disputes between nations and between nations and European institutions like the European Commission. An individual, however, can only bring an action if he is challenging a decision that affects him.

The treaty states in Article 234 that any to the ECJ if it considers that a decision in that question is necessary to enable t any judicial or quasi-judicial body however low ranking, may refer a question to give judgment and that such a reference must be made where any such question is raised in a case before a national court from which there is no further appeal.

Lord Denning MR formulated guidelines in Bulmer Vs. Bollinger (1974) as to when an inferior court should refer a case to the ECJ for a preliminary ruling. He offered four guidelines to determine whether the reference was necessary within the meaning of Article 234:

1. The decision on the point of European law must be conclusive of the case;
2. The national court may choose to follow a previous ruling of the ECJ on the same point of community law, but it may choose to

refer the same point of law to the court again in the hope that it will give a different ruling;

3. The national court may not refer to the grounds of eclair where the point is reasonably clear and free from doubt; and
4. In general, it is best to decide the facts first before determining whether it is necessary to refer the point to community law.

The ECJ is a court of reference, the ruling the court makes is preliminary, in the sense that the case is then remitted to the national court for it to apply the law to the facts. The court only addresses itself to points from actual cases; it will not consider hypothetical problems.
Lord Diplock in **R Vs Henn (1981)** has characterised the ECJ's work in the following way:
"The Courts, applies teleological European court, in contrast to English rather than historical methods to the interpretation of the Treaties and other community legislation. It seeks to give effect to what it conceives to be the spirit rather than the letter of the Treaties, sometimes, indeed, to English judge, it may seem to the exclusion of the letter. It views the communities as living and expanding organisms and the interpretation of the provisions of the Treaties as changing to match their growth".

The ECJ is made up of senior judges from each member state (15) and a President of the Court assisted by nine Advocates General. The Advocates General are persons whose independence is beyond doubt, and their task is to give the court a detailed analysis of all the relevant legal and factual issues along with recommendations. The court does not necessarily follow the recommendations, but they can be used on later occasions as persuasive precedent. The court attempts to ensure consistency in its decisions but is not bound by precedent to the same extent as a court in England.

8. The European Court of Human Rights

The European Court of Human Rights (ECHR) does not arise from the EU but arises from the 1950 European Convention on Human Rights, signed by 21 European States including, the U.K. It deals with matters relating to human and political rights. The ECHR sit in Strasbourg and consists of judges from each member state. The signatory states undertook to guarantee a range of human and political rights to the citizens within their jurisdictions.

9. Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council was created by the Judicial Committee Act 1833. Under the Act, a special committee of the privy council was set up to hear appeals from the Dominions. The cases are heard by the judges (without wigs or robes) in a committee room in London. The committee's decision is not a judgment but advice to the monarch, who is counselled that the appeal be allowed or dismissed.

The committee is the final court of appeal for certain commonwealth countries that have retained this option and from some independent members and associate members of the commonwealth. The committee comprises privy counsellors who hold or have held high judicial office. In most cases, which come from places such as the Cayman Islands and Jamaica, the committee comprises five Lords of Appeal in ordinary, sometimes assisted by a judge from the country concerned. The decisions of the privy council are very influential in English courts because they concern points of law that are applicable in this jurisdiction and they are pronounced upon by Lords of Appeal in ordinary in a way which is thus tantamount to a House of Lords' ruling. These decisions, however, are technically of persuasive precedent only, although English courts normally follow them.

Self-Assessment Exercise (SAE) 2

1. Using a well-labelled diagram, show the hierarchy of court in the English legal system.
2. Discuss the role of the European Court of Justice and the European Court of Human Rights in the administration of Justice.
3. Is there any similarity between the English court system and the Nigeria court system?

4.6 Summary

In this unit, you have learnt that the different courts are arranged in a hierarchical framework based on seniority. The higher the level of seniority, the greater the court's authority. This is essential for the nature of precedent. In general, there are trial courts and appellate courts. The former are the courts where the trial is heard sometimes referred to as courts of first instance. Where the parties appear, witnesses testify, and the evidence is presented. The trial court usually determines any questions of fact in dispute and then applies the relevant point of law. Usually, once the trial court reaches a decision, the losing party has a right to appeal to an appellate court. The court can only decide questions of law, and its decision in each case is based on the general, appellate record made during the trial. Appellate courts do not receive new testimony or decide questions of fact, and in a lot of jurisdictions the appellate courts only issue written opinions. All jurisdictions in the English legal system have a final court of appeal.

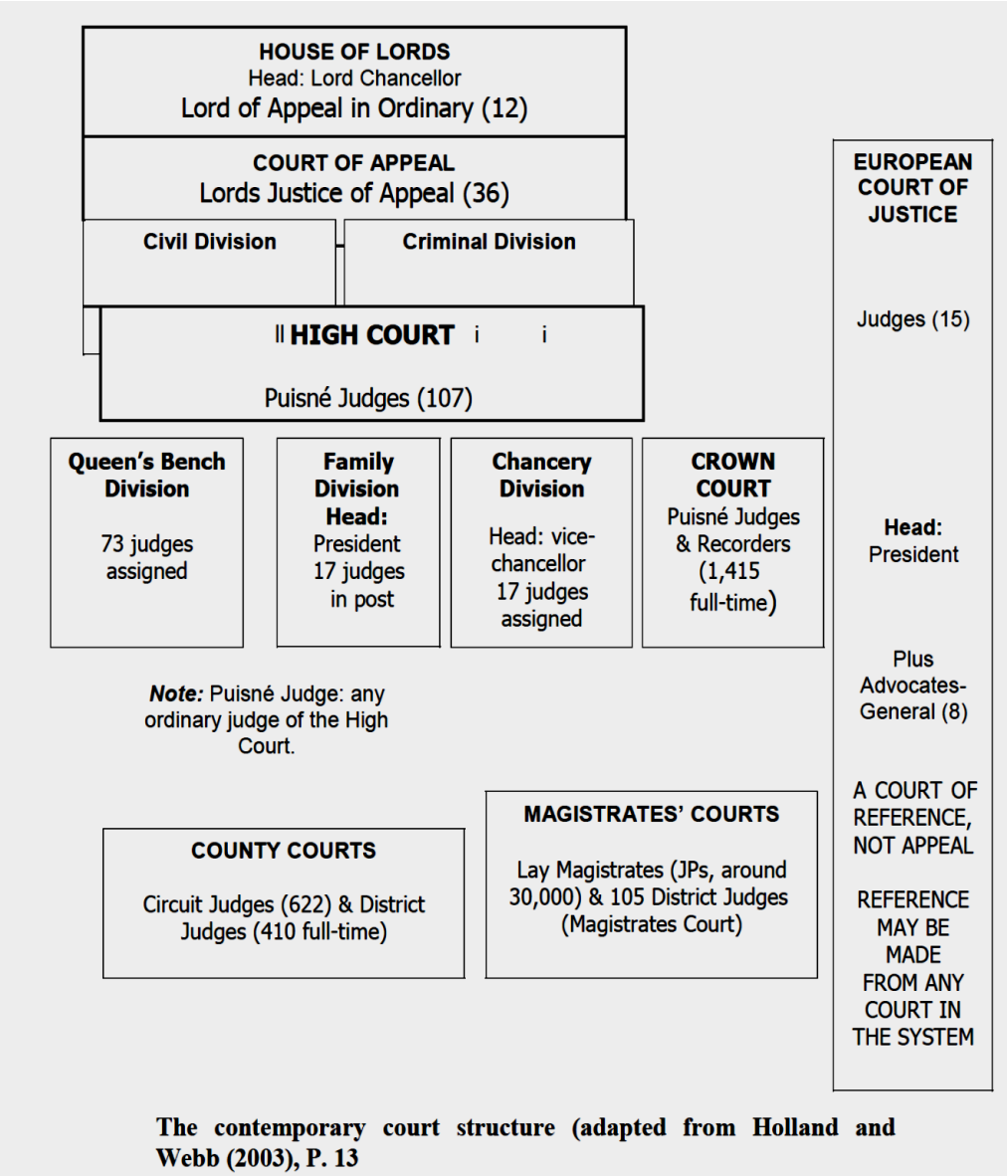
4.7 References/Further Readings/Web Sources

Imiera, P.P. Knowing the Law (2005). Fico Nigeria Ltd (FHM): Lagos, Nigeria

Morrison, W.J., A. Gearey and K. Malleson, (2004). Common Law Reasoning and Institutions, University of London Press: U.K.

Slapper & Kelly, (2004). The English Legal System 7th ed. Cavendish Publishing Ltd: London.

4.8 Possible Answer to Self-Assessment Exercise 2 (2)



The contemporary court structure (adapted from Holland and Webb (2003), P. 13

UNIT 5 THE HIERARCHY OF THE JUDICIARY IN THE ENGLISH LEGAL SYSTEM

Unit Structure

5.1 Introduction

The role and function of the judiciary in England and Wales have changed considerably in recent years. It has become larger, more professional, and better trained, while its increasing role in interpreting and applying human rights law and scrutinising official decision-making has drawn it into more politically sensitive areas.

One impact that these changes have had on the English judiciary is that the judicial appointment process has attracted more public attention. In particular, the continuing lack of diversity in the composition of the judiciary, the risks of politicisation, and the lack of accountability in the selection process have become more pressing issues in light of the expanding role of the judges. For instance, in 2004, these concerns led to the introduction of fundamental changes to the judicial appointments process.

5.2 Learning Outcomes

By the end of this unit, you will be able to:

- list the main functions performed by the judges;
- explain the way the system of precedent works;
- describe the process by which English judges are appointed; and
- list the possible means by which English judicial independence and judicial accountability are protected and promoted.

5.3 The Hierarchy of the Judiciary in the English Legal System

5.3.1 The Hierarchy of the English Judiciary

In the 1970s, there were around 300 judges in England and Wales, by 2002 this figure had grown to over 3,500 of which approximately one-third are practising lawyers who sit as part-time judges. Almost all full-time judges are appointed after a period of part-time service, which is seen as a way of testing out the competence of those who seek judicial office. There is a wide range of judicial officers in England and Wales and most judges hear both criminal and civil cases at trial and appeal level.

Before 2004 the England judiciary was headed by the Lord Chancellor. He was also the speaker of the House of Lords (legislative) and a member of the cabinet (government). These overlapping constitutional roles became increasingly controversial as they breached the principle that there should be a separation of powers between the judiciary, the legislative, and the executive. In 2003, the English Government announced that the office of the Lord Chancellor was to be abolished. This change was included in the Constitutional Reform Bill introduced in 2004, which established the Lord Chief Justice as the Head of the Judiciary. The proposed abolition of the office of Lord Chancellor has attracted some strong opposition and it is likely possible that there will be amendments to the Bill, which will result in the office of Lord Chancellor being retained in some more limited form. One outcome which seems clear, however, is that the Lord Chief Justice will have a much more extensive role than in the past.

In addition to being the most senior sitting judge, the Lord Chief Justice is also the Head of the Court of Appeal (Criminal Division). Under the provisions of the Constitutional Reform Bill, he is also now formally the Head of criminal justice. The other most senior judges are the Master of the Rolls (MR) Head of the Civil Division of the Court of Appeal and Head of Civil Justice, the President of the Family Division (Head of the Family Division of the High Court and from 2004 Head of family Justice), and the chancellor (Head of the chancery Division of the High Court). Until 2004, the Chancellor was known as the Vice Chancellor but has been re-titled in anticipation of the abolition of the office of Lord Chancellor.

Self-Assessment Exercise (SAE) 1

Highlight and discuss the main characteristics and features of the English judiciary between 1970 to 2004.

5.4 OVERVIEW OF THE DIFFERENT RANKS OF SUPREME COURT JUDGES

At the time of writing this course guide, the highest court in the U.K. is the Appellate Committee of the House of Lords. Its members are known as the Law Lords (the upper chambers of parliament). They are full-time judges. Under the provision of the Constitutional Reform Bill 2004, the Laws Lords will be removed from the House of Lords and reformed into an independent Supreme Court to ensure a clear separation between the judiciary and the legislature. It is not clear exactly when this change will be implemented. Once the new system is up and running, it is envisaged that the current and future judges in the Supreme Court will fulfill essentially the role and functions as the Law Lords have done. The judges will continue to be appointed from the Court of Appeal, though they may occasionally be appointed directly from practice or from amongst leading academics. The court's role will continue to be hearing both civil and criminal appeals of general public importance.

a. Lords and Ladies Justice of Appeal

Judges in the Court of Appeal are usually appointed from the High Court. They hear both civil and criminal appeals. The civil division sits in panels of twos or threes while the criminal division sits in threes, usually made up of one Lord Justice with two High Court judges or with one High Court judge and one Circuit judge.

b. High Court Judges

High Court Judges (or puisne judges) are usually appointed from the ranks of Recorders or Deputy High Court Judges, or occasionally from the circuit Bench. They are appointed to one of the three Divisions of the High Court (Queen's Bench family and chancery) and regularly travel around England hearing the most important civil and criminal cases.

c. Deputy High Court Judges

These judges are also senior practising lawyers who sit as part-time High Court Judges. They do not have security of tenure and are appointed when the workload of the court requires more temporary judges. Some, however, still go on to be appointed to be full-time High Court Bench.

d. Circuit Judges

Usually appointed from among Recorders or district judges, circuit judges hear middle-ranking and more serious criminal cases in the Crown Court and civil cases in the County Court.

e. District Judges

The District Judges are appointed from Deputy District judges. Most district judges are former solicitors. They handle the bulk of less serious judicial work in the County Court. They carry out a wide range of different work such as family cases, breaches of contract and negligence claims.

f. District Judges (Magistrates' Courts)

These are professional magistrates who are lawyers (unlike the majority of about 30,000 magistrates, who are lay people). They sit in the Magistrates' Courts hearing mostly the more serious criminal cases. They also hear some civil work such as family cases.

g. Recorders

These are part-time judges. They are practicing lawyers (barristers or solicitors) who sit as judges for approximately 20 days per year. They hear both criminal and civil cases sitting in the Crown Court and County Court.

IN TEXT QUESTION: Identify and explain the major differences and similarities between the English Judiciary and Nigerian Judiciary in the category of persons appointed as judges.

5.5 Judges' Function

Dispute Settlement

Most judges spend most of their time in work relating to dispute settlement in the civil and criminal courts. In civil courts, this involves determining procedure, deciding which facts are proved, applying settled law to those facts, reaching a decision, writing a judgment setting out the reasons for that decision and deciding on costs. In criminal cases, fact-finding is carried out by lay magistrates and juries. Professional judges sit in the Crown Court with a jury and decide questions of law and procedure, costs and sentencing. Since most defendants either plead guilty or are found guilty, sentencing is a major function of a criminal judge. The sentencing system in England and Wales, in contrast to that of other jurisdictions such as many U.S. States, offers a wider measure of judicial discretion.

a. Case Management

Since 1999, when the major reforms were introduced to the civil justice system in the English legal system following the Wolf report, judges have spent much more of their time actively managing cases before and during trial. Previously, judges usually came to court knowing very little about a case and were expected to fulfill a limited 'reference' role, leaving much of the management of the case to the lawyers. Presently,

they must read the papers before the trial and participate in decisions about matters such as which expert witnesses are to be called.

b. Training

Changes such as the growth of case management, the introduction of the Human Rights Act 1998 and the expansion in the range of sentencing options available to judges, have all increased the need for the English judiciary to receive appropriate training. Traditionally, however, judges did not consider that training was necessary and indeed, regarded it as a potential threat to their independence. The establishment in 1979 of the Judicial Studies Board, which provides training to judges, was only considered acceptable because judges ran it and the training provided was largely voluntary. Since then, however, the range and amount of training have increased and judges now generally welcome all the training they can get although this still amounts to only a few days a year on average.

c. Extra-judicial Activities

In addition to the diverse range of judicial work, which judges carry out, many also fulfill several different responsibilities not directly related to their caseload. Many senior judges are involved in decisions about staffing resources and deciding which cases will be heard by which judges and when. Almost all judges are involved in the consultation process for the appointment to judicial office. Some judges spend time dealing with the media advising on the use of information technology in the courts, consulting with court users' groups, receiving and giving judicial training, delivering lectures and public speeches, writing personal articles, and giving evidence to or heading government inquires.

d. Judicial Review

Senior judges also play an important role in placing a check on official action. Over the last 40 years in the English legal system, judges have developed the law of judicial review which gives them the power to quash decisions that are illegal because they go beyond the decision-maker's powers or have been arrived at through an unfair or irregular procedure.

e. Interpreting Statutes

Legislation has increased in quantity and scope in the English jurisdiction. As a result, many cases decided in the courts now involve the consideration of statutory provisions. Three rules have traditionally been used to assist judges in deciding how to interpret legislation that is unclear or has more than one possible meaning. The traditional approach to statutory interpretation is to respect the authority of the words in the statutes drafted and to seek to apply their plain and obvious meaning,

whether or not this reading leads to a sensible outcome (the 'literal approach'). A modification of this approach is the golden rule which states that where the application of the literal rule leads to a manifest absurdity, the judges are required to interpret and if necessary adapt the language of the statute to produce a sensible outcome. More recently, judges have increasingly preferred a third approach - the 'mischief rule - which seeks to identify accurately, the need to understand why parliament wished to pass the law in the first place. This is sometimes called a 'purposive or purposeful approach'.

Self-Assessment Exercise (SAE) 2

1. Discuss briefly any three traditional functions of judges.
2. Describe the ways judges approach the task of interpreting statutes.
3. What is judicial review? Why do you think judicial review is necessary in any legal system?

The literal rule, golden rule and mischief rule are guidelines developed by the courts to help the judges approach the task of statutory interpretation. Increasingly, judges apply a purposive approach, which requires them to look for the underlying intention of parliament in passing the statute.

5.6 Summary

In this unit, you have learnt that the judiciary in England and Wales is organised in a clear hierarchy of ranks with relatively low levels of specialisation. Most judges hear both civil and criminal cases at first instance and appeal. Throughout the system, there is a heavy reliance on the use of part-time judges, many of whom go on to be appointed to full-time posts.

5.7 References/Further Readings/Web Sources

Imiera, P.P. Knowing the Law (2005). Fico Nigeria Ltd (FHM): Lagos, Nigeria.

Morrison, W.J., A. Gearey and K. Malleson, (2004). Common Law Reasoning and Institutions, University of London Press: U.K.

5.8 Possible Answer to Self-Assessment Exercise 2(1)

Case Management
Since 1999, when the major reforms were introduced to the civil justice system in the English legal system following the Wolf report, judges have spent much more of their time actively managing cases before and during trial.

Training
Changes such as the growth of case management, the introduction of the Human Rights Act 1998 and the expansion in the range of sentencing options available to judges, have all increased the need for the English judiciary to receive appropriate training.

Judicial Review
Senior judges also play an important role in placing a check on official action. Over the last 40 years in the English legal system, judges have developed the law of judicial review which gives them the power to quash decisions that are illegal because they go beyond the decision-maker's powers or have been arrived at through an unfair or irregular procedure.

UNIT 6 LEGAL REASONING

Unit Structure

6.1 Introduction

To what extent does legal reasoning resemble how we all reason in our everyday affairs? The point must be borne in mind from the beginning that logical consistency cannot in itself provide a definite solution to this kind of question. Thus, legal reasoning leans heavily on argument by analogy. Furthermore, the human mind feels a natural disposition towards treating cases alike and this tendency as we have seen plays an important role in the functioning of the principles of justice. Broadly speaking, how lawyers and judges reason out their cases follows a pattern similar to that of problems and is expressed and argued in ordinary language. Legal practitioners, like other professionals, create a certain esoteric jargon of their own. This creation of specialist jargon is a necessary tool of any science which is to attain a greater degree of precision and definition than is needful in ordinary life, though it can also produce harmful consequences, especially in a sphere which is concerned with everyday problems. The danger is that certain unreal and merely terminological solutions may be developed concerning situations which call for other factors to be taken into account. When it comes to decision-making on points of law, there exists in most legal systems a very large apparatus of previously decided and recorded cases the reasoning for those decisions is systematically set out in the court records.

6.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss Legal Reasoning and Case Law
- explain Judicial Reasoning and Statutory Interpretation
- describe the Other Aids to Statutory Interpretation.

6.3 Legal Reasoning

6.3.1 Legal Reasoning and Case Law

The separation of the judicial arm of government from other forms of constitutional power rests heavily on the need to preserve judicial independence. The availability in Western countries of regularly constituted legislatures makes the separation between law-making and judicial interpretations intelligible and justifiable and thought to be conducive to the preservation of the independence of the judiciary. What is felt fairly strongly by most legal practitioners brought up in the traditions of Western rationalism is that there are and should be very definite limits to the extent to which judges and courts should be treated as free to change the law, either directly or indirectly under the guise of development or redefinition.

Courts often seek to minimise or conceal the element of conscious choice involving value judgment in their decision-making. The reason for this is not a desire for mystification or an attempt or pretend that the law is a completely rational and certain science capable of solving all problems by sheer logical inference. Consequently, even when courts are patiently making new laws by their decisions, they tend to shun too open an avowal of what they are doing, lest they be accused of usurping the functions of the legislature. Hence, a tendency on the part of courts to play down the element of conscious choice in their decisions and to export their reasoning in the form of logical deductions from well-established rules.

The idea of law in legal reasoning in its simplest form, states that lower courts are bound by the decisions of higher courts. Thus, the practical administration of justice in any legal system plainly requires that once a case has been decided, the parties should be bound by the decision. In Nigeria, the courts whose decisions form binding precedent are those courts established under Section 6(5) of the 1999 Constitution. These courts are:

a) The Supreme Court of Nigeria.
b) The Court of Appeal.
c) The Federal High Court.
d) The State High Court.
e) The Sharia Court of Appeal of the Federal Capital Territory.
f) The Customary Court of Appeal of the Federal Capital Territory.
g) The Sharia Court of Appeal of a State.
h) The Customary Court of Appeal of a State.
i) The High Court of the Federal Capital Territory.

This part examines the operation of the doctrine of case law both in conceptual terms and through the decisions of the courts. Othordoxically, the role of the courts consists merely of stating what the existing law is and interpreting authoritatively doubtful points as they arise. This attitude of the judiciary is in harmony with the traditional approach of the common law which listed that judges had no power whatsoever to make laws but simply declare it as they had always been. Such attitude stemmed from a long-past order of society.

It is trite and a well-respected principle of law applicable in Nigeria and all common law countries that the decisions of the apex court of the land such as the Supreme Court of Nigeria on subordinate courts, including all courts exercising appellate of competent jurisdiction notwithstanding that a decision of a court of competent jurisdiction. Thus, it was held in the case of *General Sani Abacha & 3 Ors. V. Chief Gani Fawehinm*that:
...It is therefore, inexcusable judicial disrespect and arrogance for a lower court to refuse to follow an extent and valid decision of a higher court.

Contribution on the bindingness of a court's decision until set aside, Achike, JSC, as he then was, stated in the case of *General Sani Abacha & 3 Ors. v. Chief Gani Fawehinmi* as follows:
By the time-honoured doctrine of precedent as it operates in Nigeria and all common law countries, the decision, on a given issue of law handed down by the apex court which for us in Nigeria is the Supreme Court, is not only superior but binds all subordinate courts, including all courts exercising appellate jurisdiction. It is the law that the decision of a court of competent jurisdiction, no matter that it seems palpably null and void, unattractive or insupportable, remains good law and uncompromisingly binding until set aside by a superior court of competent jurisdiction... With utmost respect to Mustapher. HCA, it is an inexcusable judicial disrespect of arrogance to deny the subsistence of the hierarchical order of superiority of Nigerian laws as adumbrated by the Supreme Court in Laby's case. This posture of the lower court is more startling in the absence of any doctrine of precedent, stare decisis of great antiquity, embedded in the English Common Law, and indeed,

an integral part of our law which is anchored in good reason, logic and common sense and has not been, demonstrated to be manifestly out of step with modern development in law should be blown away by a side wind. There is therefore no basis whatsoever for the lower court not to have followed the decision of Labiy's case.

A case will serve as a precedent only for what it actually decides. It cannot be cited for a proposition that may seem to follow logically from it. The doctrine of precedent means that a judicial decision has a binding force on the parties by creating a *res judicata* and creating a binding precedent on lower courts. However, the force of authority of a particular decision on other courts depends on the hierarchy of courts. The decisions of higher courts bind the lower courts. Consequently, a lower court based on the operation of the doctrine of precedent cannot pronounce the decision of a higher court *Prof. F.N. Ndili v. Mr. J. M Akinsumade& Anor,* Olagunju, JCA opined on whether a lower court can pronounce the decision of a higher court *per incuriam* as follows:
It is a piece of judicial solecism bordering on heresy to say that the decision of a higher court was reached per incuriam as the learned trial chief judge who set the tone had expressed with obvious difference.

Commenting on the same issue in the case, Justice Ubaezoni, JCA stated that:
...It will be an act of judicial impertinence for a lower court to refuse to follow the decision of higher court because the lower court thinks that the decision of a higher courts is wrong or given per incuriam. The principle by which a lowr court follows the decision of a higher court, whether the decision of the higher court is right or wrong, is the principle of stare decisis, that is the binding force of precedent. It makes for clarity and certainty in our judicial decisions. I do not like handing down strictures on the lower courts when they make mistakes as nobody is above mistakes, especially, in a discipline such as law. But it is wrong for the lower court in the instant appeal to refuse to follows the decision of the Court of Appeal in Okara v. Ndili. Even if the decision of a higher court is given per incuriam, a lower court is bound to follow it.

The predominant view is that a lower court should not open its mouth to say that the decision of a higher court was given *per incuriam* even if it is obvious that such a decision was wrong or given *per incuriam.* This is particularly so when it is the decision of the apex court. The contemporary judicial attitude to the treatment of such decisions is that the honour and privilege belong to the apex court to correct its decision if it is found that any of its decisions is given per *incuriam.* The underlying principle must be understandable but with utmost trepidation that if the decision of a higher court is given *per incuriam* a statute or an earlier case, there is nothing wrong in a lower court referring to it most

politely and drawing the attention of the higher court to it so that it may reconsider its position in its future decision. After drawing the attention of the higher court to the earlier decision or a statute that it might have inadvertently failed to consider, the lower court will follow the decision of the higher court. Judicial impertinence arises when the lower court refuses to follow the decision of the higher court. In the light of the foregoing, it is manifestly clear that it does not lie within the competence of a lower court to say that the decision of a superior court was arrived at *per incuriam* on a surmised fantastic possibility conjectured by it. The underlying jurisprudential basis of the operation of the doctrine of precedent is predicated on the maxim *stare decisis et non quelamovera* which means to stand by what has been decided and not to disturb; and unsettle things which are established. Thus, in the case of *Godtly Okeke & 12 Ors. v. Chief Michael Ozo Okoli stare* decisis was defined as:
Stare decisis thus means to abide by former precedents where the same points come again in litigation. Stare decisis presupposes that the law has been solemly declared and determined in the former cases. It thus precludes the judge of subordinate court from changing what has been determined. In other words, they should keep the scale of justice even and steady and not liable to waiver with every judge's opinion.

In the context of the Nigerian legal system, the Supreme Court is the apex court and its decisions are binding on all Courts lower than the Supreme Court. But the critical questions to ask at this point are: Is the Supreme Court bound by its decision? The Supreme Court has great respect for its previous decision. However, it will depart from its previous decision whenever necessary in the interest of justice. No court is bound to follow a decision of its own if it is satisfied that the decision is given *per incuriam.* Although there is no provision in the rules governing precedents generally at the Supreme Court, by the principle of *stare decisis* the Supreme Court is bound by its previous decisions, though it can decide which of its two conflicting decisions it will follow. The Supreme Court will depart from or overrule its previous decisions in the interest of justice where the decisions are shown to be:

i. Vehicles of injustice;
ii. Given *per incuriam:*
iii. Clearly erroneous in law; or
iv. Impeding the proper development of the law,
v. Having results which are unjust, undesirable or contrary to public policy,
vi. Inconsistent with the provisions of the constitution; or
vii. Capable of fettering the exercise of judicial discretion by a court.

There is no hard and fast rule exhausting the area within which to warrant a departure from a previous decision. Thus, each case must be

decided on its special facts and circumstances to avoid perpetuating injustice, which is the paramount determinant of facts in this respect. Concerning the doctrine of precedent, it is the *ratio decidendi* of a case that binds a court. Consequently, for a ratio of a cited case to govern a latter case in hand, the latter case has to be similar and identical with the cited case in terms of the facts of the two cases of the legal issues involved in the two cases. The Court of Appeal, which is next to the Supreme Court in the order of superiority of the hierarchy of courts in the context of the Nigerian legal system, is bound by its previous decision. However, there are recognised circumstances in which the court may legitimately decline to follow such a decision, such as where:

1. The Court of Appeal may follow one of its conflicting decisions in preference for the other.
2. It may decline to follow its decision which though not expressly overruled cannot in its opinion coexist with a decision of the Supreme Court.
3. It may decline to follow its earlier decision if satisfied that, the decision had been reached *per incuriam.*
4. It is not bound to follow the *obiter dicta* of any of its justices.

The aspect of the decision of the higher court that binds the lower court is the *"ratio decidendi"* of a case. Consequently, a clear distinction should be drawn between a "*ration decidendi"* and an "*obiter dicta"* in relation to the operation of the doctrine of precedent. An "obiter dicta" is defined in the case of *Loveday Ebere v. John Onyengel* as the:
Pronouncement of the court on the issue joined that can and does embody the resolution of the court. Any observation or comment by the court which though made in pronouncing the resolution is not necessarily involved in the resolution or essential to it is obiter dictrum.

It is clear that lower courts are bound only by the *ratio decidendi* in the decision of higher courts. Not the *obiter dicta.* The rationale for the none binding of *obiter dicta* is that it reflects inter alia, opinion of the judge which does not embody the resolution of the court. The expression of a Judge in a judgment must be taken with reference to the facts of the case which he is deciding, the issues calling for decision and the answers to those issues. A party cannot rely on and derive any benefit from an *obiter.* A critically striking issue in relation to the operation of the doctrine of *stare decisis* is whether a dissenting view of a justice can be preferred to the decision of the majority. It is trite law that the dissenting view of a justice cannot be preferred to the decision of the majority. In support of this preposition, the Supreme Court of Nigeria per Uwaifo JSC held in the case of *Ishaya Bamaiyi v. The State* that:
In his argument before us in the present case, the learned Attorney-General prefers the view expressed by Omo JSC that for a conclusion in a deposition to contravene Section 87 of the Evidence Act, it must be a

legal conclusion and not a mere conclusion which is a statement of fact. Let me say that Omo JSCs view is a dissent and cannot be presented in submission by counsel in preference to the decision of the majority on the point.

The principle of law upon which a particular case is decided is called *ratio decidendi* and the effect of it is to serve as a basis for the doctrine of judicial precedent in subsequent cases with similar facts. Previous decisions and judgments of higher courts are generally binding on lower courts. The decision of the Supreme Court is binding on all courts. However, for such a decision of the Supreme Court to be binding, the facts and issues pronounced upon by the Supreme Court must be on all fourth with the case under consideration by the lower court. Earlier decisions of the Supreme Court are generally binding on later cases for determination in the Supreme Court when such cases are in all fours with the earlier decisions of the Supreme Court. These are general rules to which there are recognised exceptions. Where there is a conflicting decision of the Supreme Court on the same point the court will not follow its previous decision. The court must be consistent with itself under the doctrine of *stare decisis.*

An issue of considerable debate that has often arisen in relation to judicial precedent is whether judicial precedent is a law-making process. One thing that is clear is that it is the duty of the judge to decide every case brought before him. Consequently, a judge cannot refuse to do so on the pretext that there is no relevant law or statutory provision applicable to the facts of the case. In building the law, courts strive to give effect to the practices and transactions which are not clearly harmful to society and usually apply concepts like the conduct of a reasonable man or reasonably foreseeable consequences. In this regard, judges do at time more than apply existing rules. Sometimes they create new principles by way of developing the law.

There are two conflicting decisions of a superior court, which decision operates as a binding precedent? In the conflicting decisions of a superior court, the latter in time supersedes. In the case of *Mackson Ikeni & Anor. v. Chief William Akuma Efamo,* the Supreme Court held that:
The law is well settled in Nigeria that where there are two or more conflicting judgments, it is the latest in time that constitutes res judicata.
For the doctrine of judicial precedent to be effective, there has to be a settled judicial hierarchical order of courts and a reliable systematic manner of case reporting. In Nigeria, the hierarchical order of courts is well-established and enshrined in the Constitution. The hierarchy of courts is well settled in a unified structure with the Supreme Court as the ultimate appellate court. Concerning the operation of the doctrine of

judicial precedent, a critical issue that requires an examination is whether a decision or order of the court can be overruled or set aside by the court of a State sit on appeal over the decision of another High Court Judge.

The Chief Judge of a State is no more than a *primus inter pares* among his fellow judges. He exercises the same powers and is of co-ordinate jurisdiction with the other judges. He is merely an administrative head. On the first question raised, it was held in the case of *James Nwogu & Anor. v. Chief Bon. Kevin Njoku* that:
It is not competent of a court to overrule the decision of another court of co-ordinate jurisdiction. Thus, in the absence of statutory authority, a court has no power to set aside or vary the order of another court of co-ordinate or concurrent jurisdiction. No court can, therefore sit on appeal over its own decision or the decision of courts of co-ordinate jurisdiction. However, an exception to the above principle is the power to set aside a judgment given in the absence of a party which power can be exercised by any court find not necessarily the same court that gave the judgment, but the exception is restricted only to default judgment – and cannot be extended to correct of trial. Thus, in the instant case, it was wrong for the chief judge to have declared that the order made by the presiding judge was without jurisdiction and therefore null and void and of no effect the same having been made after the former had given an order for the later to stay proceedings in the matter pending the final determination of the motion on notice.

Justice Pats –Acholonu put the matter more aptly when he observed that:
The appointment of a judge to the post of a chief judge is not based on his intellectual prowess, legal erudition or even superior brilliance but most often on mere seniority or political consideration regardless of the fitness of the appointee. To attempt to bestride the judiciary of which he presides like a colossus is to carry exercise of power to a ridiculous extreme. In the realm of jurisprudence and having regard to the nature of our judicial set up. It is heretical for a judge to purport to sit on appeal and hiding under one subterfuge or the other to quash the decision of another exercising no less of equal power and authority. It is only a judge who is full of malcontent or unbridled prejudice that would seek to subjugate a fellow judge by usurping the powers of an appellate court. Indeed, it is asinine to say the least. Clearly therefore, the assumption of such powers. I find it utterly reprehensible for any chief judge to pretend that he is higher than a judge who exercises the same power with him merely because he exercises an administrative power which any judge can do. It is time our people began to understand the limit of their powers and not set out to grab powers not given to them by any statute. The incidence of a High Court judge arrogating himself the power to review or support to sit as it were on appeal on a decision of a

court of co-ordinate jurisdiction is assuming alarming proportion and is giving rise to concern. Such reprehensible and debilitating practice either borne out of palpable ignorance of the law or out of a malice, chicanery or corrupt intention and in such a situation the judge is not' competent to be addressed Honourable Justice so so and so" as there is obviously nothing honorable about such a judge.

In Nigeria, a fairly rigid system has developed with the consolidation of the hierarchy of the courts. In this connection, the actual working of the system of precedent suggests that a decision of a higher court is binding on all lower courts in the hierarchy.

Self-Assessment Exercise (SAE)
Discuss Judicial Reasoning and Case Law.

6.3.2 Judicial Reasoning and Statutory Interpretation

One of the most important aspects of judicial functions is the construction of statutes. It is from this point of view that one may discern the divergence between common law and continental practice. Common law proceeds on the basis that it represents the fabric of the law. Hence, the practice of drafting statutes in the fullest detail and the assumptions that a statute deals only with those cases which fall within its actual wording. Consequently, there is no judicial power to "full gaps" in a statute based on analogy. Conversely, continental theory, on the other hand, treats statute as the basis of the law. In this respect, statutes tend to be drafted in a general and abstract way. The task is therefore left to the courts to fill in the details of the statutory provisions by reference to a presumed legislative intention. The common law approach is primarily based on ascertaining the plain meaning of the words used in the text of a statute while the continental theory is directed to ascertaining the intention of the legislature. This distinction obviously explains why continental courts have recourse freely to *travaux preparatiores* legislative materials whereas common law courts are reluctant to pay attention to legislative materials. There are basically three rules of statutory interpretation all of which can best be explained and appreciated historically. The earliest rule of statutory construction was formulated in Heydon's case in 1584. The rule is known as the mischief. The growth of parliamentary supremacy and the articulation of the separation of powers led simultaneously to the emergence of the will theories of law to the development of what became known as the literal rule of statutory interpretation. The move to literalism was tempered by the development of the golden rule of statutory interpretation. Although the literal rule seemed to be very much in the ascendance Lord Diplock observed in the case of *Charter v. Bradbear* that:

If one looks back to the actual decision of this House (i.e. the House of Lords) on questions of statutory, construction over the last thirty years, one cannot Jail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provision.

But are the three roles of statutory interpretation distinct rules or have been fused? Driedger observed on the issue that first, it was the spirit and not the letter, then the letter and not the spirit and now the spirit and the letter. He submitted that:
There seems now to be just one rule of interpretation, a revamped version of the literal rule which requires the general context and purpose to be taken into consideration before any judicial decision is reached concerning the ordinary meaning of the statutory words.

IN-TEXT QUESTIONS: Explain Three Rules of Statutory Interpretation

6.3.3 Literal Rule

The literal, strict constructionist approach or the plain meaning approach to statutory interpretation is a potential meaning rather than an actual usage. It is a conventional meaning within a system of such meanings rather than in the actual use of the word in combination with other words. No word has a single simple literal meaning except in certain instances in the dictionary or the mind of the judge. Consequently, Goodrick defines it as follows:
A literal meaning is, at the end of the day, always an interpretative meaning. A selection has to be made consciously or unconsciously to prefer one of several possible literal meanings in the context of the phrase or clause or statutory rule to be interpreted.

The current approach to statutory interpretation in Nigeria is that if the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary senses. The rationale for this approach is that the words, themselves in such cases best declare the intention of the legislature. In the case of *City Engineering (Nig) Ltd. v. Nigerian Airport Authority,* the Supreme Court held concerning the principle of interpretation that:
The duty of the court is to interpret the words the legislature has used. It is a cardinal principle of interpretation that where in their meaning the provisions are clear and unambiguous effect should be given to them as such.

Furthermore, the Supreme Court of Nigeria held in the case of Owena Bank (*Nig.) Plc v. Nigerian Stock Exchange Ltd.* that:

The rule of construction of statute is that they should be construed according to the intent of the legislature which promulgated the Act. If the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary meanings.

The plain meaning rule or literal approach to statutory interpretation was best summed up in the words of Jervis CJ as follows:
If the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense even though it does lead in our view of the case to an absurdity or manifest injustice.

In the case of literal interpretation, regard is given to the letters of the law as the conclusive evidence of the legislative intention and the courts are not free to go behind the letters of the law to find out the intention of the legislature. If the words are used concerning a trade or business, they are to be given their usual meanings in the trade or business. In *R v. Bangaza* Section 319(2) of the Criminal Code provides that where an offender who in the opinion of the court has not attained the age of seventeen years has been found guilty of murder, such offender shall not be sentenced to death but shall be ordered to be detained. Applying the literal rule of statutory interpretation, the Federal Supreme Court held that it was clear from the words of the provision that the offender's age was to be decided at the time of conviction and not the age at the time of committing the offence. Consequently, since the offender had committed the offence when he was under seventeen years old: by the time of conviction, he had attained seventeen years he could be sentenced to death. The literal approach to statutory interpretation encourages courts to adopt the approach that is likely to cause hardship to the parties. The underlying objective of the literal approach to statutory interpretation is not to denote that every word used in a statute must be given its plain and literal meaning irrespective of the consequences or the resultant interpretation would be.

The literal rule of statutory interpretation has certain inherence defects. One of the defects of the literal rule is that the intention of the law-maker." must be found in the ordinary and natural literal meaning of the words used. Consequently, if the words interpreted are capable of alternative meanings, the literal rule automatically becomes inapplicable in the face of ambiguity in the words of the statute. Secondly, the literal rule rests on the fallacy that words have meanings. Once they are clear and unambiguous they do not need to be interpreted in relation to the context of language or circumstances. The literal rule suffers from the inherent weakness that is not always easy to say whether a word is plain or not. In this respect, Lord Blackburn once opined that:

The cases in: which there is real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the word, used with the reference to the subject matter.

Self-Assessment Exercise (SAE) 2
Explain the idea of law in legal reasoning in its simplest form

6.3.4 The Golden Rule of Statutory Interpretation

An appreciation of some of the difficulties inherent in the literal approach to statutory interpretation led to the evolution of another approach to statutory interpretation styled the "Golden Rule". The Golden Rule of statutory interpretation suggests that words in a statute must be interpreted in such a way as to avoid a manifestly absurd result. This rule was established in the celebrated case of *Becke v. Smith,* where Lord Park held:
It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself or lead to any manifest absurdity or repugnance, in which case the language may be varied or modified as to avoid such inconvenience but no further.

In the case of *R. v. Prince Well,* the relevant criminal provisions were to the effect that whoever is being married and shall marry any other person during the life of the former husband or wife shall be guilty of bigamy. It was submitted on behalf of the defendant that the expression "shall marry" means contracting a valid marriage and since the existence of a previous marriage nullified a subsequent marriage, the defendant could not be charged for bigamy. The court rejected the submission as being absurd and that the expression "shall marry" was to be construed as going through a form of marriage known or recognised by law even though in effect, it is a nullity. See also the case of *Council of University of Ibadan v. Ademolekun,* where the Supreme Court had to determine whether Nigeria was void by virtue of Section 3(4) of the Constitution (Suspension and Modification) Decree No. 1 of 1966 which provided that where an Edict was inconsistent. Meanwhile, Section 6 of the same Decree provided no question as to the validity of this court of law in Nigeria. It was therefore submitted by counsel that even Edict was void, the court lacked the competence to declare it void because of the ouster clause. It was held that the literal interpretation of the Decree would lead to manifest inconsistent laws regarding the same facts. Consequently, the court edict was void to the extent of its inconsistency with a decree, subjective in that is the judge who decides whether the adoption of the literal rule is contrary to the intention of the legislature. It is no doubt a rule of statutory interpretation that the grammatical construction of a

sentence must be followed but the golden rule suggests that this is not to be adopted when the grammatical construction will lead to manifest injustice.

6.3.5 The Mischief Rule

The mischief rule of statutory construction emphasises that the general policy of the statute and the evil at which it was directed should be considered when construing a particular legislation. The point must be borne out that the mischief rule of statutory construction is the earliest rule of statutory construction formulated in *Hydon's* case in 1584. In *Hydon's case,* the facts of the case concerned the intricacies of land law. The rule in *Hydron's* case, relating to statutory construction is that where a statute was passed to remedy a mischief, the court must adopt an in approach which will have the effect of correcting the mischief. To do this, the court in the *Hydron* held that there are four things to be discerned and considered concerning the application of the mischief rule.

i) What was the state of the law before the statute was passed?
ii) What was the mischief and defect for which the law passed is aimed at curing?
iii) What is the remedy which the lawmaker had resolved to provide and have provided to cure the mischief?
iv) The true reason for the remedy.

Taking these considerations in mind, the role of the judge is to make such construction as shall suppress the mischief and advance the remedy as well as suppressing subtle inventions and evasions for the continuance of the mischief according to the true intention of the lawmaker. In the Nigerian case of *Akerele v. IGP* the court had to interpret the word "accuse" in Section 210(6) of the Criminal Code. It was argued that the word "accuse" meant making a formal complaint by swearing to an information oath. The court applied the mischief rule of statutory interpretation and rejected the argument because, according to the court, that chapter of the Criminal Code was meant to prohibit indiscriminate accusations of witchcraft and to stop trials by ordeal by making them punishable. The mischief basis of statutory interpretation, namely, the purposive approach. In the case of *Maunsell v. Olins*, Lord Simon held:
The first task of a court of construction is to put itself in the shoes of the draftsman to consider what knowledge he had and importantly, what statutory objective he had if only as a guide to the linguistic register. Here is the first consideration of the "mischief. Being thus placed in the shoes of the draftsman, the court proceeds to ascertain the meaning of the statutory language….

One practical difficulty with the mischief-based approach to interpretation is that the mischief is only one consideration that the court will take into account which cannot be treated as being determinative of the issue. Modern judges when construing the provisions of a statute have been increasingly willing to accept that the purpose underlying the words, which they are considering is an important part of the context within which those words are used. Consequently, this hastened them to adopt the idea of the mischief rule into what is now commonly regarded as the purpose approach to statutory construction. The closeness of the link between purposivism and the mischief rule is underscored by the fact that it is quite common for the courts to still interpret a statute in terms of the mischief-based approach while adapting the purposive approach to interpretation. Thus, legal rules, principles and importance which is to be assessed in terms of the desirability of promoting them. There is no denying that the understanding of such standards typically involves an appreciation of their purposes. But this does not entail that the weight which they are to have in the justification of judicial decisions requires that the judge makes his own judgment of their importance in this sense. Rather, it may be argued that the only relevant sense in which the judge is entitled to weigh a legal standard is to determine its institutional support in terms of other established standards. Thus, a judicial decision takes place against the background of an entire legal system in a variety of interrelated and independent decisions, rules, principles, and policies. The duty of the judge is therefore to reach a decision which coheres best with the total body of authoritative legal standards. The correct decision in a given case is that which achieves the best resolution of existing standards in terms of systematic coherence as formally determined, not in terms of optimal desirability, as determined by some supreme substantive principle or by the judge's own personal scheme of values even though, the degree of the weight or importance in this formal or systematic sense will typically reflect the importance in the sense of desirability which is it perceived to have extra systematicality. It is the distinctive feature of the institutionalised role of the judiciary, in contrast to the legislature, that it may not directly base decisions on substantive considerations of the value of competing social policies.

6.4 Other Aids to Statutory Interpretation

1. The Statute must be read as a whole. Thus, since words can bear meanings which are different from what they bear when read in conjunction, so also can whole sentences and paragraphs. In this regard, the text of the statute must be read as a whole, since any section can qualify another or shed light on each other. In the

case of *Beswick v. Beswick*, it was held that the 25 sections of the whole statute must be read together.

2. The *Ejus dem generis* rule. The *ejus dem generis* rule is to the effect that when construing a statute, will, agreement or other instruments, where general words follow an enumeration of persons or things by words of a particular or specific meaning, such general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. In drafting, when the intention is to cover a wide range of similar examples forming a genius followed by a general expression which has the effect of extending the operation of the statute to all the circumstances which are within the genius or class created. The *ejus dem generis* rule is therefore the general word which follows two or more particular words in a statute and when construing such as statute, the general word which follows two or more particular words in a statute and when construing such a statute, the general word, should be interpreted to confine to a meaning of the same kind as the particular words expressly stated in the statute. As the search for legislative intent goes on, the court develops several conventions as a means of searching out the intent of the legislature. These conventions may be classified as grammatical rules and one of such grammatical rules is the *ejus dem generis* rule. Thus, Lord Diplock observed concerning the *ejus dem generis* rule in the case of *Quazi v. Quazi* that the legislature may intend other like instances to be covered by their general categorising clause but what is a like case may involve consideration of policy. Consequently, the *ejus dem generis* rule is not a canon of statutory interpretation that applies to judgments as the rule does not involve a purely rational process. See the Nigeria case of *Nasir v. Bouari* where the court had to interpret Section 1 (1) of the Rent Control Amendment Act of Lagos, 1960. The Act defined premises as a building of any description occupied or used under any tenancy as a shop or store. The issue before the court was whether premises used partly as a nightclub and partly as a living accommodation were premises within the meaning of Section 1 (1) of the Act. The court held that the expression “other lawful purposes” covers only the class or genius of the living or sleeping and so premises used partly for night clubs were not included in the genius within the meaning of the Act.

3. Presumptions of Constructions: A presumption is an assumption of fact the law requires to be made from another fact or group of facts found or otherwise established in the action. In this regard, any rule of construction can be expressed as a presumption. There are presumptions against imposing liability without trial,

presumption of innocence and presumption against denying a person of a vested right.

Thus, in the realm of criminal law, there is the presumption that *mens rea* is a necessary ingredient of an offence. The law requires that two elements exist before an accused person is convicted of the commission of a crime, namely *actus reus* and *mens rea.* The *actus reus* is the guilty act while the *mens rea* is the guilty mind. Thus in the case of *Sweet v. Parsley* Lord Diplock held that:
Where penal provisions are of general application to the conduct of ordinary citizens in the course of their everyday life, the presumption is that the standard of care required of them in informing themselves of the facts which would make their conduct unlawful is that of the familiar common law duty of care. But where the subject matter of a statute is the regulation of a particular activity involving potential danger to the public health, safety, morals in which citizens have a choice whether they participate or not, the court may feel driven to infer an intention of parliament to impose by penal actions a higher duty of care on those who choose to participate and to place on them an obligation to take whatever measures may be necessary to prevent the prohibited act without regard to those considerations of cost or business practicability which play a part in the determination of what ordinary common law duty of care. But such an inference is not lightly to be drawn nor is there any room for it unless there is something that the person on whom the obligation is imposed can do directly or indirectly by supervision or inspection, but improvement of his business methods or by exhorting those whom he may be expected to influence or control which will promote the observance of the obligation.

Before now, we said that the interpretation given by a superior court is binding on all inferior courts faced with the task of interpreting the same words. Thus, it is quite clear that judicial statements as to the construction and intention of a statute must never be allowed to supplant or supersede its proper construction and courts must be aware of falling into the error of treating the law to be that laid by the judge in construing the statute rather than that found in the statute itself. No doubt, a decision of particular words binds inferior courts on the construction of these words on similar fats but beyond that, the observation of judges on the construction of statutes may be of the greatest help and guidance but are entitled to no more than respect and cannot absolve the court from its duty of exercising an independent judgment of interpretation.

6.5 Interpreting the Constitution

It is necessary to consider what should be the approach of the judiciary in the matter of constitutional interpretation.

Thus, on interpreting the constitution, Justice P.N. Bhagwati said:
It must be remembered that a constitution is a totally different kind of enactment than an ordinary statute. It is an organic instrument defining and regulating the power structure and power relationship. It embodies the hopes and aspirations of the people, it projects certain basic values and it sets our certain objectives and goals. It imaginatively with a view to advancing the constitutional values and spelling out and strengthening the basic human of the large masses of the people in the country, keeping in mind all the time that it is the constitution, the basic law of the land, that we are expounding and that ultimately, as one great American judge felicitously said, the constitution is what we say it is.

The courts, when interpreting the constitution must adopt a creative and purposive approach. In the United States of America, there are two approaches to the interpretation of the Constitution namely; the orginalist interpretation and the creative and purposive interpretation. The orginalist interpretation of the constitution suggest that when construing the constitutional provisions, the courts are bound to accept the meaning which the constitutional provisions had in the original understanding of the framers, drafters and adopters of the constitution. The creative and purposive approach to the interpretation of the constitution suggests the constitution is a living document and the interpretation which must be given by the court is that which advances the constitutional values and enhances the protection of the people by limiting and structuring the executive and legislative power and ensuring realisation by the people of the protection guaranteed in the constitution. Justice P.B. Bhagwati was of the view that there are three traditions in the interpretation of the constitutional provisions. There is the bureaucratic tradition where the constitutional text is treated like any ordinary statutory enactment. In this approach to the interpretation of the constitution, judges display a high level of fidelity to the written text, which is treated as ex cathetra, and they claim that they do not allow their judicial function to be confused by social, political and economic considerations. Judges in this approach interpret the constitutional provisions in a mechanical fashion unconcerned with the consequences of their decision or with the potential radiation of the decision they are making.

The second tradition of judicial interpretation has its origin in liberal whigism. The constitution confers on the various organs of the state and lays down the limits within which such power can be exercised. The third approach to constitutional interpretation is the social justice approach. It was observed that the constitution is what the judges make it and so, judges cannot remain oblivious to the social needs and requirements while interpreting the constitution. There are normative expectations from judges and these normative expectations arise from

the revolution of rising expectations that characterised modern society in most parts of the world. Most of the jurisdictions in the world have made a determined attempt to shift the focus of constitutional interpretation away from the bureaucratic and abuse of power modes of discourse and taken to the social justice approach. The interpretation of the Constitution touches vital political and social questions with far-reaching repercussions. Consequently, controversies conceal vital ideological, social-political or economic interests. Under the Nigerian Constitution, the duty to safeguard and protect the Constitution and the laws is vested in the courts. Kayoed in *Ariori v. Elemo* held that: Having regard to the nascence of our socio-economic and cultural background of the people of this country and the reliance that is being placed and necessarily have to be placed as a result of this background on the courts and finally the general atmosphere in the country, I think the Supreme Court has a duty to safeguard the fundamental rights in this country which from its age and problems that are bound to associate with, it is still having an experiment in democracy.

Furthermore, in the case of *Nafiit Rahiu v. The State* Udo Udoma stated the appropriate approach to be adopted by the courts in the interpretation of the constitutional provisions in the following words:
The function of the constitution is to establish a framework and principles of government, broad and general in terms intended to apply to the varying conditions which the development of our several communities, must involve our being a plural dynamic society and therefore more technical rules of interpretation of statutes are to Some extent inadmissible in a way so as to defeat the principle of government enshrined in the constitution, …. Mr Lord, it is my view that the approach of this court to the construction of the constitution should be and so it has been only of liberalism probably a variation on the theme of the general maxim litresmagis value! Quampereat *it do not conceive it to be the duty of this court so to construct any of the provision of the constitution as to defeat the obvious ends the constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.*

Another case in respect of the appropriate approach to the construction of constitutional provisions is the case of *Senator Adesanya v. The President of the Federal Republic of Nigeria,* where Fatayi Williams, then CJN stated as follows:
Where interpreting the provisions of our 1979 constitution, not only should the Court look at the Constitution as a whole, they should also contract its provisions in such a way as to justify the hopes and aspirations of those who have made the strenuous effort to provide us with a constitution for the purpose of promoting the good government

and welfare of all persons in our country on the principles of freedom, equality and justice, and for the porpoise of consolidating the unity of our people.

From the *dicta* of Udo Udoma and Fatayi Williams, it is manifestly clear that judicial liberalism is the appropriate approach to the construction of the constructional human rights in any civilised society. Judicial liberalism itself is an important element of judicial activism or creativity. Judicial activism and judicial passivity are competing theories of judicial attitude to the interpretation of the Constitution. Judicial passivity assigns a passive role to the court namely to declare what the law is. Judicial passivists interpret the law literally; they seek to ascertain the purports of the law through the sole medium of the words used. Judicial activism or creativity, on the other hand, is constitutive in theory, liberal in conception and teleological in essence. It assumes that every legislation has a society based on certain ideological and philosophical presuppositions, and so, when interpreting the constitutional human rights provision, the underlying principles must be ascertained and given effect.

6.6 Summary

By the end of this unit, you will be able to:

- Discuss Legal Reasoning and Case Law.
- Explain Judicial Reasoning and Statutory Interpretation.
- Describe the Other Aids to Statutory Interpretation.

6.7 References/Further Readings/Web Sources

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Caledonian Rail Company v. North British Rail Co. [1881] 6 App. Cases 114 at pp.131-132.

[1975] 1 All E.R. P.16.

Justice P. N. Bhagwati: “Fundamental Rights in their Economic, Social and Cultural Context” in Developing Human Rights Jurisprudence; Judicial Colloquium in Bangalore. 24-26 Feb. 1998 p. 60.

6.8 Possible Answer to Self-Assessment Exercise (2)

The idea of law in legal reasoning in its simplest form, states that lower courts are bound by the decisions of higher courts. Thus, the practical administration of justice in any legal system plainly requires that once a case has been decided, the parties should be bound by the decision. In Nigeria, the courts whose decisions form binding precedent are those courts established under Section 6(5) of the 1999 Constitution. These courts are:

a) The Supreme Court of Nigeria.
b) The Court of Appeal.
c) The Federal High Court.
d) The State High Court.
e) The Sharia Court of Appeal of the Federal Capital Territory.
f) The Customary Court of Appeal of the Federal Capital Territory.
g) The Sharia Court of Appeal of a State.
h) The Customary Court of Appeal of a State.
i) The High Court of the Federal Capital Territory.

UNIT 7 METHODS OF SOCIAL CONTROL THROUGH LAW

Unit Structure

7.1 Introduction

Whatever definition philosophers, legal theories and text writers may ascribe to law, it is well accepted by all that law in whatever form serves as one of the mechanisms of social control. It is largely through the instrumentality of law that order is maintained in society. Law is therefore a *sine quo non* for any organised "community in that without law, anarchy and chaos will prevail 'with the resultant effect of societal disintegration. The Latin expression *ubi societa ubi jus* is to be explained and analytically sustained in the light of the indispensability of law as an engineering mechanism of social control. A critical question which class for determination at this point is: How does the law bring about social control and order in society? Alternatively, what techniques do the component agencies concerned with the creation, interpretation, application and administration of the law adopt or employ to achieve social ends through law?

There are seven basic methods used in modern law to bring about social control. These methods are:

1. The Penal Method
2. The Grievance-Remedial Method
3. The Private Arranging Method
4. The Constitutive Method
5. The Administrative-Regulatory Method
6. The Fiscal Method
7. The Conferral of Social Benefits Method

7.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss the Methods of Social Control through Law
- explain the Penal Method
- describe other Methods of Social Control.

7.3 Methods of Social Control Through Law

7.3.1 The Penal Method

The word "penal" ordinarily suggests punishment or a form of punitive measure. Thus, "Penal" is defined as:
Punishable; inflicting a punishment; containing a penalty or relating to a penalty.

This method of social control exists mainly if not entirely the realm of criminal law. The method involves the creation of rules to prohibit certain deviant behaviour. It involves the maintenance of law enforcement agencies like the police force to prevent, detect, and prosecute infractions or contravention of the penal law. The method also involves the use of judicial institution where issues of criminal liability are adjudicated upon as well as the maintenance of prisons, custody centres and other institutions recognised in the penal system. In this regard, the entire criminal justice system and process has essentially been created for the specific purpose' of applying the penal method. But why is punishment considered essential for the control of deviant behavior? Can't deviant behaviour be checked or controlled without resort to punishment? Why do we need to punish people in order to bring about social control? The application of penal method is found preferable as an engineering mechanism of social control because of the fundamental injustice existing in society which creates tensions leading to deviant behaviour. When a person is denied social justice, he or she likely to revolt against society and engage in deviant or anti-social to contain such deviants is the penal method which does only prevent further anti-social behaviour because of incarceration and such related punitive devices but the method has a stigmatising or labeling effect which serves as a break or wedge to deviant behaviour. Punishment depends upon three principles, namely:

i) Retribution
ii) Deterrence
iii) Rehabilitation.

Punishment has the following essential criteria:

a) It involves an evil and unpleasantness to the victim.
b) It must be for an office, actual or supposed.
c) It must be imposed by an authority conferred with power to do so.

Merits of the Penal Method

1. The existence of the penal method deters some people from committing crime. The general assumption is that some penal prohibitions coupled with the punitive measure which may be imposed on them if they are found guilty, However, the point must also be borne in mind that a large percentage of the populace refrain from committing crimes not necessarily because of the fear of penal sanction but because they feel it is morally wrong to each or violate laws and hence they refrain from deviant conduct. Thus, conformity with the law is not necessarily the suit of the existence of the penal technique but partly the result of the existence of several factors.
2. The existence of penal method induces reformed behavior in convicted deviants. Thus, punishment could make the culprit a worthy member of the society.
3. Punishment could in some respects bring about the rehabilitation and education of the offenders. Thus, closely related to both the deterrent and rehabilitative aspects of the penal method is the educative aspect. Towards this, when an offender is punished, he or she may not only feel deterred from committing crimes in the future but he may also through the punishment inflicted on him come to realise the wrongfulness or impropriety of his conduct.
4. The penal method provides protection to society. This is done by disabling the offender from future criminal propensity. Thus, disablement in the form of incarceration or total elimination certainly saves society from immediate harassment by the affected offender.
5. The penal method system provides a means of employment. Thus, the existence of the penal methods necessarily suggests the use of law enforcement agencies such as the police force, the courts, prisons and other custody centres which ultimately provide a means of livelihood to the people manning SUCH law enforcement agencies.

Demerits of the Penal Method

The above mentioned effects of the penal method are positive in character. Nonetheless, the method has its negative effects. The method may instead of rehabilitating, educating or reforming an infidel induce a sense of revulsioning him against society thereby making him harder or emboldened in his antisocial behaviour. Thus, the indiscriminate

grouping of convicts has brought about the sad situation whereby first offenders are turned into hardened ones and eventually become recidivists.

But to what extent has the penal method achieved its goal?
It is clear that the relevant authorities in Nigeria attach overwhelming significance to the severity of punishment rather than the certainty of punishment as a way of curbing crime. There is the assumption that the more severe or extreme a punishment is, the higher its deterrent content is.

This assumption is faulted in Nigeria in view of the severe punishment for armed robbery; the incidence is ever-increasing and never-decreasing. Crime is a product of socio-economic, psycho-social and psychiatric as well as political factors and not just a legal matter. Thus, the failure of the component agencies concerned with the operation of the penal method in Nigeria from a multi-dimensional perspective is largely responsible for the escalating trend of the phenomenon of crime. In this regard, there is fallacy in the attitude of those concerned with the implementation of penal method by their dealing with the matter of crime from only the penal method without a corresponding effort in dealing with other causative factors of crime as part of the overall strategy of crime prevention and control in Nigeria. Commenting on the interrelationship between crime and society, Professor I.I. Gabriel of blessed memory, once observed that:
The social phenomenon known-as crime does not exist independent of the human society since it is people who commit crime. Therefore, an objective assessment of the causes and cures of crime in Nigerian society bas to be based on the solid scientific foundation of the interrelationship between crime and society. What we are saying in a nutshell is that crime is the product of given socio-economic system and can only be eliminated when this is realised and solution based on this framework.

Prof. I. I. Gabriel's postulation is evidently instructive in that no agenda of crime prevention and control can be said to be complete if it fails to recognise the co-relation between crime and poverty. The prison plays a significant part in the criminal justice administration in Nigeria. Orthodoxically, the functions of the prison involve:
i) Punishment
ii) Reformation
iii) Rehabilitation

However, the prison system in Nigeria is more punitive than reformative or rehabilitative. Thus, the attitude of the Nigerian prison authorities is not in consonance with the modern penological thinking which stresses

the rehabilitative and re-formative aspect of punishment than the punitive aspect. Furthermore, the attitude of society towards ex-convicts hampers or inhibits the effective and proper rehabilitation and re-integration into society of ex-feons with the result of the latter turning out to be recidivists.

Having identified the defects and demerits of the penal method as an engineering mechanism of social control through law, the pertinent question at this juncture is whether there are visible alternatives to the application of the penal method? This question has assumed relevance and significance because some sociologists show resentment towards the ideal of punishment. Thus, there are certain deviant behaviours that could be controlled without resort to punishment. The following are some of alternatives to the penal method as an instrument of social control.

1. The non-intervention approach: The penal method is not appropriate when applied against certain deviant behaviors. Thus, the penal method is not an appropriate social engineering mechanism for child offenders. In this category of deviant behaviors, a simple warning would more appropriate than imposing penalties which may have adverse social implications on the offender.

The fiscal method: Any behaviour which is regarded as anti-social may be taxed heavily to curb or stem the rate of involvement in such a behavioral pattern.

Self-Assessment Exercise (SAE) 1

Discuss the merits and demerits of the penal method.

7.3.2 The Grievance-Remedial Method

Unlike the penal method, the Grievance-Remedial Method is applicable mainly in the realm of civil law. The Grievance Remedial method is an engineering mechanism of social control involving the award of remedies to aggrieved persons. The remedies to an aggrieved person are many and of varying degrees. Thus, they take the form of monetary compensation or damages. Remedies may also take the form of injunction specific performance. In civil matters, the commonest remedy usually sought in cases of breach of contract is damages. The object of damages is to, compensate the aggrieved person for the loss occasioned by the breach of the contract. A breach of contract is defined as

…..failure, without legal excuse, to perform any promise which forms the whole or part of contract. Unequivocal, distinct and absolute refusal to perform an agreement.

In the realm of the law of contract, in the event of a breach of a contract, there is no such thing as a claim for special and general damages in contract. It is therefore erroneous as it is the position in tort. In contract, what is claimed is damages simpliciter and this is for Appeal stated the position more explicitly in the case of *Oceanic Bank international(Nig.)Ltd v. G Ghitek Industries Ltd* as per Fabiyi JCA (as he then was) as:
I must quickly stress the point that in contract there is no dichotomy between special and general damages as it is the position in tort. The narrow distinction often surmised is one without a difference. In contract, it is damages simpliciter for loss arising nom breach. Such loss must be contemplation of the parties or on reasonably contemplated. The loss must be real, not speculative or imagined. In contract, authorities galore take of damages simpliciter without distinction or dichotomy.

Where the aggrieved person does not suffer any actual loss but his legal right has been infringed, he will awarded what is called nominal damages. Apart from nominal damages, there is general damages which is usually the amount necessary to compensate the aggrieved party. In practice, it is usually granted in actions involving breach of contract relating to sale of land. Specific performance will not be granted in the event of any of the following circumstances is existing:

i) Where damages will be adequate compensation.
ii) If the court cannot supervise the performance of the contract.
iii) If the remedy cannot be enforced against any of the parties.
iv) Where the person seeking the remedy has not offered consideration.

Injunction is another remedy usually granted to prohibit or Stop the doing or continuing or repeating a wrongful act. Injunction is an equitable remedy. Its grant is discretionary and will only be granted if the court considers it just and equitable to do so. It is manifestly clear from the foregoing that the Grievance Remedial Method involves the use of judicial institutions mechanisms for the remedies. Here is possible alternative to this method of social control.

1. Where the matters involved relate to public order and interest, the penal method will be more appropriate as an effective method of social control.

Where individuals provide their own private system to deal with dispute, they should be accorded or given the opportunity to do so. Thus, private arranging method of dispute resolution enjoys certain advantages' over the Grievance-Remedial Method. Thus, arbitration has the advantage of secrecy and informality. The private arranging method of dispute

settlement helps to reduce the accumulation of cases thereby affording the courts sufficient time to deal with more serious cases such as those of public interest.

IN TEXT QUESTION: Discuss the Grievance - Remedial Method

7.3.3 The Private Arranging Method

Individuals may at the point of making a transaction create their own private system to deal with dispute rather than have such a dispute referred to the courts for adjudication. Thus, the private arranging method is an engineering mechanism for social control is a matter of individual initiative. Examples of private arranging method exist in the realm of contract of sale, private arranging should contain: clause ousting the jurisdiction of courts from entertaining questions relating to a jurisdiction of courts from entertaining questions relating to a dispute there from. Thus, the parties to a contract may insert a clause in their agreement stipulating how dispute arising from the performance of the contract can be settled. This kind of arrangement or clause is called the arbitration clause.

Similarly, the parties to a contract may agree at the point of entering into the contract that in the event of a breach of the contract, the party in breach shall pay a specified amount of money as damages to the aggrieved or injured party. This kind of clause is called the liquidated damages clause. Apart from the sphere of contract, individuals may opt for private arranging method in the resolution of dispute of other kinds. Thus, in a case of motor accident, the parties may decide to deal with the matter solely in terms of insurance cover. That is to say, they may prefer dealing with the matter outside the court by referring to their insurance companies who will handle the payment of compensation for injuries suffered by one or all the parties. But why should the private arranging method which seems to be a matter of individual initiative be cite as one of the examples of engineering mechanisms of social control evolved or employed by law to bring about social control? The private arranging method, though largely an individual affair does not exist without the backing of the law. It is the backing of the law that makes the method workable as a means of achieving social control, for without the element of law in the process, the parties may well renege from the terms of the arrangement thereby leading to dispute. The law does not only permit private arranging method to exist as a means of resolving dispute but also provides a framework of rules which primarily determine the validity and workability of a private arrangement as a means of conflict resolution. For instance, the law provides that a holder of certificate of occupancy is not allowed to alienate, transfer, sublease or otherwise deal with land without the prior consent of the Governor.

Self-Assessment Exercise (SAE) 2

Explain why the Grievance-Remedial Method is applicable mainly in the realm of civil law.

7.3.4 The Constitutive Method

This method of social control is closely related to the private arranging method. The law in this instance recognises a group of people as constituting a legal person. Such a legal person is artificial and fictitious by nature and only exists in contemplation of the law. Thus, an incorporated company has a legal personality distinct from the members of the company. Furthermore, upon incorporation, the company has a perpetual succession, suggesting that the life span of a company incorporated does not lie on the life span of its members. Consequently, the death of a member of an incorporated company does not bring about the death of the company.

But how does the constitutive method operate as an instrument of social engineering? If the law had not created the method, a situation may arise whereby in the event of a business failure, the creditors of the business organisation will rush to collect their dues from the individuals who form the company and in the event that the members of the company decline payment, acrimony between the creditors of the company and the individual members of the company may ensue. The underlying jurisprudence for the evolution of the constitutive method as an engineering mechanism of social control is to facilitate collective responsibility where two or more persons are involved in carrying out a business. Additionally, the existence of the constitutive method which involves the creation of a legal personality operates as a strategy to forestall personal bankruptcy, since by virtue of the method, the law has given the company a separate legal personality or identity of its own and hence, it alone is accountable for its debts and not the individual human persons who compose it**.**

7.3.5 The Administrative Regulatory Method

This method of social control exists mainly or basically to regulate wholesome or legally permissible social activities. This method should not be confused with the penal method which exists specifically for the purpose of prohibiting anti-social or deviant forms of behaviour. Similarly, the Administrative Regulatory method is distinguishable from the Grievance-Remedial method by reason of the fact that while the former is designed to operate preventively before a grievance arises, them latter comes into operation only after occurrence of the grievance. The point being made regarding the distinctiveness between the Administrative-Regulatory Method and the Grievance-Remedial Method

is that while the former exists a preventive device against the occurrence of grievances, the latter operates only as a remedial device. The Administrative Regulatory Method invoves the use of regulatory standards, such as inspection, warning letters and system of licensing to ensure compliance with the laid down rules. A good example of the operation of the Administrative-Regulatory Method can be found in the system of licensing where health officials may make regulations to govern the activities of a public house e.g. a restaurant, by preventing the operation of such a place unless its owners have been duly authorised under the license to do so. The need for the fulfillment of such a condition is to ensure safety standards as regard hygiene by the operators of such institutions. Judging from the foregoing discussion, the Administration Regulatory Method exists essentially as an institution or their operators with the private citizen as well as a means of ensuring fair deal in social interactions.

Self-Assessment Exercise (SAE) 3

Describe the Private Arranging Method of Social Control.

7.3.6 Fiscal Method

Certain behavioral patterns which are regarded as anti-social may be heavily and taxed as a way of curbing or stemming such behaviour, the Fiscal Method as an engineering mechanism of social control exists to regulate conduct which are not wholesomely prohibitive it, regarded as inimical to society. The law does this through this method by imposing fiscal measures on persons or group of sons found engaged in acts inimical to the overall interest of the society. The Fiscal Method operates to curb or stem conduct which not criminal in nature but are regarded as not wholesome in the interest of society. In this situation, government allows such conducts but imposes heavy tax on such conducts as a means of curbing or stemming such conduct.

7.3.7 The Social Benefit Method

When law is used to be an instrument of social control, it should not be taken to mean that law is an instrument for merely maintaining public order and peace. Law is also conceived as a means of regulating the exercise of official power and as a medium for the reinforcement of social welfare. Thus, Section 17(3) of the 1999 Constitution of the Federal Republic of Nigeria states *inter alia:*

i) The state shall direct its policy and towards ensuring that:

a. All citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment,

b. Conditions of work are just and humane, and that there exist adequate facilities for leisure and for social religious and cultural life,
c. The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused,
d. There are adequate medical and health facilities for all persons,
e. There is equal pay for equal work without discrimination on account of sex or any other ground whatsoever.
f. Children, young persons and the aged are protected against any exploitation, whatsoever and against moral and material neglect,
g. Provision is made for public assistance in deserving cases or other conditions of need, and
h. The evolution and promotion of family life is encouraged.

Any society that is without adequate welfare is one full of discontent which may generate public disorder. Social behaviour is determined by how the major means of production are owned. Where a society allows few to access social resources as well as appropriate the surpluses of production to themselves, leaving the majority in poverty thereby creating dichotomous classes or groups, whereby one deprives the other. The deprived are likely to go against the privileged and thereby become delinquents or criminals. Thus, it is concerning the role of law as a medium for reinforcement of social welfare that the conferral or social benefit method comes into play. Consequently, the method does not exist as a process of regulating the conduct of the members of the society but as a process of ensuring the upliftment of the welfare of the society which in the final analysis serves to bring about order and peace. The modern government spends money obtained through the application of the community. The involvement of modern government in the distribution of social benefits and services has no small measure brought about order and progress in society in the sense that the individual who finds himself catered for the government feels accountable to it and hence not only channels his energies to the general well-being of the society but also generally refrain from indulging in acts that are considered anti-social.

7.6 Summary

In this unit, you were able to:

- Discuss the Methods of Social Control through Law.
- Explain the Penal Method
- Describe other Methods of Social Control.

7.7 References/Further Readings/web sources

Henry Campbell Black, M. A. Black's Law Dictionary (St. Paul. Minn. West Publishing Co., 1990) p. 1133.

Barbara Hudson: Justice Through Punishment: A Critique of Justice Model of 1987 (Hong Kong, Macmillan Education Ltd., 1987) p.3

See the case of Oceanic Bank International.

See also the case of Barau .v. Cubittis (Nig) Ltd.

See section 21 and 22 of the Land Use Act, CAP 15, Law of the Federation of Nigeria, 2004.

7.8 Possible Answer to Self-Assessment Exercise

The Grievance-Remedial Method is applicable mainly in the realm of civil law. The Grievance Remedial method is an engineering mechanism of social control involving the award of remedies to aggrieved persons. The remedies to an aggrieved person are many and of varying degrees. Thus, they take the form of monetary compensation or damages. Remedies may also take the form of injunction specific performance. In civil matters, the commonest remedy usually sought in cases of breach of contract is damages. The object of damages is to, compensate the aggrieved person for the loss occasioned by the breach of the contract.