NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE CODE :POL 211

COURSE TITLE:
NIGERIAN LEGAL SYSTEM

COURSE GUIDE

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COURSE TITLE: **NIGERIAN LEGAL SYSTEM**

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Introduction

Welcome to POL 211: Nigerian Legal System. This course is a three-credit unit course for undergraduate students in Political Science. The materials have been developed with the Nigerian context in view. This course guide gives you an overview of the course. It also provides you with information on the organization and requirements of the course.

Course Aims

The aims of this course are to impart fundamental knowledge of general principles of Nigerian Legal System in resolving disputes as and when necessary. To make an attempt to create national legal norms that regulates and stipulates rights and duties of the citizenry, etc. These broad aims will be achieved by:

i. Introducing you to Nigerian Legal System, and the basic principles and sources of Nigerian Legal System.
ii. Demonstrating how effective these principles are.
iii. Informing you about Nigerian legislation as well as the reasoning behind legislation.

Course Objectives

To achieve the aims set out above, POL 211 has overall objectives. (In addition, each unit also has specific objectives. The unit objectives are at the beginning of each unit. I advise that you read them before you start working through the unit. You may want to refer to them during your study of the unit to check your progress).

Here are the wider objectives for the course as a whole. By meeting the objectives, you count yourself as having met the aims of the course. On successful completion of the course, you should be able to:

a. Know the meaning of law
b. The need for law in a society
c. The difference between law
d. Custom and law
e. The meaning of Jurisprudence
f. Legal system in Nigeria
g. The legislative process in Nigeria
h. The meaning of Constitution
i. Kinds of Constitutions
j. Hierarchy of courts in Nigeria
k. The role of judiciary in the emerging democracy
l. The Rule of law and political governance in Nigeria.

Working Through This Course

To complete the course, you are required to read the study units and other related materials. You will also undertake practical exercises for which you need a pen, a note book, and other materials that will be listed in this guide. The exercises are to aid you in understanding the concepts being presented. At the end of each unit, you will be required to submit written assignments for assessment purposes. At the end of the course, you will write a final examination.

Course Materials

The major materials you will need for this course are:

i. Study unit
ii. Assignments file
iii. Relevant textbooks including the ones listed under each unit

Study Units

There are 33 units (of 7 modules) in this course.
These are listed below:

Module 1

Unit 1; The Concept and Evolution of Law
Unit 2: Law and Morality
Unit 3: Types of Law
Unit 4: Theories of Law
Unit 5: Classification of Law

Module 2

Unit 1; Meaning of Law
Unit 2: The Nigerian Legal System
Unit 3: Sources of Nigerian Legal System

Module 3

Unit 1; Nigerian Legislation
Unit 2: The Reasoning behind Legislation
Unit 3: Legislative Process
Unit 4: The Rules of Law and Political Governance
Unit 5: Tools of Social Control via Law

Module 4

Unit 1; The Hierarchy of Courts in Nigeria
Unit 2: The judiciary and Democracy in Nigeria
Unit 3: Judicial Settlements of Disputes
Unit 4: Constitution and Constitutional Democracy
Unit 5: Crime Control in Nigeria

Module 5

Unit 1; An Outline of Civil Procedure in Nigeria
Unit 2: Civil Procedure in the Magistrate Court
Unit 3: Commencement of Civil Proceeding in the High Court.
Unit 4: Interrogations and Application
Unit 5: Enforcement of Judgments

Module 6

Unit 1; An Outline of Criminal Procedure in Nigeria
Unit 2: Classification of Offences
Unit 3: Criminal Procedure in the Magistrate Court
Unit 4: Preliminary Inquiry
Unit 5: Summary Trial

Module 7

Unit 1; Legal Aid and Advices in Nigeria
Unit 2: Legal Aid Council
Unit 3: The Necessity of Legal Aid
Unit 4: How to improve the Service of the Legal Aid Council in Nigeria

Textbooks and References

Certain books have been recommended in this course. You may wish to purchase them for further reading.

Assessment File

An assessment file and a marking scheme will be made available to you. On the assessment file, you find details of the works you must submit to your tutor for marking. There are two aspects of the assessment of this course, the tutor marked and the written examination. The marks you obtain in these two areas will make up your final marks. The assignment must be submitted to your tutor deadline stated in the presentation schedule and the assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

Tutor Marked Assignments (TMAs)

You will have to submit a specified number of the TMAs. Every unit in this course has a tutor marked assignment. You will be assessed on four of them but the best three performances from the TMAs will be used for your 30% grading. When you have completed each assignment, send it together with a Tutor Marked assignment form, to your tutor. Make sure each assignment reaches your tutor on or before the deadline for submission. If for any reason, you cannot complete your work on time, contact your tutor for a discussion on the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading
The final examination will be a test of three hours. All areas of the course will be examined. Find time to read the unit all over before your examination. The final examination will attract 70% of the total course grade. The examination will consist of questions, which reflect the kind of self assessment exercises and tutor marked assignment you have previously encountered and all aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course.

Course Marking Scheme
The following table lays out how the actual course mark allocation is broken down.

Assessment	**Marks**
Assignments (Best three assignments out of four marked)	30%
Final Examination	70%
Total	**100%**

Presentation Schedule
The dates for submission of all assignments will be communicated to you. You will also be told the date of completing the study units and dates for examinations.

Course Overview and Presentation Schedule

Units	**Title of work**	**Weeks Activity**	**Assignment**
Course Guide			
Module 1			
	The Concept and Evolution of law	Week 1	Assignment 1
	Law and Morality	Week 1	Assignment 2
	Types of Law	Week 2	Assignment 3
	Theories of Law	Week 2	Assignment 4
	Classification of Law	Week 2	Assignment 5
Module 2			
	Meaning of Law	Week 3	Assignment 1
	The Nigerian Legal System	Week 4	Assignment 2
	Sources of Nigerian Legal System	Week 4	Assignment 3
Module 3			
	Nigerian Legislation	Week 5	Assignment 1
	The Reasoning behind Legislation	Week 6	Assignment 2
	Legislative Process	Week 7	Assignment 3
	The Rules of Law and Politics	Week 8	Assignment 4

	Governance		
	Tools of Social Control via Law	Week 9	Assignment 5
Module 4			
	The Hierarchy of Courts in Nigeria	Week 10	Assignment 1
	The judiciary and Democracy in Nigeria	Week 10	Assignment 2
	Judicial Settlements of Disputes	Week 11	Assignment 3
	Constitution and Constitutional Democracy	Week 11	Assignment 4
	Crime Control in Nigeria	Week 11	Assignment 5

Module5			
	An Outline of Civil Procedure in Nigeria	Week 12	Assignment 1
	Civil Procedure in the Magistrate Court	Week 12	Assignment 2
	Commencement of Court Proceedings in the High Court.	Week 12	Assignment 3
	Interrogations and better application	Week 13	Assignment 4
	Enforcement of Judgments	Week 13	Assignment 5

Module6			
	An Outline of Criminal Procedure in Nigeria	Week 14	Assignment 1
	Classification of Offences	Week 14	Assignment 2
	Criminal Procedure in the Magistrate Court	Week 14	Assignment 3
	Preliminary Inquiry	Week 15	Assignment 4
	Summary Trial	Week 15	Assignment 5

Module 7			
	Legal Aid and Advices in Nigeria	Week 15	Assignment 1
	Legal Aid Council	Week 16	Assignment 2
	the Necessity of Legal Aid	Week 16	Assignment 3
	How to improve the Service of the Legal Aid Council in Nigeria	Week 16	Assignment 4
	Revision		
	Examination		
	Total	17	

How To Get The Most From This Course

In distance learning, the study units replace the University lecture. 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 suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you where to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. 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 to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have complete the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then 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 set books or from a reading section. The following are practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

1. Read this course guide thoroughly, it is your first assignment.
2. Organize a study schedule. Design a "Course Overview" to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.

3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason why students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late to help.

1. Turn to Unit 1, and read the introduction and the objectives for the unit.
2. Assemble the study materials. You will need your set books and the unit you are studying at any point in time. As you work through the unit, you will know what sources to consult for further information.
3. Keep in touch with your study centre. Up-to-date course information will be continuously available there.
4. Well before the relevant due dates (about 4 weeks before due dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
5. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.

6. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
7. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your tutor's comments, both on the tutor marked assignment form and also the written comments on the ordinary assignments.
8. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the course guide).

Tutors and Tutorials

Information relating to the tutorials will be provided at the appropriate time. Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must take your tutor marked assignments to the study centre 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 if you need help. Contact your tutor if:

- You do not understand any part of the study units or the assigned readings
- You have difficulty with the exercises
- 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.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and 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 discussion actively.

Summary

The course guide gives you an overview of what to expect in the course of this study. The course teaches you the basic principles of Nigerian Legal System. As a student of Political science, it will also acquaint you with the rudiments of Nigerian Jurisprudent.

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

Module 1

Unit 1; The Concept and Evolution of Law
Unit 2: Law and Morality
Unit 3: Types of Law
Unit 4: Theories of Law
Unit 5: Classification of Law

Module 2

Unit 1; Meaning of Law
Unit 2: The Nigerian Legal System
Unit 3: Sources of Nigerian Laws

Module 3

Unit 1; Nigerian Legislation
Unit 2: The Reasoning behind Legislation
Unit 3: Legislative Process
Unit 4: The Rules of Law and Political Governance
Unit 5: Tools of Social Control via Law

Module 4:

Unit 1. Interpretation of Statutes
Unit 2. Justice and Rights
Unit3 Grounds for Criminal Liability and Punishment
Unit 4 Recklessness, Negligence and *Mens Rea*
Unit 5 The Legal Profession in Nigeria.

Module 5

Unit 1; The Hierarchy of Courts in Nigeria
Unit 2: The judiciary and Democracy in Nigeria
Unit 3: Commencement of Civil Proceeding in the High Court.
Unit 4: Constitution and Constitutional Democracy
Unit 5: Crime Control in Nigeria

Module 6

Unit 1; An Outline of Civil Procedure in Nigeria
Unit 2: Civil Procedure in the Magistrate Court
Unit 3: Commencement of civil proceeding in the Highcourt
Unit 4: Interrogations and further and better application
Unit 5: Enforcement of Judgments

Module 7

Unit 1; An Outline of Criminal Procedure in Nigeria
Unit 2: Classification of Offences
Unit 3: Criminal Procedure in the Magistrate Court
Unit 4: Preliminary Inquiry
Unit 5: Summary Trial

Module 8

Unit 1; Legal Aid and Advices in Nigeria
Unit 2: Legal Aid Council
Unit 3: the Necessity of Legal Aid
Unit 4: How to improve the Service of the Legal Aid Council in Nigeria

Module 1

Unit 1; The Concept and Evolution of Law
Unit 2: Law and Morality
Unit 3: Types of Law
Unit 4: Theories of Law
Unit 5: Classification of Law

UNIT I: THE CONCEPT AND EVOLUTION OF LAW

CONTENTS

1.0 INTRODUCTION:

A man living in total isolation from others may cut the way he chooses and do anything according to his fancies and caprices within the limits of his mental and physical ability in his environment. This cannot be so if he is living with one or more persons whatever the relationship that exists between them whether the other person is his wife, servant or family member. This is because, once there exists a minimum level of socialization between at least two persons, some conflict of interests beginning to manifest. At this juncture, they deserve somewhat, a rule that would restrict them from acting in an

arbitrary manner, since one man's meat is another man's poison. Thus, this brings in the concept of law.

2.0 OBJECTIVES

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

(i) The meaning of Natural law
(ii) The need for Law in a society
(iii) That the natural law of method is a pre-modern conception, etc.

3.0 MAIN CONTENT

3.1 The Meaning of Evolution of Law

From the outset, law has always concerned itself with issues about values, rights, duties/ obligations and justice. However, the issues arise in the process of man's bid to institute mechanisms or methods that would bring about a better life for humanity. Thus, in the course of man's philosophic quest, natural law developed.

However, the evolution of law is a philosophic ponder/rumination on law which has its roots in an equity. According to Unah, "The ancient Greeks, in the sense of its later refinement, bequeathed (to give to others after death) Natural Law to the West by their search for eternal forms of virtue, especially that of Justice". As a doctrine, natural law has meant so many things to so many thinkers across time from different perspective, positively and negatively.

According to Dias, natural law refers to the "ideals, which guide legal development and administration. A basic moral quality in law which prevents a total separation of the **is** from the **ought**, the method of discovering perfect law deducible by reason the conditions which must exist for the existence of law".

To Cicero, natural law is that time law of right reason which in accordance with nature, applies to all men and is unchangeable and eternal".
Jerome Frank notes that "there exists a body of fundamental, unalterable, basic principles uniformly applicable to all mankind, for the just governance of society, those principles are rational, it follows that men, by the use of reason, can discover them".

However, the foregoing definitions and explanations, undoubtedly, portray the natural law concept as a paragon of beauty devoid of any blemish.

Thus, it is important to note, that, in its modern conception, natural law has shifted emphasis to content rather than method. It is this conception that gave birth to the term "**natural law of content**". This lays emphasis on the natural rights of man. It holds that there is a constitutional provision which has a primacy of place, and that the precious item by which the success or failure of the legal system is to be judged has a place in the Constitution.

SELF-ASSESSMENT EXERCISE 3.1
From the angle of natural law, explain the meaning of evolution of law.

3.2 The Importance of Evolution of Law to Mankind.

The essence of evolution of law or natural law is that it had replaced the primitive theory that might is right. The instinct of self-preservation and egoism will, unless restrained, invariably cause one of the persons powerful enough, to assert his authority or power over his fellow man and dominate him. Let alone when a number of individuals, families or groups are living together in a society.

When socialization got to this level, the habits of the people began to crystallize into customs and rules. Initially, when rules were broken, the people administered justice by self-help through forcible reprisals and family feuds.

The rule of force held sway during this period as the weak, the young, the aged and those who were deficient or disadvantaged one way or the other, were subjected to all sorts of exploitation and deprivation. It eventually became a necessity for the society to be organized in such a way that the competing interests in the society will be harmoniously balanced.
In its initial stages of development, law consisted mainly of customary rules or practices, and the King or Elders gathering at the village square to resolve disputes administered ethical values. Social order was thus maintained by a series of unorganized sanctions such as ostracism, ridicule, avoidance of favours etc. In certain instances the punishment inflicted was disproportional to the harm.

However, the method of maintaining social order then had undergone many layers of development and reforms to become what we have today as **Rule of Law** – that is, the constitutional doctrine which emphasizes the supremacy of the Law as administered by the government through its agencies and officials such as the Law Courts, Police, Ministries, President, Civil Servants, etc.

Constitution, as we know, is the supreme law of the land, which has a binding force on all authorities and persons within its environment of operation. In its drive to institute and sustain human rights, the constitution usually provides for the fundamental rights of man – natural rights which belong to a person for the single reason that he was born a human being, and those rights enjoyed by him by virtue of the fact that he is a member of a particular community.

These rights are:-
(i) The right to life – section 33
(ii) The right to human dignity – Section 34
(iii) The right to personal liberty – Section 35
(iv) Right to fair hearing – Section 36

(v) The right to private and family life – Section 37
(vi) The right to freedom of thought, conscience and religion- Section 38
(vii) The right to freedom of expression and the press – section 39
(viii) The right to peaceful assembly and association – Section 40
(ix) The right to freedom of movement – section 41
(x) Right to freedom from discrimination – Section 42
(xi) Right to own and acquire immovable property – Section 43
(xii) The right of adequate payment for private property compulsorily acquired for public purposes – Section 44

It is therefore, pertinent to know that the 1999 Constitution of the Federal Republic of Nigeria has made provisions under Sections 33 to 44, the Fundamental Rights of the Citizenry. Thus, since the Constitution aims at the realization of the natural rights of man, it stands to reason that man must abide by the rules that promote these rights. A violation of these rules results in anarchy.

SELF-ASSESSMENT EXERCISE 3. 2

Enumerate and explain the fundamental rights of man as stipulated in the 1999 Constitution of the Federal Republic of Nigeria.

4.0 CONCLUSION

In this unit we have discussed and defined the Concept and Evolution of Law, its importance to humanity. We have also enumerated different kinds of the fundamental rights as enshrined in Section 33 – 44 of the 1999 Constitution of our country. Thus, we conclude that it is the ideal right that gives birth to rules and regulations within the context of a social structure.

5.0 SUMMARY

It is worthwhile to sum up by asserting that the purpose of any rule for man in society is to help him seek the common good, live in society, do good to others, avoid harming others, and render to each his own best. Notwithstanding Sections 33 – 44 of our Constitution, Section 45 therefore restricts individuals from the abuse of these fundamental rights. Thus, thou shall not kill and love thy neighbours as thyself; this reminds us of the golden rules or the Ten Commandments in the Holy Bible.

5.0 TUTOR MARKED ASSIGNMENT

(i) What is the importance of Evolution of Law to mankind?
(ii) What are the fundamental rights and duties as provided in Sections 33 – 45 of 1999 Constitution of the Federal Republic of Nigeria?

6.0 REFERENCES/FURTHER READINGS

Akaniro, E. G. (1997) – A Study Guide to General Principles of Nigerian Law, Ikeja, Elcoon Press Ltd.
Dias, R. W. M. (1976) – Jurisprudence, London, Buther Wors.

Fisher, B.D. (1977) – Introduction to the Legal System: Theory, Overview, Business Applications - Western Publishing Co.
Nnayelugo Okoro and Aloysius-Michaels Okolie, (2004) – Law, Politics and Mass Media In Nigeria, Nsukka, Prize Publishers Ltd.
Sanni, A. O. (1999) – Introduction to Nigeria Legal Method, Ile-Ife, Kuntel Publishing House.
The 1999 Constitution of the Federal Republic of Nigeria.

UNIT 2: LAW AND MORALITY

CONTENTS:

1.0 INTRODUCTION

The positivists posited that nothing is law except the one laid by the sovereign or his agents. The law and morality, according to them, are mutually independent and positive law does not derive its validity from moral values. However, in discussing the validity and efficacy of law in the human society, one vital question that flows naturally from the whole gamut of the discussion is whether there can be laws that are not built or constructed, without the support or sinews of sound moral judgments. The positivists do not believe that ethics, religious or moral rules are law unless they are enacted into law. Therefore, since the ultimate aim of law is to do good, there is no doubt that law has a commonality of interest with morality which is basically concerned with good and bad in society.

2.0 OBJECTIVES

In this unit, you are expected to know the following:-

(i) The difference between morality and law.
(ii) Custom and law.
(iii) That morality is a very vital constituent of law.
(iv) That what is morally right may be legally wrong and *vice versa*.

3.0 MAIN CONTENT

3.1 The difference between Morality and Law:

In some way, law and morality may appear to mean the same thing and the two are often confused. The resemblance derives mainly from the imperative nature of both and the language employed. For instance, "**Thou shall**" or **Thou shall not**".

In some cases, the law appears to be behind morality while the converse is the case in others. For instance, while adultery is a moral question in some part of Nigeria, it is not an offence under the law. This shows that the level of moral approach is not strong enough to make it an offence. On the other hand, the law may go beyond the prevailing

level of morality in the society. In such cases, the incidence of breach is often high. The laws against **abortion** or **obscenity** are glaring examples of this.

Morality, no doubt, is a very vital constituent of law. Although the ultimate sanction of law is force. It can control only external acts, but it cannot enjoin or control a spirit/conscience.

Morality appeals to a person's conscience and sense of right and wrong, of what is good and what is evil. As a principle of human conduct, conscience becomes a self-legislating mechanism, enabling a person to choose according to the consciousness of his own liberty.

Therefore, one distinguishing factor is the availability of sanction. Law, unlike morals, almost always provides for definite sanction while the breach of a moral code may only incur societal disapproval or spiritual disapprobation.

Similarities of Law and Morality

Basic principle of morality is also the basic principle of law which means that good must be done and evil must be avoided. According to Prof. Hart with regard to the place of morality in law, he threw more light in the following words:

"The law of every modern state shows at a thousand point, the influence of both the accepted social morality and wider moral ideals. These influences enter the law either abruptly and avowedly through legislation or silently and piecemeal through the judicial process. In some systems as in the United States the ultimate criteria of legal validity explicit incorporate principles of Justice on substantive moral values. The further ways in which law mirrors morality are myriad, and still insufficiently studied, statutes may be a mere legal shall and demand by their express terms to be filled out with the aid of moral principles".

Although a rule of law does not become illegal or inoperative merely because it is against the moral code of a society, morality often gives content to law, as opposed to the claims of the positivists; many laws are therefore predicated or based on moral values.

Thus, once upon a time, there was a running controversy over the extent to which law should be employed to deal with questions of morality. The argument has been advanced that a particular conduct should not be made punishable by law, merely because the wider society considers it to be immoral, unless the need arises to prevent harm to others. But the difficulty is in the determination of where to draw the line between private harm and societal or public harm.

SELF-ASSESSMENT EXERCISE 3.1

What are the distinguishing features between law and Morality?

3.2 Law Morality and Justice

It is important to note that the appeal to a person's conscience in respect to what is good or bad is done within the spectrum of what the community regards as good or bad or evil. It is upon this predication or base that the talks about ideal morality and positive morality emerged. Thus, morality can be viewed from two separate angles.

Ideal Morality dwells on morality in the context of the individual as a person while positive morality discusses morality in relation to the individual as a member of a community.

As part and parcel of the community, the individual is expected to abide by the approved norms of behaviour in the community. In this regard, his sense of what is right or wrong is essentially controlled by what the community defines as good or bad, as the case may be.

Positive morality, therefore, refers to a body of rules supported by the prevalent opinion of the community to which the individual belongs at any given time.

Law on the other hand, is a refection of a society's morality. But law and morality are not one and the same thing as what is morality right, may be legally wrong and vice versa.

Justice is fairness, equity and the right application of the law. Justice is what is what the law supposed to produce. Though, law is synonymous with justice, yet law is not always just, such as, when a rigid application of law results in injustice. According to Black Stone, "Justice is a reservoir from where the concept of right, duty and equality evolves". While, Salmond, further opined that, "though every man wants others to be righteous and just towards him, he himself being selfish by nature may not be reciprocal in responding justly." This is why some kind of external forces are necessary for maintaining an orderly society. Hence, without justice, an orderly society is unthinkable.

Therefore, whilst a person desires absolute freedom to do and undo whatever he likes, the state has had to limit such freedom in the overall interest of everyone and society in general. Thus, law develops society and society develops the law by reforming it.

SELF-ASSESSMENT EXERCISE 3.2

Explain the two angles of morality.

3.3 Custom and Law

Customs, like law, also have normative values and command obedience from members of the society. But in spite of their effectiveness, they are easily distinguishable from laws so properly called.

Law, unlike custom, attracts physical coercion, is more regular and consistent, and invokes a greater authority.

A custom does not become legally binding unless it receives the force of law. However, with the growth of society and increased sophistication, the relevance of bare customs as sustaining norms has gradually declined and easily yields to any law on the same subject. For example, old customs have been given the force of law for the sake of commercial convenience. Such accepted customs are to be respected as laws only because they are pronounced to be so by the courts.

SELF-ASSESSMENT EXERCISE 3.3
Distinguish between custom and Law.

4.0 CONCLUSION

In this unit we have differentiated law from morality, discussed their similarities, different/types of morality. We also differentiated law from custom. Thus, we could conclude by opining that in as much as law has the overriding character of force or coercion the philosophy of thought of taking cognizance of established thoughts, beliefs, customs, habits and values of a people becomes a significant factor in the process of establishing a conducive environment that would promote obedience to the laws of the land.

5.0 SUMMARY

It is important to stress that the concept of what is good or evil varies from society to society, and from time to time. On the other hand, what is morally good today may be morally bad tomorrow, and vice-versa, because, while the few basic principles of morals do not change, others do. Countless human actions are neither good nor bad in themselves but get their goodness badness from circumstances of time, place, object and intent.

6.0 TUTOR-MARKED ASSIGNMENT

Compare and contrast between law and morality.

7.0 REFERENCES/FURTHER READING

Dennis Lloyd, (1979) – The Idea of Law, England, Penguin Books.

John Ohireime Asein, **(1998)** – Introduction to Nigerian Legal System, Ibadan, Sam Bookman Publishers.

Nnayelugo Okor and Aloysius-Michael Okolie (2004) – Law, Politics and Mass Media in Nigeria, Nsukka, Prize Publishers Ltd.

Okonkwo, C. O. ed., (1980) – Introduction to Nigerian Law, London, Sweet and Maxwell.

Sanni, A. O. ed., (1999) – Introduction to Nigerian Legal Method, Ile-Ife, Kuntel Publishing House.

UNIT 3 TYPES OF LAW

CONTENTS

1.0 INTRODUCTION

Laws in the widest possible connotations are any necessary relation arising from a things' nature. In this sense, all beings have their laws: the Deity his laws, the material world, its laws, the intelligences superior to man, his laws, the beasts, their laws, man, his laws.

Since the use of the world "law" is so diverse, it is necessary to consider further the various types of law in order to deepen our knowledge of the nature of law within the context of our study.

2.0 OBJECTIVES

At the end of this unit, you will be able to know the following:-

(i) Different types of law.
(ii) That, at best, eternal law, divine law and natural law represents what ought to be law and not what is law.
(iii) That all beings have their laws.

3.0 MAIN CONTENT

3.1 Eternal Law

The word eternal is derived from eternity. It literally means something that has always existed, has never changed and will always exist. Hence, eternal laws are laws that are constant, everlasting and universal. For instance, the laws of gravity, floatation and motion are the same all over the world since the time of the pre-historic cave man up till the present time. It is doubtful if any man-made law exists that fits the above definition of eternal law. This is because law is certainly not the same everywhere; it reflects different values in different cultures and different epochs.

3.2 Divine Law

The literal meaning of divine law is law of God. A perfect example of divine law is the **Ten Commandments** contained in **The Holy Bible.** Divine law is based on the premise that man is incapable of making a valid and just law because he is sinful by nature. Hence, man must turn to God, who is the governing authority of the universe for perfect law. Since God no longer physically hands over law to man as he was reported to have done for Moses in **The Bible**, the early Christians believed that the Pope was the only ultimate representative of God on earth vested with authority to expound and interpret divine revelations. The laws so interpreted and expounded were enacted into Papal Decrees and binding throughout the Roman Empire. Any other laws created by secular authorities were no law and did not command the obedience of the people.

3.3 Natural Law

Law of nature has been given different meanings. Some writers say it is that which accounts for the behaviour of creatures generally, whether human beings, animals and plants. For instance, plants under given circumstances behave in a particular way and it is the law of nature which makes us sleep, laugh and angry.

A good example of the law of nature is Law of Karma, Poetic Justice or Law of Sowing and Reaping. There is another theory regarding natural law guiding the behaviour of man as man because man has reason. This is called the natural law and not the law of nature.

3.4 Human or Positive Law

Positive Law means the same thing as human law. This is in contradiction to the type of law earlier considered, that is eternal, divine and natural law. Law within the context of divine, eternal and natural law as earlier noted is a far cry from what obtains in the society. It is perhaps this observation that led the positivist school of jurisprudence to say that nothing is law except the one laid by the sovereign or his agent. At best, eternal law, divine law and natural law represent what ought to be law and not what is law.

SELF-ASSESSMENT EXERCISE

Distinguish and explain different types of law.

4.0 CONCLUSION

We have discussed the various types of law in order to vividly understand laws in the widest possible connotations, and these laws are eternal law, divine law, natural law and human or positive law.

5.0 SUMMARY

The law of any nation therefore is the aggregate of all the human laws contained in the different sources of law such as Statute, decided cases, International law etc. However, every state recognizes that law is what it makes it and that it has the responsibility to

fashion its law in such a way that it can best achieve certain set objectives which may be different from time to time. If the law of a State does not meet the needs of that State, it will be the fault of that particular State and not God or nature.

6.0 TUTOR-MARKED ASSIGNMENT

Distinguish between eternal law and divine law. What fundamental change did the evolution of natural law bring in man's conception of law?

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UNIT 5: THEORIES OR PHILOSOPHIES OF LAW

CONTENTS:

1.0 INTRODUCTION

In order to satisfactorily answer the question what is law? One must therefore delve into jurisprudence. **Jurisprudence** is the study of legal philosophy. In as much as philosophy consists of one's belief about something or thoughts, the question as to what law is all about, is provided by examining different beliefs of prominent scholars to ascertain what they have deemed is law. Thus, the various beliefs have come to be known as theories or philosophies of Law, or School of Jurisprudence.

2.0 OBJECTIVES

At the end of this unit, you are expected to know the following:-

(i) What jurisprudence is all about?
(ii) Different types of legal theories.
(iii) Which of these philosophies of law do you consider most appropriate?

3.0 MAIN CONTENT

3.1 The Natural Law School:

The central thesis of this School of thought is that law has a divine or supernatural origin and that for human laws to be legally valid, they must conform to certain objective moral principles based on the nature of man and the dictates of reason. It was precisely based on the divine right theory, the prevailing belief at that time that man was totally subject to the will of God and incapable of making the right law to shape his world.

However, the main problem, which confronted the natural law thinkers, was how to check the absolute power and its abuse by heavy-handed monarchs. Thus, the natural law school offers a convenient basis or starting point for the development of the concept of fundamental (natural) rights – equality, human rights, democracy and the rules of natural justice the world over.

3.2 The Historical School:

This theory was developed to counter the widespread influence of the natural law school in the seventeenth and eighteenth century Europe in overthrowing the Monarchs and creating egalitarian societies. Thus, the historical school viewed law as an outgrowth from the history of the society rather than an artificial contrivance. The denial of artificiality is an aspect, which it shares with the natural law school.

According to the historical school, there is what is called, "a spirit of the people binds the people of a particular society together and distinguishes them from any other people". Accordingly, before a law is made for a society, there must be a good understanding of the history of the people.

Therefore, for the law to be valid, it must accord with the history and the way of life of the people that is, their customs.

3.3 The Positive School:

This school emerged at a time when scholars were beginning to realize the need for imperialism in the study of philosophy. Diametrically opposed to the natural and historical schools is the positivist school, which denies the upward growth of law from the society.

The positivists posited that nothing is law except the one laid by the sovereign or his agents. The agents of the sovereign, permitted to make law according to this school, are the legislators and judges.

Therefore, laws are those made by the sovereign or through his agents by Statutes or Case laws. They believe that laws are not ethics, religious or moral rules unless they are enacted into law.

3.4 The Sociological or Functional School:

This school of thought is particularly attractive for its insistence that jurists should study the actual social effects of legal institution and ensure that legal rules are effective in achieving the purpose for which they are designed.

Therefore, the functional school considered law from the point of view of what the courts will do with respect to a particular legal problem. Notwithstanding what may be contained in the Statutes and prior decided cases, one has to wait for a court's decision on a particular legal problem before one can know what the law is.

3.5 The Realist School:

The greatest advocate of the Realist School was Justice Oliver Wendell Holmes of the United States Supreme Court. He saw law as an expression of the State through the courts, which in essence, occupy the position of the sovereign. However, he emphasized the element of uncertainty in law and the role of judges in the law-making process. In order to know the law, he argued, one must look, not into Statute books, but up to the courts. Therefore, this theory was mainly focused on the court system – particular trial courts. They did not want the judicial system biased in favour of the **good boys** and against the **bad boys.**

SELF-ASSESSMENT EXERCISE

Discuss the views of the different theories of law.

4.0 CONCLUSION

In this Unit, we have discussed the theories or the philosophies of law, such as the natural law school and its views on law, the positive school, the sociological or functional school, and finally, the realist school as they conceptualized law from different backgrounds and orientation.

5.0 SUMMARY

Their different backgrounds and experiences undoubtedly, informed their cardinal conception of law from different angles. For instance, the angle from which a judge would view a particular case or law will be different from that of a legislator.

6.0 TUTOR-MARKED ASSIGNMENT

Critically comment on the various theories of law.

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UNIT 5: CLASSIFICATION OF LAW

CONTENTS:

1.0 INTRODUCTION

Law can be divided into different branches such as Law of Contract, Company Law, Labour Law, Constitutional Law, Criminal Law, etc. Within each subject classification you will find a body of rules and principles, which have been developed over the years on a particular aspect of law. The evolution and nature of subject sometimes differ significantly from one another. While some subjects such as law of contract have very old origin, others such as Human Rights, Environmental Law and Labour are purely Statutory in nature. It is important to note here that there is no single universal mode of classifying law, but law can be classified in multifarious ways.

2.0 OBJECTIVES

At the end of this Unit, you will know in details the following:-

(i) Each one of these classified laws.
(ii) That there is no single universal mode of classifying law.
(iii) That it is important to classify law into different subjects.

3.0 MAIN CONTENT

3.1 Private Law and Public Law:

Private Law comprises those laws that serve to regulate the conduct of persons in their interpersonal dealings, conferring status, rights and obligations on individuals or corporate persons. It includes such diverse areas as the law of contract, property law, tort, family law and succession, commercial law, equity and trust, etc. Thus, private law is that branch of the law of a country, which governs the relationship of citizens among themselves.

Public Law, on the other hand, is primarily concerned with the smooth running of the machinery of State and, consequently, caters for cases where the interest of society is directly involved or the smooth interaction between governmental agencies and organs of the State is threatened. Subjects like Constitutional law, Administrative law, Criminal law, Revenue law, etc., fall within the purview of public law. Thus, public law is the branch of a country's law, which governs the relationship between the State and the citizens hence the name public law.

3.2 Civil Law and Criminal Law:

Civil Law is primarily concerned with competing private interests and obligations and abounds mostly in our unwritten or judge-made laws. It is often invoked by private persons, although the State or its organs may, in appropriate cases, initiate or defend such actions as juristic persons. Civil actions are commenced in accordance with the relevant rules of civil procedure, the object being to obtain relief either by way of damages or injunction. Thus, civil law has several meanings depending on the context in which it is used. In this context, it means the law, which defines the rights and duties of persons to one another and provides a system whereby an individual who is injured by the wrongful act of another can be compensated for the damage, which he has suffered. Examples of civil laws are law of contract, torts, land law, family law.

Conversely, Criminal law is the branch of law which seeks to protect the interest of the public at large by punishing certain conducts which are believed to be harmful to the society to permit such conducts to exist or continue. Punishment is imposed generally by means of imprisonment or fine or both. Thus, the main object of criminal law is to punish wrong doers thereby seeking to protect the collect interests of the citizenry against the detrimental conduct of its constituent members.

3.3 Civil Law and Common Law:

Civil Law has its origin in the Roman, having evolved from the commentaries of European scholars on the Justinian code. The law under this system has always been flexible and persuasive, seeking a well-ordered society through rules that expressed a sense of justice. Under the Civil Law system, a higher legal status is given to the code

(statutes). A code is believed to be its own guide to the interpretation of its provision. The Civil Law employs inquisitorial procedure.

Common Law, on the other hand, describes the law that was developed by the English courts from the Common Customs and practices in England. Unlike the civil law system, which formulates guiding rules in general terms, the primary concern of common law is the resolution of particular disputes.

Thus, common law is used in this context to describe the English legal traditions while civil law is used to describe Roman law or Roman-legal tradition.

3.4 Substantive law and Procedural Law:

Substantive law comprises the rules of law and those legal principles that define the existence and extent of a right or liability in a particular branch of law. It is concerned with the creation, definition and limitation of obligations.

However, in relation to legal proceedings law can be broadly divided into substantive law and adjectival law. Substantive law embraces such subjects like Law of Contract, Torts, Criminal Law, Constitutional Law, etc. which are concerned with statement of rights, duties and liabilities of individuals.

On the other hand, Procedural Law involves the rules by which an action may be brought and disposed of. It prescribes the method for enforcing the rights and duties and obtaining redress for wrongful invasion of those rights as well as the enforcement of obligations or duties. Thus, as the name implies, it deals with the methods of initiating proceedings to enforce a certain right or duty and how the litigation or prosecution is conducted.

3.5 Written Law and Unwritten Law:

Law may either be written or unwritten. The word written here has a technical meaning. It means a rule of law that has been formally enacted into a Legislation or Statute by the legislatures. Such laws before their enactment are usually subjected to rigorous debates and serious scrutiny through several stages before they are enacted and signed into law by the Chief Executive of the State.

The unwritten law could be explained from two different perspectives. Firstly, it may mean any principle or rule of behaviour that is not written down at all as in the case of Customary Law and Conventions. Secondly, it could also mean any un-enacted law even if the principles are reduced into writing as in Case laws.

3.6 Municipal Law and International Law:

The classification of laws into Municipal and International underscores the territorial limitation of laws. Usually, the laws of a sovereign State do not operate outside its boundaries. So, municipal laws are such laws emanating from a particular country and having the force of law within its territory.

International law, on the other hand, is the law that binds respective States and regulates their mutual co-existence and relationship. The sources of international law include international customary practices, Treaties, Bilateral agreements and Conventions. While individuals or juristic persons are the main subjects of municipal laws, international law deals primarily with States.

4.0 CONCLUSION

We have discussed in full, the classification of law. However, classification may acquire a momentous of its own and come to dictate the way in which the law is applied. Hence, it is important to know that to classify law into different subject carries with it a danger. Thus, lawyers may rigidly classify their clients' claim in terms of a particular subject and fall to see that there might be a successful argument in other branches of law that may be put to the court.

SELF-ASSESSMENT EXERCISE

State the differences between the various classifications of law.

5.0 SUMMARY

Classification should be the lawyer's servant not his master. Lawyers should be able to reason flexibly from the facts to the classifications and then back to the facts until all the legal issues are properly analyzed and researched from all possible angles.

6.0 TUTOR MARKED ASSIGNMENT

Enumerate the various classes of laws.

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POL. 124 NIGERIAN LEGAL SYSTEM

MODULE 2

Unit 1: Meaning of Law
Unit 2: The Nigerian Legal System
Unit 3: Sources of Nigerian Law.

UNIT 1 THE MEANING OF LAW

CONTENTS

1.0 INTRODUCTION

Nigeria came to independence with a well-established legal system that included a court system and a thriving legal profession in the British tradition. Therefore, in any society, all over the world, as it is in Nigeria too, there are laws rules and regulations and a system of enforcement put in place by which life and human activity are governed in such society. Therefore, the fundamental purpose of this topic - Nigerian Legal System; is to highlight the nature, source, development, features, courts system in Nigeria, etc for a better understanding of Nigerian legal system for the students of Political Science in this respect.

2.0 OBJECTIVES

At the end of this unit you aught to have understood the following:

i) The legal system of Nigeria
ii) The Concept of Law
iii) The Functions of Law
iv) The Legislative Process

3.0 MAIN CONTENT

3.1 Meaning of Law

The term "legal system" means, the laws, courts, personnel of the law and the administration of Justice System in a given state, country or geographical entity. It is important to note that, a legal system is composed of the above four elements. Therefore, Nigerian legal system is the laws, Courts and personnel of the law and the administration of justice system in Nigeria.

Naturally however, the concepts of law raise the question as what law is? In as much as this seemingly simple question is not all that so easy to answer, Longman Dictionary of Contemporary English (New Edition), has defined law as a rule that is supported by the power of government and that Parliament makes/passes laws. There ought to be a law against that sort of antisocial behaviour.

Very few, if any, areas of law are spared the problem of definitions. In the words of Cicero, "everyone may understand the subject of enquiry, to attain this objective, it is vital that we commence from the standpoint of lucid definitions." Even the meaning of the phenomenon 'law' is not settled with any clear finality. According to Hart, few questions concerning human society have been asked with such persistence, and answered by serous thinkers in many divers, strange and even paradoxical ways as the question: What is law? Generally speaking, the concept of law may mean different things to different people. The physicist speaks of the law of gravity or Newton's law of motion and the economist, the law of supply and demand. However, these usages of the word of law denoted a rule of action expressing a verified regular pattern of behaviour or consequences in a given circumstances. Nevertheless, the lawyer is more interested in its narrow and guarded meaning as a rule of human conduct tacitly or formally accepted by a people as binding and backed up by some mechanism for the sustenance of its binding nature.

3.2 The duties of law

Law, whether Divine, natural, or human is a necessity for right life or good life in any realm. The functions or relevance of law to society are numerous and may not be completely enumerated. However, the functions of law in society include:

(i) It is a code of conduct. A rule of action to ensure that person, bodies and society live orderly and peaceful lives.

(ii) It specifies the structure, framework and the order for all aspects of life and society, whether it be the structure of government, education and so forth.

(iii) It is a means of resolving and settling disputes peacefully. It is a means for administration of justice through the establishment of a court system.

(iv) It is a guarantee of rights, freedoms and duties. It is a necessary framework to ensure a free society.

(v) It ensures order and peace in society; otherwise life would be brutish, nasty and short. Law is an instrument of civilization, but lawlessness is opposite and anti-civilization.

(vi) It is an instrument of political, economic and social change and stability. It can be used to restructure any aspect or sector of society, to improve, re-organize, upgrade, preserve, project, establish, revive, save pardon and so forth.

It provides the environment that enables individuals and society to live operate and to realize their ambitions and to reach their fullest potentials.

3.3 FEATURES OF LAW

The followings are the features of law:

(i) **Law is a body of rules:** When a layman thinks of the law, he is probably of the opinion that all the laws of a state are contained in one single document, perhaps the Constitution. However, this is not the case, for instance, the offence of murder and the penalty is nowhere expressly written in the Constitution. But this is rather enshrined in section 316 of Criminal Code. Thus, law is made up of multifarious rules some of which are written in the Constitution and various other Statutes.

(ii) **Dynamic in Nature:** Law is not static but dynamic. Since law is meant to regulate the behaviour of man in the society, the content of the law of each society usually changes as the social, political and economic world in which he lives changes.

(iii) **It has an Element of Coercion:** Breach of law is usually enforced by means of sanction or coercion or coercion through an organized institution such as the Police Force, law courts, tribunals, prisons etc.

(iv) **It is Man-made:** Laws are rules that society adopts to govern itself. As a result, man has the responsibility to determine to a large extent the content of the law of his society. If the law is bad or ineffective, man must take responsibility for it and cannot blame God or nature.

(v) **Territorial Limitation:** Law is usually made to guide the conduct of the people of a particular society or country and are binding on the people and properties within that territory. While the law of two or more communities may be similar, there are usually some marked differences depending on their respective needs, objectives, cultural, religions and other values. However, it is the differences in the laws of two or more states that necessitated comparative studies of law.

(vi) **It is normative in character:** Law is a norm, which tells us what to do and what to refrain from doing in order to achieve a particular objective. For example, the rules of criminal law, which forbids stealing, and the killing of another under certain circumstances are to guarantee security of lives and properties.

Thus, the above features of law would enable the student to vividly understand the meaning of law in all its totality.

SELF-ASSESSMENT EXERCISE

State the various duties of law in a society

4.4 CONCLUSION

The divergence of views on the essence of law could, however, be explained by noting that each school of thought is influenced largely by its peculiar social and political experience, historical context, etc. but all had therefore come to the conclusion of what law is the rules which define the way people are governed. It is also a combination of expectations such as enforcement, sanctions, obligations and obedience, not minding who is who, in order to make law serve its end.

5.0 SUMMARY

The survival of human society from the time immemorial has been made possible by the adherence of man to a set or body of rules and principles that governs human

conduct. A legal system or regime is therefore essential for any given unit of people, community, state, or country. The essences of legal system, among other things, are to ensure law, order peace in society. It guarantees of rights, freedoms and duties; assures the safety of life, property and society. It equally provides a forum, that is, courts and so forth for the peaceful and orderly resolution of disputes. It assures progress and advancement of society, and finally, provides a framework for individual self-realization and for society to achieve its goals.

6.0 TUTOR MARKED ASSIGNMENT

(i) Define law, and why does Law mean different things to different people?
(ii) What are the features of Law?

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UNIT 2: THE NIGERIAN LEGAL SYSTEM

CONTENTS

1.0 INTRODUCTION

Since a person desires absolute freedom to do and undo whatever he likes, the state has had to limit such freedom in the overall interest of everyone and society in general. As a result, human conduct and almost every field of human activity is regulated by law, prescribing standards of behaviour or prescribing at least some basic structure, or conclusion for operating in a given field of endeavour. Where law guarantees a right, there is created a corresponding duty. Similarly, whenever law imposes a duty, it also creates a corresponding right.

2.0 OBJECTIVES

In this unit you should be able to understand the following:

(i) A detailed knowledge of Nigerian Legal System
(ii) Expose to the underlying general principles of law
(iii) That the subject of Nigerian legal system cuts across all aspects of law
(iv) Without law, rules and regulations and a law enforcement system, society would be in disorder.

3.0 MAIN CONTENT

Features of Nigerian Legal System

3.1 Duality

As a result of the colonial influence and the subsequent imposition of English law, Nigerian legal system has acquired a dual structure comprising customary and English

laws. Islamic law, which has a wider application in the northern states of the country, though not indigenous, is for all practical purposes treated as customary law. Rules of customary law are treated with less dignity and have to be proved as facts until they become sufficiently notorious to be judicially noticed.

3.2 External Influence:

Nigerian law has borrowed heavily from diverse external sources beginning with the influence of Islamic law in Northern Nigeria as a by-product of the nineteenth century Fulani Jihad. Islamic law has today supplanted the indigenous customary laws of many communities in the Northern part of Nigeria, following the acceptance of the Islamic faith.

English law remains a major source of Nigeria law. Every attempt to reshape and reform the latter, at least until recently, either ended up following the English pattern or deliberately made room for the English rules of practice and procedure. The Criminal Code and the Matrimonial Causes Act are modeled after those of Queensland in Australia while the Penal Code, applicable in the North, is fashioned after the Sudanese Penal Code.

3.3 Geo-cultural Diversity:

Geo-cultural diversity is so much a part of the Nigerian legal system. This diversity can easily be traced to the heterogeneity of the country's ethnic groupings and cultural units. It is believed that there are more than 250 ethnic groupings in Nigeria, spanning across a vast geographical area, each having its peculiar custom and norms differing in some way from those of its neighbours. This situation has further compounded the task of proving customary law and the attainment of a harmonized Nigerian common law.

3.4 The System of Precedents:

Nigeria has imbibed the tradition of stare decisis (let the decision stand), which enjoins that earlier decisions should be binding authorities for subsequent cases. The court in which the decision is given may depart from it only in special cases while that precedent strictly binds the lower Courts even where they are inclined by good reasons to do so. This practice of obeying precedents has been justified on the grounds that it enhances certainty and predictability in the law and minimizes the influence of personal bias against settled principles of law.

3.5 Order of Judicial Hierarchy:

Nigeria has a well-structured hierarchy in its judicial set-up. Though the state and federal courts co-exist with their respective jurisdictions, there is only one pyramidal line of judicial authority. The Supreme Court, as the highest court in the land occupies the apex, hearing appeals from the Court of Appeal and retaining some measures of original jurisdiction in selected matters.

3.6 Fusion of the Legal Profession:

Legal practitioners in Nigeria are trained as barristers and solicitors within unified training scheme at the university level and, therefore, at the Nigerian law school. They are then admitted to the bar as solicitors and advocates of the supreme court of Nigeria, combining the duties of both callings, and they are under the overall control of the Bar Council.

3.7 Military Influence:

The impact of the incessant interventions of the military in Nigeria's political development has left an indelible mark on its legal system. Despite the repeated dismantling of governmental structures, it is commendable that the judiciary has always survived those eras with the least interference.

3.8 The nature if Nigerian Law.

Attribute or the characteristics of the legal system

The legal development of all former British colonies of which Nigeria is one, cannot be separated from the reflections of colonialism. Thus, fact that Nigeria was once a colony of England, and a consideration of how the laws of Nigeria involved is necessary. Here, focus will be the nature of Nigerian Legal System.

Nigeria, like many other African countries may be classified under the common law system. It has, however, not lost touch with its indigenous African character as evidenced by the strong impact of the rules of customary law. However, the nature of law in the context of human society is different from the nature of law in the physical realm such as the law of motion, the law of gravity, the law of thermodynamics etc. When we talk about law in the human society, we mean that set or body of rules that frames human actions. In this respect, the purpose or nature of Nigerian law among other things, is to order or prohibits certain actions, disobedience of which involves a penalty by the government.

In this regard, the nature of Nigerian law has many attributes or characteristics, and these attributes of law include the following:

(a) Nigerian law is usually made by the legislature, that is, the parliament, or by delegated authority.
(b) This august body has the power to make laws for the peace, order and good governance of Nigeria. By virtue of legislation or statutes, successive governments have affected, more and more positively the political, economic and social aspects or national life.
(c) Law today is mostly codified, that is, written, at the insistence of the lawmakers, especially, when it is made by parliament and so forth. Nevertheless, laws that emanates from custom are mostly unwritten-common laws.
(d) And finally, the law is fundamental and pervasive. There is law with reference to nearly all things Nigeria law, therefore, covers and regulates practically all aspects of life and human activity.

SELF-ASSESSMENT EXERCISE

What are the attributes of the legal system?

4.0 CONCLUSION

In this unit we have discussed Nigerian legal system, such as, its duality, external influence, geo-cultural diversity, the system of precedents, its order to judicial hierarchy, fusion of the legal profession, and its military influence. It is therefore, apt to conclude that a legal system is a necessity to ensure a safe, progressive and free society. There has to be law an order so that lives, property and society will be safe, orderly and peaceful.

5.0 SUMMARY

The existence of a legal system is therefore a necessity in the overall interest of everyone and society for the continued protection of person, their properties, rights and freedoms on the one hand, and for the safety of the state and its interest on the other hand, as opposed to lawlessness, chaos and disintegration.

6.0 TUTOR MARKED ASSIGNMENT

The relevance of a legal system cannot be over emphasized, explain this in the overall context of the Nigerian legal system.

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UNIT 3 SOURCES OF NIGERIAN LAW

CONTENTS

1.0 INTRODUCTION

Nigeria like other country is governed by legislation, rules and principles, all aimed at establishing and sustaining an orderly Nigerian society. It is however, pertinent at this juncture, having looked at the meaning and nature of Nigerian legal system, to study the various sources of what is today referred to us as Nigerian law. But the expression "sources of Nigerian Law" is capable of bearing several meanings depending on the context in which it is used. It could mean either the starting point of Nigerian law or the place from which the law can be got, i.e, the literal or material source, the historical sources, the formal sources or the legal sources of a rule of law. But it is of largely shaped by our Colonial Masters namely, Britain. Prior to the amalgamation by Lord Lugard in 1914, there existed three distinct administrations in the geopolitical entity that is today known as Nigeria. Therefore, Nigerian law sprang from two principal sources, namely (a) The Received English Law, and (b) Indigenous Sources.

2.0 OBJECTIVES

In this unit you are expected to understand fully:

(i) The history and sources of Nigerian law
(ii) To distinguish between Common law and Constitutional law
(iii) To know types of laws
(iv) To be able to know Case laws
(v) To differentiate between Decrees and Acts
(vi) To be able to differentiate the 3 Legislative Lists.

3.0 MAIN CONTENT

3.1 Local Legislation:

The laws made by the Nigerian law making authorities like the Federal and State Legislatures to a large extent constitute source of Nigerian laws. Considering the political history and constitutional framework of legislation in Nigeria, Legislations can be classified as:

(1) **Ordinances:** These were Legislations passed by the various Legislative authorities in the country during the colonial era prior to October 1, 1954.

(2) **Laws:** These are enactments made by the legislature of a Region or a state or having effect as if made by that legislature during a civilian regime. They are often called ***Laws of the States.***

(3) **Acts:** These are legislations made or deemed to be made by the Federal Legislature of a civilian government. They are often called ***Acts of Parliament.***

(4) **Decrees:** Are laws by the Federal Military Government under the various Military Governments that the country has witnessed.

(5) **Edicts:** Are laws made by the various State Governments in a Military dispensation. Such laws are signed by the Military Governors/Administrators.

(6) **Subsidiary Legislations:** The Parliament, though charged with the duty of law making, often finds it difficult to discharge its duty exclusively because it has so much to do and so little time within which it can be done. This difficulty is overcome by Parliament delegating its legislative authority to administrative bodies and other agencies within or outside the executive arm of government. Laws by such bodies and agencies are referred to as subsidiary or delegated legislations and they are usually made in form of Rules, Orders, Regulations and Bye-laws.

SELF-ASSESSMENT EXERCISE 3.1

State and explain the various classifications of Legislations.

3.2 The Constitution/Legislative Competence:

In a civilian regime, the Constitution is regarded as the primary law of the land and the source of all other laws. For instance the ***Constitution of the Federal Republic of Nigeria 1979*** in Section I as well as 1999, proclaimed its supremacy over all other laws and provided further that where any other law is inconsistent with the provision of the Constitution, that law is null and void to the extent of its inconsistency.

The 1979 and 1999 Constitution respectively, also recognized that Nigeria is a Federation and in that regard, the unique feature relating to division of legislative powers in a Federal system like ours is contained in these Constitutions. The various legislative powers are identified and classified under 3 lists.

The lists are:

(i) **Exclusive Legislative List:** Only the National Assembly can legislate upon matters contained in this list. Examples of such matters are armed forces, defence, police affairs, external affairs, currency etc.

(ii) **Concurrent Legislative List:** Both the National Assembly and State House of Assembly have competence to legislate on matters contained in this list. Matters here include Education, Health; Assembly may conflict in respect of the matters contained in this list. In such a situation, Section 4 (5) of the 1999 constitution provides that the provisions of the Federal Act shall prevail and the State Law will be null and void to the extent of its inconsistency with the Federal Act.

(iii) **Residual List:** All other matters that are not mentioned either in the exclusive or concurrent legislative list fall within the Residual List and are exclusively reserved for State Assemblies.

Position under the Military

A Military regime is not a democratically elected government within the provisions of the Constitution. So there is a strong tendency to see such a regime as being unconstitutional or illegal. Section 1 (2) of the 1999 Constitution by implication declared Military government an illegal government. However with the coming into power of any Military regime, the first task they are faced with is suppressing the supremacy of the Constitution especially the provision that prohibits modernization of Nigeria by Military Government. They would also make law to legalize the illegal government.

Therefore, while the Constitution of the Federal Republic of Nigeria is supreme under civilian regime, however, under Military regime, the Military Decree is supreme.

SELF-ASSESSMENT EXERCISE 3.2

Within the Nigerian context are the various classification of legislative powers adhered to.

3.3 Case Law/Judicial Precedent:

Judicial Precedent or Case Law refers to the law as derived from the previous decisions of courts.

The judiciary is traditionally vested with the power to interpret laws made by the Legislature. But since the pronouncements of courts in cases are regarded as authoritative, they are binding on the parties to those cases and therefore laws. The doctrine of ***Stare decisis-*** (Let the decision stand) give the concept a wider application to subsequent cases similar in nature to the issues involved in previously decided cases.

It is not everything said by a judge in the course of his judgment that constitutes a ***Precedent.*** Only the pronouncement on law in relation to the material fact before the judge constitutes the precedent. A Judicial precedent is therefore, the principle of law on which a judicial decision is based. It is the ***Ratio decidendi*** (i.e. the reason for the decision).

Therefore, when a court is called upon to apply the decision in a previous case, the court is expected to follow that part of the previous decision, which represents the *ratio decidendi.* This is the portion of the decision based on the actual facts of the case. But the other parts of the decision, which are not based on the facts of the case, are referred to as *Obiter dictum* (i.e things said by the way) meaning those words delivered by a judge, which are not essential to his decision. They are pronouncements of law on hypothetical situations; as such they are not binding precedent on a subsequent court.

SELF-ASSESSMENT EXERCISE 3.3

Explain what in the course of judgment constitutes a *Precedent.*

3.4 English Law:

The English laws which comprises Acts or Orders-in-Council that are applicable directly to Nigeria are statutes of General Application, the Common Law and doctrine of equity.

The Received English law is part of our colonial legacy. Following the Berlin Conference of 1884-1885, which was summoned by the Chancellor of Germany, Otto von Bismark, Britain was empowered to control the coast from Lagos up to Calabar. Therefore, prior to the year 1900, laws that were enacted and passed for Britain in the British Parliament were applicable to Nigeria as a British colony. "With the result that laws that came into existence at the time Nigeria was not even in contemplation as a country, still apply to this country up to this day."

These laws are referred to as Statutes of General Application. Statutes of General Application, which were in force in England on January 1, 1900, apply in all the states of the Nigeria Federation except in the states in all defunct Western and Mid-Western regions.

Therefore, common law and equity remain important parts of Nigerian law, however, before and since independence, legislations, or statutory enactments have been on the increase in power and coverage.

SELF-ASSESSMENT EXERCISE 3.4

The Received English law is part of our colonial legacy. Explain.

3.5 OTHER SOURCES OF NIGERIAN LEGAL SYSTEM

1. Customary Laws: These laws must undergo three validity tests

(I) That is not repugnant to natural justice, equity and good conscience.

The following cases are applicable here:

(a) Edet vs Essien(1932) 11 N.L.R.47

(b) Re Effiong Atta(1930) and

(c) Mariyama v. Sadiku EJo(1961) N.R.N.L. R 81

(II) That must not be incompatible either directly or by implication with any law for the time being in force. In this case see: Taiwo Aoko v. Fademi (1961) 1 ANLR.400, Adesubokan v. Yinusa (1971).

(III) That must not be contrary to public policy. In this case see: Cole V. Akinyele (1960) 15 WACA 20.

3.6 International Law

International law, on the other hand, is the law that binds respective States and regulates their mutual co-existence and relationship. The sources of international law include international customary practices, Treaties, Bilateral agreements and Conventions. While individuals or juristic persons are the main subjects of municipal laws, international law deals primarily with States.

4.0 CONCLUSION

At this juncture, it is important to restate the fact that there is no human society in this modern age that is not based on law. It must be stated however, that any piece of legislation or a body of rules and principles that is not enforced is as good as nothing. What is important about rules is their actual observance/application since they are of little value if they are not the active instruments used in the regulation of the activities and behaviours of man in society.

Therefore, to have viable legal system within a defined area, there must be in place certain ultimate principles from which all orders are derived but which are themselves self-existent.

5.0 SUMMARY

Nigeria, under British colonial rule, derived legal authority from the Queen in Parliament. But within the attainment of independence in 1960, and subsequently under the Republican Constitution of 1963, this umbilical cord was severed and the Constitution became the basic law for Nigeria. In fact, section 1 of that Constitution contained the following declaration:

This Constitution shall have the force of law throughout Nigeria, and subject to the provisions of section 4 of the Constitution (granting Parliament the power to alter the Constitution) if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. Thus, the bulk of our laws today, are in the form of Statutes. The codification of our criminal law, exemplified this.

6.0 TUTOR MARKED ASSIGNMENT

(i) What is Judicial Precedent?

(ii) Define English law

(iv) Differentiate the following:

(a)Acts from Laws

(b) Decree from Edicts and Bye-laws from Delegated Legislation

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MODULE 3

UNIT 1: Nigerian legislation
UNIT 2: The Reasoning behind Legislation
UNIT 3: Legislative Process
UNIT 4: The Rule of Law and Political Governance
UNIT 5: Tools of Social Control via Law

UNIT 1: NIGERIAN LEGISLATION

CONTENTS:

1.0 INTRODUCTION

Legislation as a source of law means the law made by the organ of government whose primary duty is to make law for the State. Therefore, legislation is the product of a deliberate and formal expression of rules and conduct made by the relevant law-making authority. It is important that the relevant authority is recognized for the purpose by the operative political and legal machinery of the State, otherwise the declaration lacks legality and the force of law. Thus, laws made by the legislature are called "Statutes". Nigerian statutes are variously known as Ordinances, Acts, Decrees, Laws and Edicts depending on when they are enacted.

5.0 OBJECTIVE

In this Unit you should be know the following:-

(i) Different types of legislation.
(ii) That Legislation is a source of law.
(iii) That under the Military regimes, Decrees constitute the supreme laws of the land.
(iv) Local legislation is today the most potent and adaptable of all the sources of Nigerian law.

6.0 MAIN CONTENT

6.1 Primary and Subsidiary Legislation:

Legislation may be primary or subsidiary legislation, otherwise known as statutes, are those enacted laws that emanate from the major legislative arm of government. This

may either be the National Assembly, comprising the Senate and House Representatives or a State House of Assembly, serving the Federal and State Legislative interests respectively. These Statutes go by the nomenclature Ordinances, Acts, Laws, Decrees or Edicts, depending on the status and political nature of the enacting authority. Legislation as a source of law is easily the most important source of law in modern times, over shadowing other sources of law so much that when we talk of law today we immediately think of the Statute.

3.2 Delegated Legislation/Subsidiary Legislation:

However, a subsidiary, on the other hand, has been defined as legislation made by a person or body other than the sovereign parliament (or the government of the State or Federation) by virtue of powers conferred either by Statute or by legislation which is itself made under the statutory power. This form of legislation is inferior to, and may be repealed directly by, a primary legislation. Regulations, Rules, Orders and By-laws are some of the subsidiary legislation. Thus, such laws made by the delegate within the limits of its powers also form part of the primary sources of law in Nigeria, and have been consolidated in the laws of the Federation of Nigeria since 1990 immediately after their respective principal Act.

3.3 Nigerian Customary Law:

Nigeria became a truly federal State on October 1, 1959 with the introduction of a Federal Constitution by the Nigerian Order-in-Council of that year. But prior to the advent of the colonialist, the various existing communities in Nigeria had their own system of customary law governing their affairs. Customary law is rules of conduct accepted by members of a community as binding among them. Nigerian Customary Law can be classified into ethnic/non-Moslem customary law and Moslem (Islamic Law). The ethnic customary law is indigenous, unwritten and diverse from one ethnic group to the other. Moslem law is however, largely written in the Koran and the practice of the prophets.

Thus, the rules of customary law are subject to tests of validity. Before a customary law rules is applied by the court, it must have passed the three tests are that the customary law rule must not be –

(i) Repugnant to natural justice, equity and good conscience;
(ii) Contrary to public policy, and
(iii) Incompatible directly or by implication with

Any rule of customary law that have passed the above tests also form part of the corpus of the Nigerian Law

3.4 Case Laws:

When a Judge makes a decision in a case he disposes the immediate problem that comes before him and also lays down a legal principle, which other Judges will have to follow. When a lower court is confronted with a legal question or issue, the lawyers and Judges are free to search into the case laws and find a precedent which they can fall back upon

and cite as authority to a court that is lower than the court that delivered that judgment, where the facts of the case are similar to one that has been decided before.

Thus, judicial precedent is one of the main sources of law in Nigeria. It is a judgment or decision of a court cited as an authority for the purpose of persuading the court to decide a similar case on the same principle as the previous one.

3.5 International Law:

International conventions, Treaties and Resolutional bodies such as the United Nations Organization (UNO), African Union (AU), and International Labour Organization (ILO) etc. form a secondary source of law in Nigeria. They are however translated into primary source if the Conventions, Treaties or Resolutions are ratified by Nigeria and their provisions enacted into our law. Section 12(1) of the 1999 Constitution of our country makes a provision for the implementation of these treaties after their domestication/ratified by the legislature.

SELF- ASSESSMENT EXERCISE

Explain the statute that enacted laws emanate from the major legislative arm of government.

4.0 CONCLUSION:

Legislation involves wider participation, which is more easily achieved through the process of representative democracy in the legislative house. Each of the legislative houses, at both Federal and State levels, has a broad representative to cater for the interests of its constituencies. More importantly, the relative ease with which Statutes are enacted makes this process of law making more endearing than any other does.

5.0 SUMMARY:

Legislation has a tremendous effect on the other sources of law. Where the content of another source of law is in conflict with the provisions of the legislation, that other rule of law will be null and void to the extent of its inconsistence with that provision of the legislation. Thus, legislation can and has been used to change the content of other sources of law by repealing or abrogating them.

6.0 TUTOR MARKED ASSIGNMENTS:

(i) Explain what is meant by Legislation and what do you understand by the term, "Domestication of International Treaties"?

(ii) Where the content of another source of law is in conflict with the provisions of the legislation, that other rule of law will be null and void. Vividly throw more light on this statement.

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UNIT 2: THE REASONING BEHIND LEGISLATION

CONTENTS:

1.0 INTRODUTION

Legislations are mostly instigated by the demands and suggestions of the citizens, interest groups, a community, a private person or government institutions or departments in form of proposals to the legislature. Thus, the object of this Unit is to gain insight into the dynamics and legal reasoning behind legislation in our country.

2.0 OBJECTIVES

In this Unit you will be able to understand the following:-

(i) The dynamic and legal reasoning behind legislation.
(ii) That as the society develops and embraces new attitudes, values and ideas, its legal system automatically makes a paradigm shift as well.
(iii) How laws are mostly instigated by suggestions and proposals of citizens and other interest groups.

3.0 MAIN CONTENT

3.1 Dynamic Nature of the Society:

The subject of law is about human being and the target of its specification is human behaviour. Human beings by nature are dynamic; therefore, law must be and is very dynamic. As the society develops and embraces new attitudes, values and ideas, its legal system also reacts to bring its law into conformity with the changing attitudes, values and ideas. Many of our customs have been invalidated on the grounds that they are incompatible with natural justice, equity and good conscience and in some new attitude have been enacted into law.

3.2 Anti-social Elements:

Legislations may be made to arrest deplorable, reckless or anti-social behaviours or practices of the people. Such behaviours may be injurious to the interest of the whole

populace or the image of the country abroad. For instance, in order to curb unconventional banking practices leading to distress and failures in the Nigerian banking institutions, the Nigerian government has enacted certain Decrees in order to arrest and prosecute those indulging in evil dealings against the society.

3.3 Paradigm shifts in Universal Value:

Legislation may be made to embrace global shifts in value systems and incorporate international standards in certain areas of our domestic law. For example, if there are new legislation on women's rights, the rights of children, conservation and preservation of nature, environment, endangered species of animals, birds and fishes among others, there must be incorporated into our existing laws through domestication, and our membership in various international organizations, necessitated this.

3.4 Scientific and Technological Breakthroughs:

Proposals for legislation may be made to cope with the scientific and technological breakthroughs in order to maintain law and order in the area. The advent of satellite communications and the use of computers have made access to information throughout the world easy at the touch of a button. However, the Internet, described as the information super highway has also brought about a new set of problems, rights, duties and liabilities, which now necessitate the development of information technology laws.

3.5 Change in Political cum Economic Ideologies of Government:

A change from a Military regime to a civilian regime or vice versa will inevitably necessitate the abrogation of certain Decrees and Edicts and the promulgation of new ones to establish a new Legal Order and establish the policies of the government.

SELF- ASSESSMENT EXERCISE

Explain the dynamics and legal reasoning behind legislation in Nigeria

4.0 CONCLUSION

In this Unit we have discussed various aspects of legal reasoning in law. For example, we discussed about the dynamic nature of the society, anti-social elements, paradigm shifts in universal value, scientific and technological breakthroughs change in political cum economic ideologies of government. Hence, the above-mentioned points are the reasons why new legislations may be made.

5.0 SUMMARY

Apart from the above factors, legislation may be made on a matter at the instance of a government ministry, corporate body, a legislator or a private citizen. Communities may also call for legislation on matters affecting them, for instance, the clamour by the populace that they, are subjected to unfair and illegitimate multiple taxations may lead the government to ensure that its tax system has a human-face.

6.0 TUTOR MARKED ASSIGNMENT

Various circumstances necessitate the reasoning behind legislation. Discuss the circumstances.

7.0 REFERENCES/FURTHER READING

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UNIT 3: THE LEGISLATIVE PROCESS

CONTENTS:

1.0 INTRODUCTION

The primary purpose in this Unit is to examine the process by which laws are made in both legislative houses. This is contained in Sections 58 and 100 of the 1999 Constitution, respectively. A special procedure is required under section 59 for money bills. Although these sections of the Constitution have been suspended by the Constitution (Suspension and Modification) decree of 1993. The legislative powers of the Federation are vested in the National Assembly, consisting of a Senate and a House of Representative, while those of the State are vested in their respective House of Assembly. The National Assembly is conferred with the powers to make laws for the peace, order and good government of the Federation or any part thereof. These powers covered all matters in the exclusive legislative list set out in part 1 of the Second Schedule to the Constitution and also those matters in the concurrent legislative list, to the extent prescribed therein.

The House of Assembly of a State has also powers to make laws for peace, order and good government of the State or any part thereof with respect to residual matters and matters in the concurrent legislative list, to the extent prescribed therein.

However, for a bill to become law, it must be passed by a simple majority of the members present and voting in the House where it originated after which it is sent to the other House where it originated after which it is sent to the other House to go through a similar procedure. The same procedural steps equally follow in both the National and State Houses of Assemblies.

2.0 OBJECTIVES

In this Unit you will learn the following:

(i) How a bill becomes law.
(ii) The difference between Money Bills under the Civilian regime and under the Military, respectively.

3.0 MAIN CONTENT

3.1 Money Bills:

Some special procedure is provided for, under Section 59 of the 1999 Constitution, where the bill in question is a money bill. A money bill is defined as:

(i) An appropriation bill or a supplementary appropriate bill including any other bill for payment, issue or withdrawal from the consolidated Revenue Fund or any other public fund of the Federation of Nigeria.

(ii) A bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.

Ordinarily, a money bill goes through the same process as any ordinary bill. However, where a money bill is passed by one of the Houses of the National Assembly but is not passed by the other House within a period of two months from the commencement of a financial year, the President of the Senate shall within 14 days thereafter arrange for and convene a meeting of the Joint Finance Committee to examine the bill, and shall be presented to the National Assembly sitting at a joint meeting to the President for assent.

3.2 Ordinary Bills

An Act of the National Assembly commences as a bill and may be introduced in the Senate or House of Representatives. A bill may either be a private bill introduced by a private member of any of the legislative bodies and intended to benefit the limited interest of a section of the society or it may be a public bill affecting the interest of the public at large. The Chairman of the appropriate standing committee or an ordinary member of the House as a private member may introduce a bill.

3.3 The Legislative Process under the Military:

Considering the frequency of Military intervention in Nigeria Politics and hence the legal system, it is important to mention the peculiar nature of Military legislation and the legislative process.

One characteristics feature of all the Military administrations Nigeria has had, was the arrogation of ultimate power to themselves. Unlike civilian a government, which has elected representatives from different constituencies, derive their legislative authority from the Constitution, which is the Supreme law of the land. Sadly enough, Military regimes, in fact, subdued the Constitution. The Military assumed the power to amend or suspend all or any part of the constitution by Decree. A case in point was the Suspension and Modification of 1979 Constitution.

Therefore, in a civilian government, the principle of separation of powers is entrenched, but Military regimes have a tendency to exhibit an incomplete separation between executive and legislative functions. In the same token, the rules of Federalism were hardly obeyed as the demarcation between Federal and State Powers was very thin and the central government had the ultimate powers to legislate on all matters.

3.4 Types of Legislation:

The following types of legislation can be identified:

(i) **Public General Act:-** which applies to everyone and everywhere within the State. Examples of such legislation include the Criminal Code or the Penal Code.

(ii) **Local Act:-** which applies to a particular locality or community. For example, a law made to combat environmental or ecological problems in the Niger Delta area or a law establishing a particular University.

(iii) **Private Act:-** This is even more restricted in its scope and application. A Private Act is one made in respect of a particular person or body of person including individual, local authorities and statutory bodies. For example, a Statute granting a State pardon, to a convicted person or reverting certain properties earlier confiscated back to him.

(iv) **Consolidating Act:-** This is a new statute passed which re-enacts the content of earlier Statute with such modifications and additions as are necessary to produce a coherent whole.

(v) **A Code:-** This is a Statute which attempts to put together in one document the provisions of the existing legislation, the principles of common law and doctrines of equity which have over a period of time on a particular subject. Examples include the Criminal Code, Penal Code and The Companies and Allied Matters Decree, No.1, 1990.

4.0 CONCLUSION

Where laws are enacted in the legislature such as the National Assembly or a State House of Assembly, which are made up of the elected representatives of the people, the law has to be passed according to the prescribed legislative procedure. It is therefore essential to conclude that on the legislative process that much time and resources, human and material, are expended in the course of enacting a Statute. The legislature would have considered all apparent loopholes and sought to resolve any uncertainty in order to ensure that the law, when finally passed, is clear and certain and that it is, as much as possible, devoid of all ambiguities.

5.0 SUMMARY

Unfortunately, the impact of the incessant interventions of the Military in Nigeria's political development has left an indelible mark on its legal system. Nevertheless, the repeated dismantling of governmental structures, it is commendable though that the Constitution has always stood the test of time. The legislatures have been working. People are now witnessing and enjoying the dividends of Civilian Government. Laws are now made and passed by people's representatives at the Federal and State level.

SELF-ASSESSMENT EXERCISE

Explain extensively the various types of legislation.

6.0 TUTOR-MARKED ASSIGNMENT

(i) Define Money Bill.
(ii) What is Consolidated Revenue Fund?

7.0 REFERENCES/FURTHER READINGS

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UNIT 4: THE RULE OF LAW AND POLITICAL GOVERNANCE

CONTENTS:

1.0 INTRODUCTION

The rule of law is one of the cardinal ingredients of political or democratic governance. Political governance largely refers to the rule by the people, either directly or through representatives. Political governance or democratic rule assumes the value and the fundamental quality of all individuals. Its main principles are **liberty** and **equality** for all citizens.

For democratic governance to be in place, sustained and consolidated, the rule of law must subsist and in fact forms the foundation of the former. In this regard and arrangement, the people are actually equal before the law, are subject to the rule of law, have liberty and equal opportunities, and uniform stake in the polity.

2.0 OBJECTIVES

In this Unit you will be able to understand the following:-

(i) The extent to which the rule of law prevails and subsists in Nigeria.
(ii) The rule of law and its basic elements.
(iii) Political governance standards.

3.0 MAIN CONTENT

3.1 Meaning of the Rule of Law:

Rule of Law is a constitutional doctrine, which emphasizes the supremacy of the law as administered by the law courts. Literally, the rule of law means the governance of law. That is to say that the entire society including democratic institutions, organs of government and the civil society must be subject to legal rules.

It demands that all actions of government officials and the citizenry be justified in law. Thus the law is supreme and all must be subordinated to it. One important point to note is that the idea of the rule of law emanates from man's conceptions of the nature of man itself. Man has innate distrust of his fellow man, especially when vested with power. Man by nature is seen as expansive, domineering, atavistic, and governed by the

principle of ***cupiditas*** and ***lubido dominandi***. Hence, when vested with absolute power, man has the tendency of subordinating, exploiting and suppressing one another. Remember that power corrupts absolute power corrupts absolutely. Thus, the only mechanism available to check and curtail the excesses of man within the ambit of the law and social harmony is the rule of law.
However, Dicey (1959) is typical of those who conceive the rule of law as a legal control of the executive arm of government. He opined that the rule of law is distinct but related meanings.

It means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. The rule of law means not only that with us, no man is above the law, but that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.
Therefore, from the above expressed views, Ewelukwa, (1997), summarized that the concept meant "not only to safeguard and advance the civil and political rights of the individuals in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized".

3.2 Political Governance:

In its most general sense, democracy connotes a society in which each individual member is believed to entitle to equality of concern or opportunity. Meanwhile, the term political democracy means more than mere forms of government, especially because there is evidence of increasing lip service paid to democratic forms without practice of the substance of political democracy. It is concerned with those institutions and practices considered necessary to secure the principles of popular participation as governance, equality and equalization of political and economic opportunities. The Nigerian political leadership is presently saddled with the onerous task of instituting political democracy that will guarantee economic freedom and enhance societal well-being and popular participation in governance.

Nigeria has signed several International Codes and Standards on democracy and political governance, but they have not all been ratified and reflected in Nigerian laws and are thus not being implemented. One reason for this is that no proper records are kept of all the standards and codes that Nigeria has signed with a view to their being ratified. Another is the delay caused by the slow process of passing a bill in the National Assembly when one is submitted for ratification of a Standard or Code. Also, Nigeria's federal structure and the rigid procedures for amending the Constitution makes it difficult to ratify some Standards and Code.

To correct the situation and ensure that outstanding Standards and Code are ratified in March 2001, the Government established a Committee on the Ratification of

Outstanding Treaties, Conventions, Protocols and Agreements entered into by Nigeria with other countries and international organizations. The Committee recommended steps to take in quickening ratification of Standards and Codes.

4.0 CONCLUSION:

In this Unit we have vividly discussed the rule of law, its meaning from different perspectives. We also discussed political governance in relation to the rule of law. We also touched up the imperativeness of the rule of law in any given society. Thus, it is apt to conclude that the rule of law remains basically a mirage as the independence of the judiciary becomes a heavily eroded and vitiated.

5.0 SUMMARY

For Nigeria to consolidate the gains therein in democratization process and hence accumulates substantial democratic residues in its broadest senses, the principles of rule of law must be appreciated, respected and sustained by the political leadership. This among others will guarantee political freedom and political equality as well as economic freedom and economic equality.

SELF-ASSESSMENT EXERCISE

There is increasing lip service paid to political democracy democratic practice in Nigeria. Explain.

6.0 TUTOR MARKED ASSIGNMENT

For democratic governance to be in place, sustained and consolidated, the rule of law must subsist. Discuss.

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UNIT 5: TOOLS OF SOCIAL CONTROL VIA LAW

CONTENTS:

1. INTRODUCTION

The divergence view within the legal–philosophers about the meaning of law notwithstanding, it is unanimously agreed by all that law is an instrument of social control, helping to maintain social order in a number of ways.

2.0 OBJECTIVES

In this Unit you are expected to know the following:-

(i) The meaning of social control.
(ii) The techniques of social control through law.
(iii) That there are similarities and differences between the different techniques, etc.
(iv) That Law is not the only instrument of social control.

3.0 MAIN CONTENT

3.1 What is Social Control?

Social control is the control of social behaviour that is, behaviour that affects others. The 1999 Constitution of Nigeria has provisions for the exercise of rights as well as duties for its citizens. For instance, a person has the right to decide whether or not to work under certain conditions. If he chooses not to work, he cannot be forced by law to do so against his will. This is because nobody except perhaps himself and members of his household, are likely to suffer for his decision. Therefore, Mr. A's decision to work and where to work to a large extent is not socially controlled, at least directly. However, if Mr. A, driven by inordinate ambition attempts to steal the food or money of Mr. B, it then becomes the concern of the society to control his act or tendencies in the overall interests of the society.

3.2 Techniques or Tools of Social Control:

There are seven main techniques used in modern law, and these are:-

(I) **The Penal Technique**:

When a person is alleged to have committed a crime, the victim instead of resorting to vengeance or self-help reports the matter to the police. The police who will decide

whether or not to prosecute depending on the available evidence will then investigate the matter. In case the police decide to prosecute, the suspect is arraigned in the court where he will be given the opportunity to defend himself (fair learning).

However, if the prosecution succeeds in proving the guilt of the suspect beyond reasonable shadow of doubt, the offence depending on the nature, may attract the punishment of fine and or imprisonment or even death sentence, which is a form of elimination from the society. Thus, the aim of the Penal technique is to curb deviant behaviours in the face of the increasing wave of crime in the country ranging from petty stealing, assassination, robbery, advance fee fraud (419), bribery, corruption, electoral offences, drug pushing, etc.

(II) **The Grievance – Remedial Technique:**
While the penal technique involves matters relating to public order or criminal law, the grievance remedial technique is applicable mainly in the area of civil law. The technique establishes some substantive rules, principles and standards, which create legal rights and duties, and defines the proper remedies in case of breach. It also provides for the enforcement of the rights and duties through the law court.

The remedies available to an aggrieved person are multifarious depending on the nature of the right that is breached and the circumstances of each case. Thus, the logical basis of this technique is that if adequate remedy is granted to the aggrieved person he is likely to be genuinely pacified and in this way the law would have succeeded in discouraging injustice or dissuading aggrieved people from taking law into their hands.

(III) **The Public Benefit Conferral Technique:**
This technique is aimed at ensuring the upliftment of the welfare of the members of the society in the expectation that this will in the final analysis bring about order and peace.

This technique appears to be effectively used by the developing countries because they are always seeking to create more conveniences for their people. It is a known fact that the government of United States of America can send an Aeroplane to salvage the life of a single American who is trapped in another country in an emergency situation. In Nigeria, many programmes have been introduced at different times in different sectors of the economy aimed at alleviating the plight of the poor and underprivileged.

(iv) **The Constitutive Technique:**
This technique fosters social order by facilitating the pooling of efforts and resources together among a group or groups of people to achieve certain desirable social ends such as promotion of commerce, charitable, social and cultural objectives.

(v) **Administrative Regulatory Technique**:

Under this technique, government agencies adopt regulatory standards; communicate them to private operators and takes steps to ensure compliance. The steps will usually include system of licensing, inspection, writing warning letters or revocation of license before the bringing of administrative proceedings, civil litigation or a criminal prosecution when necessary as the last resort.

(vi) **Fiscal Technique:**
Fiscal technique has been used in the modern times to discourage certain anti-social behaviours and thereby helping to bring about a measure of social order. Also, some taxes have been used ostensibly to redistribute income and bridge the widening social gap between the "haves" and the "have nots" in the country. Such taxes include the income tax and capital transfer tax. But the latter was abolished in 1997.

(vii) **The Private Arranging Technique**:
This technique operates in the area of civil law. What the private arranging technique does is for the law to provide a framework of rules, which will determine the validity of private transactions and then leave the individual with the option of arranging his private affairs the way he likes within the framework of the law. Two quintessence of private arranging are marriage and the making of Will. Marriage under the Marriage Act or in the Registry or under the custom or a combination of any two or all of the options.

4.0 CONCLUSION
In this Unit we have discussed various aspects of social control through law. Although there seems to be some ineffective in some of the techniques employed, yet it is quite likely that there is no viable option to it in controlling deviant behaviours in the society.

5.0 SUMMARY
We can rightly sum up that there are keen similarities and overlap between the different techniques, while the differences between each of the techniques should always be kept in mind. It is possible for the law to use more than one technique to achieve a particular objective. When legislation is being considered, the government must choose which technique or combination of techniques will best achieve its legislative purpose.

SELF-ASSESSMENT EXERCISE

Explain the techniques used in Social Control in modern law.

6.0 TUTOR MARKED ASSIGNMENT
What is social control and what techniques can be applied to bring about effective social control in our society?

7.0 REFERENCES/FURTHER READING

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MODULE 4

Unit 1: Interpretation of Statues
Unit 2: Justice and Rights
Unit 3: Grounds for Criminal Liability And Punishment
Unit 4: Recklessness, Negligence and *Mens Rea*
Unit 5: The Legal Profession in Nigeria.

Unit 1: INTERPRETATION OF STATUES

CONTENTS

1.0 INTRODUCTION

In English law, the principal sources of legal rules are status and precedents (the case law). Whereas precedence is guidance by example, statutes are guidance by precept. Statutes generally come in a clear set of words. The principle of parliamentary draft is certainty, thus statutes are to be as certain as possible. After all, law ought to be certain.

The Supreme Court in **Awolowo Vs Shagari** laid down the following principles for the interpretation of statutes, in the following words:

A statute should always be looked at as a whole

Words used in a statute are to be read according to their meaning as popularly understood at the time the statutes became law, a statute is presumed not to alter existing law beyond that necessarily required by the statute. It is necessary to emphasize that a decision on the interpretation of one statute generally cannot constitute a binding precedent with regard to the interpretation of another. The concept of legal reasoning through judicial process as best explained in this unit. The power to interpret statutes is a constitutional right vested in the courts by section b of the 1999 constitution.

2.0 OBJECTIVES

In this unit, you will be able to know the following:

i. The meaning of statutes
ii. The importance of statutes
iii. The arguments behind statutes

iv. Canons of interpretation
v. Interpretation of the Constitution, etc.

3.0 MAIN CONTENT

3.1 Canons of interpretation

There are three main canons of interpretation of statutes. They are:

i. The literary rule,
ii. The mischief rule, and
iii. The golden rule

i. The Literary Rule:-

This is also referred to as the ordinary rule, the primary rule or the plain rule. This canon of interpretation is the first and most commonly used. It is the most important of statutes. It states that where the words used are clear and unambiguous the courts should apply the ordinary meaning of the words as used in reaching a decision. In **William V. Akintude**, the learned justice of the then Court of Appeal, How Justice Pats Acholomu, agrees that: In determining either the general object of the legislation or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice, and legal principles should in all cases of doubtful significance be presumed to be the true one.

Justifying the dictum above, His Lordship observed that expedience and prudence will help in understanding the character of an enactment. The Courts are not to defeat the plain meaning of an enactment by introducing their own words into the enactment as was wrongly done in **Okumagba V. Egbe.** Even when words are used in the technical sense, it must be construed in its ordinary technical sense. For example, "call to bar" or "bar and bench". These words have acquired technical meanings and shall be interpreted in their ordinary technical meanings.

In the popular case of **Akintola Vs Adegbenro**, the Privy Council applying the ordinary meaning of S. 33 (10) of the constitution of Western Nigeria echoed that where the words are dear and unambiguous the literal interpretation must be adopted.

ii. The mischief Rule

In the course of interpretation of statutes judges express their own opinions as to social policy and these opinions do not always command universal assent. If by any chance the literary rule or interpretation leads to ambiguity, then the intention of the parliament must be sought. This bids the judges to look at the law as it was before the Act being interpreted and the mischief which statute was intended to remedy. The Act is then construed to suppress the mischief and advance the remedy. The Heydon's case has been described as the root or origin of the mischief rule. The aim of the mischief rule is to ascertain how and why the statute being construed to have cured the defect in the common law or previous statute. This is done by following a logical order prescribed in the Heydon's case, that is to say:

i. What was the common law or statute law before the Act being construed was passed?
ii. What was the mischief or defect for which the common law or statute did not provide?
iii. What remedy has the legislation resolved and appointed to cure?
iv. What was the true reason or the remedy?

The court after due consideration of the above proposition is duty bound to make such construction as shall suppress the mischief and advance the remedy. In **Ibekwe V. Machuka**, Justice Mohammed quoting **Akpata JCA in Adeleji V. National Bank of Nigeria Ltd**, expressed the attitude of courts as follows:

In pursuance of the principles that law should serve public interest, the courts have evolved the technique of construction in *bonam partein*. One of the principles evolved from such construction in the interpretation of statutes is that no one should be allowed to benefit from his own wrong. The effect is usually that the literal meaning of the enactment is departed from where it would result in wrongful self-benefit.

Aniagolu JSC cited with approval the principles in Heydon's case (Supra) in **Ifezue V. Mbadugha**, when he said;

To properly ascertain the mischief aimed at by legislation, it is sometimes helpful to look into the history of the legislation. In construing a statutory provision, which is ambiguous, preference should be given to the view, which would not lead to public mischief.

Therefore, the practical utility of the mischief rule depends to some extent upon the means, which the courts are entitled to employ in order to ascertain the mischief, which was intended to remedy. Such exploration will require a true historical investigation, press agitation, party conferences, government pronouncements and debates. In applying the mischief rule, the judiciary must not invent fancied ambiguities.

iii. The Golden Rule:

At times in the interpretation of the literal rule the intention of the legislators cannot be reached. The literal interpretation here leads to absurdity. The courts in such situations allow themselves to construe a statute in such a way as to produce a reasonable result even though this involves departing from the *prima facie* meaning of the words. Generally, an interpretation to avoid absurdity is called the golden rule.

In **Bronik Motors Ltd., V. Wema Bank Ltd,** Idigbe. JSC considering the jurisdiction of the Lagos High Court under S.230, his Lordship said that,

Words in an enactment are used in their ordinary and primary meaning or in their common or popular sense in which they would have been understood the day after unless such interpretation or construction would lead to mischief absurdity. Therefore, through this rule, an inapplicable statute becomes applicable by removing the character of absurdity from the contents of the statute

3.2 Why Statutes Generate Arguments?

H.L.A. Hart has hinted that rules generate fresh looking in the face of application. This is precisely because, drafters are not very aware of the full range of factual situations where the rule will apply, yet the rule's auto-application must be set.

There is relevant indeterminacy of aim. We are not quite sure what we want to do in certain circumstances; hence we may be in the state of relative ignorance of fact and indeterminacy of aim. Human language, for necessarily ambiguous. English language, for example, is not an instrument of mathematical precision. Yet the draftsman will seek precision even though language does not admit of it. Thus, there is an intrinsic indeterminacy of language. However, the context of a case gives us a clue on what to

do. But a statute is frequently stripped of its context. Until very recently, contexts of statutes were forbidden.

Therefore, one of the qualities of good law is clarity. The English legislative mind is rather very detailed in drafting statutes, for law is ordinarily designed so that folks would know what to expect. Statutes need to be interpreted, hence Legisprudence of the jurisprudence or interpretation statutes.

3.3 Interpretation of the Constitution:-

It is also the primary duty of the court to interpret the constitution in doing this onerous task, along the same line of interpreting. Statutes, the courts should not allow mere technical rules of interpretation to defeat the principles of government entrenched therein. In **Bronik Motors, ltd. V. Wema Bank ltd** (Spra), it was clearly stated "the constitution is a living document (not just a statute) providing a frame work for the governance of a country not only for now but for generations yet unborn. In construing it, undue regard should not be paid to merely technical rules, for otherwise the objects of its framers would be frustrated. However, whenever the issue of wide or narrow interpretation should be favoured, the court as much as possible should adopt the wide interpretation, unless such approach will work obvious hardship. In the main, the courts should be liberal in the interpretation of the constitution.

In **Rabise V. State**, the court was reminded to always bear in mind that the constitution itself is a mechanism under which laws are to be made by the legislature and not merely as an Act, which declares what the law is.

The court must not be oblivious of the history of the constitution, the law and the legislations. The sections of the constitution must be read as a whole and the provisions of related sections read together. The Supreme Court in Attorney General of **Bendel state V. Attorney General of the Federation** laid down the principles, which the court must bear in mind while interpreting the constitution as follows:

i. Effect should be given to every word.
ii. A Construction nullifying a specific clause will not be given to the constitution unless absolutely required by the context.
iii. A constitutional power cannot be used by way of construction to attain unconstitutional result.
iv. The Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt within it's entirely, a particular provision cannot be severed from the rest of the Constitution.
v. While the language of the Constitution does not change, the changing circumstances of a progressive society for which it is designed to yield new and fuller import to its meaning.
vi. A constitutional provision should not be construed so as to defeat its evident purpose.

SELF-ASSESSMENT EXERCISE

Explain your understanding of the interpretation of the Constitution. Why are Statutes generating arguments?

4.0 CONCLUSION

When the legislature makes the law, they intend that it will bring order, peace and justice in the society. Unfortunately when these legislations are enacted, they carry with them that characteristic human imperfect quality. This causes some of the legislations to carry on the face of it certain meaning not originally intended by the legislature. It is in the cause of interpretation of statutes that judges dissent in opinion, or superior courts disagree with the decisions of the lower courts, or courts over-rule or distinguish earlier decisions or even litigants go on appeal.

5.0 SUMMARY

The law, it is said, must be certain. Again, one need to balance the concepts of certainty and justice. The more certain the law is, the less just it seems to become, if we make our law absolutely certain, the narrower it applies. But if qualifications are introduced into law, it becomes less certain. Therefore, legal justice is dealing with a case in its individuality. Hence, individualized judgment is a particular application of justice. But the more one does this, the more one moves away from treating like cases alike.

6.0 TUTOR MARKED ASSIGNMENT

i. The best interpretation of law is that law is an interpretative practice. Discuss.
ii. Should judges try to interpret statutes in a way that is faithful to the intention of the legislator?
iii. List the three main canons of interpretation.

7.0 REFERENCE / FURTHER READING

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Unit 2: JUSTICE AND RIGHTS

CONTENTS

INTRODUCTION:

Everyone talks about justice, hence statements of this type – it is just, 'it is right, and so on are appealed to a certain standard, whether or not, it is agreeable that such a standard has to be conceived in natural or conventional terms. The point is that justice forms part of a family of moral concepts, connected with law and politics. And people usually talk of distribution as being 'right' when they can at the same time say that it is just. But what is this thing called Justice? Philosophers and jurists have explained it differently.

2.0 OBJECTIVES

In this unit, you will be able to understand the following:

i. Philosophers and Jurists respective views of justice and rights.
ii. Whether justice is equally fairness or not.
iii. Whether a theory of justice ever be politically neutral.
iv. The common man's views of justice, etc.

3.0 MAIN CONTENT

3.1 Plato viewed justice as the Soul of the state. The great ancient philosopher-Plato, did not think that the identification of justice was easy. Whatever it was, he did not accept the idea that it could be identified, in his *geogias,* with '**Superman morality**' proposed by Callicles, for to do justice is worse than to suffer it. Callicles does not accept Socrates' view either, for he believes that it is moralizing to say that to do injustice is worse than to suffer it since this position bespeaks an appeal to a kind of herd morality that which one can grab for oneself according to Callicles, is just, hence "might is tight", moreover it gives he who has might pleasure to attain his end. In this regard, what is pleasurable is good, and what is good is what one obtains by might, and that is right, that which is right is just, according to Callicles. But Socrates ridicules this view, and Callicles was led to admit that pleasure was subordinate to the good.

In the *Republic,* Plato sets out to determine the nature of justice. In book **one**, Socrates his interlocutors could not determine what it is or what kind of virtue it is, hence Socrates confessed his lack of knowledge of it. Agreed on the discussion however, that there is a justice for one person, Socrates suggests, in Book **Two** of the Republic that if they consider the state, then justice will be more discernible. It implies obviously that the state and the individual have the same principles of justice, neither can be emancipated from the code of eternal justice.

For Plato, there is need for a particular organization of the state for one to see clearly what justice is. He liked a small territory for the city, but its enlargement will ask for more hands in various spheres. Plato was of the view that as the city enlarges, needs for musicians, poets, tutors, nurses, doctors, and so on will arise, and land will no longer be sufficient. War will arise for people will interfere with one another's property and neigbours might intrude. Thus, there will emerge the guardian of the state, who, at first, represents the vigorous and powerful men who will repel invaders and preserve internal order. They must be spirited, gifted and courageous Plato has found craftsmen and guardians, but who are to be the rulers. They are the best of all, powerful and intelligent, carefully selected from the guardians. Plato is to correlate functions in the state with a certain Psychology.

Book **four** of the *Republic,* especially, gives the doctrine of the tripartite nature of the soul. There are three parts to the soul, the rational, the courageous/spirited, and the appetitive parts. The rational part is the highest element. The other parts are perishable. The spirited part is nobler and in humans it is akin to moral courage. The appetitive part refers to bodily desires. Plato in *Phaedmis* made a comparison in which the rational element is likened to a charioteer and the spirited and appetitive elements to two horses. Here one sees Plato's ethical interest in insisting on the right of the rational elements to rule, to act as the Chariotee. It keeps order in the various surgings of the passions of humans.

Functions in the State:
To Plato, functions in the state were likened to the division of the nature of the soul. There is justice when all the parts of the soul are harmonized. The wisdom of the state in the auxiliaries, and the temperance of the state consist in subordination of the ruled to the ruler. Thus, justice in the state is that one does that one is suited for without interfering in the Business of the other class. This will avoid confusion in the state, for Plato was disillusioned when some kind of new breed of politicians or soldiers took over power which ended in the execution of a just man-Socrates, an experience that made Plato to turn his back against active political life. Therefore, Plato's treatment of justice was some kind of distributive concept of justice.

3.2 Aristotle Views on Justice

Aristotle saw justice as essential in the Arts of Human Affairs. It was his belief that every activity tends towards something, that is, an end or goal, which coincides with the good sought in the activity or inquiry. There are numerous activities, hence implying many ends, which are later subordinated to others as means to other ends. However, the chains of activities and their ends cannot continue *ad infinitum*. That is, we cannot desire indefinitely, there must be an end which terminates the series of means and subordinate ends of action- i.e. some object of desire, some object to be attained by action, which is ultimate to us, or which is intrinsically desirable. There must be, according to Aristotle, a good sought for itself, which human beings characteristically aim, and this he called eudaimonia.

Eudemonia, meaning "human flourishing" or well-being, good for man, complete and "always in itself and never for the sake of something else". The art that seeks *eudaimonia* is not an exact science, it needs experience and discipline of the passions to be desired aright. The subjects and properties of the mathematical sciences are easy to define, but not sphere of politics. The sphere of politics is human affairs – human action as judges' noble or baise, fair or unfair, just and defined within human affairs. The particular virtue that is needed to make sure that action and relationships are fairly pursued in the same virtue that founds human affairs.

The virtues are the means of human rationality in the pursuit of the good for man, and the lack of which will frustrate one's movement towards the *telos*. They come as a result of habit, and are merely means to well-being.
In talking about justice, Aristotle began by stating what was commonly held by people to be Justice and injustice as that "kind of state of character which makes people disposed to do what is just and makes them act justly and wish for what is just, and similarly by injustice that state which makes them act unjustly and wish for what is unjust. Justice is the rightness of act in relation to an extrinsic end, and it has a certain character of good and praiseworthy, especially when considered in relation to others. Thus, justice is a means between acting unjustly and being unjustly treated.

Aristotle used the word 'just' in two senses, namely: what is lawful and what is fair and equal in social transactions. The former is universal justice which is equivalent to obedience to law, and he believed that the law-abiding man is just and the lawless person unjust and unfair.
Justice then is a social virtue that secures a good that concerns both the agent and his neighbours. It is a virtue that takes its bearing from the good of the neigbours.

Justice is divided into distributive and remedial justice.
The just in distributive justice, according to Aristotle, is a species of proportionality, for the proportion is equally of ratios, the unjust being what violates the geometrical ratio.
Remedial justice is subdivided into two: One dealing with voluntary transactions and the other with involuntary transactions. Remedial justice proceeds with arithmetical

progression, treats the parts equally, thus "corrective justice will be the intermediate between loss and gain" On the whole, justice as a virtue and state of character in its inner nature is a voluntary action chosen with knowledge. Thus, to maintain socio-political well-being, one must constantly desire and choose to do justice.

3.3 Aquina's View on Justice:

According to Aquina, justice is a matter within intercourse between humans. Thomas Aquinas made even clear his master's point. For Aquinas, the proper matter of justice "Consist of those things that belong to our intercourse with other men", hence justice is rendering the other his due or right. This rendering of the other his due, for it to qualify as virtue, must be done knowingly, consciously or voluntarily and with choice and done on permanent basis, which indicates firmness in the act and disposition. One who does what he ought to do does not by that bring gain to the person who receives that act, for he has simply abstained from doing harm, (a harm which will have to be remedied or corrected in order to restore the equilibrium), but "he does however profit himself in so far as he does what he ought spontaneously and readily, and this is to act virtuously.

Therefore, to Aquinas, justice implies equity towards the other. It is in the fact that justice regulates human acts that it is a virtue. He agreed with Aristotle that the virtue of a good citizen is general justice "whereby a man is directed to the common good". The justice that directs to the common good is general, that is, **legal justice**, and that which simply regulates the relation of the individual and to the other is **particular justice**, directing a man immediately to the good of another individual.

3.4 David Hume's Views on Justice

According to David Hume, Justice is an artificial but necessary virtue. Hume said that the disposition to grant others their due is not a natural one because people are naturally determined by their passions to be partial to themselves. This understanding excludes the argument that honesty or justice is motivated by a natural instinct or that it is derived from some general virtuous disposition, hence Hume denied that justice is a natural virtue.

It is rather a product of social evolution /or convention intuited on the basis of utility, "thus self-interest is the original motive to the establishment of justice, but a sympathy with public interest is the source of moral approbation, which attends that virtue".

Although it is not natural, Hume believed its rules were not arbitrary. When Hume relegates the role of reason to that of the slave of passions, he does not necessarily claim that social rules of justice are no longer observed. Feeling does not necessarily operate in a situation of anarchy.

People respect the goods of others on the supposition that others will do the same, hence Hume insisted on a convention without the interposition of a promise. According to Hume, the rules of justice operate on the basis of experience. "Two men, who pull the oars of a boat, do it by an agreement or convention, though; they have never given promises to each other. However, social justice operates within a scheme and it is not

reducible to individual instances of acts of justice, which may be contrary to overall aim of public good.

Therefore, to maintain order and equitable distribution of services as established by the artificial virtue – justice, society invents general rules. General rules have, for their end, the maintenance of public goods. General rules of society owe their institution to the need for justice in society, albeit its rules are artificial.

3.5 What does a common man say then about Legal Justice?

Regarding justice within the confines of legal philosophy, three basic couplings of assertions can be distinguished, namely:

i. Procedural Justice.
ii. Formal Justice, and
iii. Justice as measure for the law.

To explain in law, one has to assume that law, to a greater extent, is made of system of rules.

If a policeman catches **B** in a scene of a crime, and denies him legal aid or assess to the information he is supposed to have before the law, there is an infringement of procedural justice. In Nigeria, criminal cases such as murder have to be introduced first in the magistrate courts for onward submission to the criminal court through the office of the Director of Public Prosecution, it will be a matter of breach of the due process of law to manipulate the process, hence a denial of procedural justice. So, if rule **N** says that all who violate it will be punished, and those punishing do not take proper care to find out those who have broken the rule, then there is breach of procedural justice.

Bur where in applying the rule, judge **B** punishes **M**, and leaves **Q** who committed the same offence, either because **Q** is his brother or he hates **M**, there is a breach of formal justice. This is the same where people are punished selectively or indiscriminately under the law without any universal criterion or standard for all those to whom the law applies, then there is breach of formal justice for like cases then, are not treated alike.

It is possible to have a coherent system of law or rules with due procedural or formal processes, yet injustice may abound. Some positivists, notably Betham, Austin, Hart and Kelsen, have argued that law remains law whether or not it is iniquitous. Procedural justice and formal do not necessarily guarantee justice, hence some argue there is a substantive justice that ought to be a measure of law. Naturally lawyers are correct to insist that there is a set of higher principles that should found law, and its judgments are discernible by human rationality. Thus, legal guarantees are not co-extensive with extra-legal intuitions, hence there is need for a standard, and instead of law narrowing justice; Justice should stand as a measure of the law.

SELF-ASSESSMENT EXERCISE

Can a theory of Justice ever be politically neutral?

4.0 CONCLUSION:

It will be pertinent to conclude that things will go for better for everyone if people do that for which they are naturally gifted, allowing those who have the highest gift to lead, hence avoiding a political back clash. Plato affirms that a political mess will be avoided when, "either the stock of those who rightly and genuinely follow philosophy acquire political authority, or else the class who have political control be led by some dispensation of providence to become real philosophers. The state, therefore, exists to further needs of humans, their happiness, and development in the good life according to the principles of Justice. Just as the rational element is the soul of the body, so also justice is the soul of the state.

5.0 SUMMARY

To talk about justice is to make a commitment to seek the good and the fair. The good and the fair may belong to universal categories, right reason determines the measure in which particular instantiations of the basic principles of natural law that good be done and evil avoided or that one treats the other as he himself would like to be treated – may be determined.

TUTOR MARKED ASSIGNMENT

i. What is Justice?
ii. Explain the following concepts:
    (a) Distributive Justice
    (b) Remedial Justice
    (c). Correctional Justice
iii. What is equity?

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UNIT 3: GROUNDS FOR CRIMINAL LIABILITY AND PUNISHMENT

CONTENTS

1.0 INTRODUCTION:

By grounds criminal responsibility or liability is meant the conditions under which a person may be held accountable or conditions under which a person may be held accountable or responsible for harm caused before the law. It is the basic assumption of law that, in the absence of evidence to the contrary, people are able to choose whether to do criminal acts or not and that a person who chooses to commit a crime is responsible for the resulting evil and deserves punishment.

2.0 OBJECTIVES

At end of this unit, you will know the following:

i. What crime is
ii. Whether the word 'responsibility' mean differently in law and moral
iii. If there is any conceptual gain in distinguishing between the concepts of liability and responsibility, etc.
iv.

3.0 MAIN CONTENT

3.1 Designating the Area of Crime

The court regards crime as a wrong. Sometimes, opinions are divided as to whether a crime is to be regarded solely as a moral wrong or simply a harm caused by doing an action prohibited by the law. Where crime is taken to be a moral wrong by the courts, then sentencing a criminal reflects, as Smith and Hogan wrote, the "revulsion felt by citizens for a particular crime". This disapproval of the conduct of the criminal is reflected in punishment as a public denunciation of the conduct in question.

Should crime be taken necessarily as a moral wrong? Jerome Hall endorses the view that crime is a moral wrong, thus, when a criminal is punished, he is evidently punished for his wickedness, for doing evil. Patrick Devlin concurs with the view that sees crime as a moral fact. He claims that there is a common morality in the society that society is entitled to criminalize any behaviour that threatens its existence; hence it may be justifiable and necessary for the society to punish immoral acts or behaviour. Some others like H.L.A. Hart disagreed, insisting that the law should punish one for breaking

the law and not necessarily for committing an immoral act, hence John Stuart Mill's harm principle is evoked on the basis that immorality is not a sufficient reason for legally punishing someone.

The criminal law is chiefly concerned with anti-social behaviour. But not all acts that the law criminalizes are regarded as crime at the same level. The stigma 'criminal' will be attached to someone who is convicted of a criminal behavoiur, for example, murder. Someone who is penalized for over-speeding has broken the law, but we would not ordinarily tag him a 'criminal'

There are many offences for which any element of stigma is diluted almost to the vanishing point, as with speeding on the roads, illegal parking, riding a bicycle without lights, or dropping litter. This is not to suggest that all these offences are equally unimportant, it can be argued, by reference to the danger to others that exceeding the speed limit ought to be regarded in a more serious light than commonly appears to be the case. Yet it remains true that there are many offences for which criminal liability is merely imposed by parliament as a practical means of controlling an activity, without implying the elements of social condemnation characteristic of the major or traditional crimes.

Regulatory Offences:

Offences of the regulatory group are referred to as strict liability offences. Liability is strict because the prosecution is relieved of the necessity of proving *Mens rea* as one or more of the elements of the *actus reus*. Strict liability has been criticized for dispensing with the conventional requirement of criminal conduct, that is, voluntary – act requirement. A soft defence that has been proffered for strict liability is that it is not a real offence, but a regulatory crime. In its theoretical assessment, strict liability is a compromise between the demands of full *mens rea* and the desire to protect society.

3.2 Distinction between Responsibility and liability

It may be asked, what is the basis for placing the tag 'responsibility' on one's action? Hart and Honoré maintain that just as in moral judgments in ordinary life we blame people because they have caused harm, so also in all legal systems liability to punishment or to make compensation usually depends on whether actions or omissions have caused harm. Morality goes beyond liability based on causing harm. Moral judgment sometimes blame specially comes into focus when harm is caused.

Harm can be caused directly through initiating a series of physical events or through omission. Common sense blames people for harms caused through omission or neglect of certain precautions that should have been taken care of, "we do this even if harm would not have come about without the intervention of another human being deliberately exploiting the opportunities provided by neglect". In its legal equivalent, it is held that "the instigation of crimes constitutes an important ground of criminal responsibility and the concepts of enticement and inducement are an element in many civil wrongs as well as in criminal offences". To say then that one is responsible – that is, responsible for something in law and morality- means that one is blamed for or made to pay for a particular harm as determined by legal rules or moral principles. One's

conduct falls within the parameters stipulated by the rule, which one can be blamed or punished.

In one sense, it is important then to isolate questions of responsibility or liability for one's action from liability for punishment, although they can be co-existence. But looking at the words 'liability' and responsibility separately, liability necessary connotes punishment while responsibility does not. In other words, responsibility for some action is not immediately reducible to liability for punishment. In the criminal law, however, harm is a basis for saying that one is responsible, thus, that harm occurs is a sufficient ground for punishment. Therefore, the meaning of the words liability and responsibility is close enough in their application in law.

SELF-ASSESSMENT EXERCISE

Is there any conceptual gain in distinguishing between the concepts of liability and responsibility?

4.0 CONCLUSION

It is generally a principle of criminal law that a person may not be convicted of a crime unless the prosecution have proved beyond reasonable doubt that he caused or brought about a certain event which is prohibited by criminal law, and that he had a defined state of mind in relation to the event or state of affairs he has brought about.

5.0 SUMMARY

Liability and responsibility can mean the same thing but they are not necessarily reducible to each other, especially where conditions for any possible assimilation of meaning are not indicated. Whereas the state event or state of affairs is called *actus reus*, the state of mind is referred to as *mens rea*

6.0 TUTOR MARKED ASSIGNMENT

i. What is a crime? Are all anti-social behaviours criminal?

ii. Does the word responsibility mean differently in law and morals? Or

7.0 REFERENCES /FUTHER READING

Akintunde, A.K.R., (1960) The Nigerian Legal System, Owerri Spectrum Law Publishing.

Eze Melami, (1999) Outline of Nigerian Legal System Lagos, Grace Publisher Inc.

Freeman, M.D.A., (1994) Lloyd's Introduction to Jurisprudence, London, Sweet and Maxwell Ltd.

UNIT 4: RECKLESNESS, NEGLIGENCE AND *MENS REA*

CONTENTS

1.0 INTRODUCTION

A person who may not intend to cause a harmful result can still be seen to have taken an unjustifiable risk in causing it. The mention of unjustifiable risk certainly suggests that certain risks are justifiable. For example, a doctor who performs a surgical operation may know that his acts might cause death, but we do not describe him as reckless unless the risk he took was an unjustifiable one. So, if a person takes an unjustifiable risk, he will be taken to have acted recklessly. In other words, to say it is reckless, it is necessary always to show that he took an unjustifiable risk.

2.0 OBJECTIVES

At the end of this unit, you will be able understand the following:

i. The line between intention and recklessness
ii. Whether it is morally right to include negligence as a component of *mens rea.*
iii. When one raises gross negligence to the level of criminal liability, etc.

3.0 MAIN CONTENTS

3.1 Recklessness as Component of *Mens rea:*

Recklessness has shades of meaning in English law, which have been called ‘Cunningham recklessness. In Cunningham,in the course of stealing money from a gas meter, the defendant damaged a gas pipe causing gas to seep through a wall into an adjoining flat where people resided. The defendant was charged with maliciously administering a noxious substance. The judge directed the jury that the dependant’s actions were malicious in the sense of being wicked. But the dependant successfully appealed to the court of appeal. The court adopted a principle that recklessness is the actual awareness of the risk of the prohibited consequence occurring. Following Cunningham, the subjective meaning of recklessness was established, that recklessness entailed the conscious running of an unjustifiable risk.

Therefore, recklessness is taken to be advertent when the accused has fore seen that the particular kind of harm might be done and yet he goes on to take the risk of it, for it was

claimed that the dependant was not actually aware of the risk. This fact of awareness is taken to be the key element in bringing recklessness within the concept of *Mens rea.*

3.2 Negligence as Component of *Mens rea*

There are some who are not comfortable with the inclusion of negligence as a *mens rea* component. J.W.C. Turner is of this camp. He argued that negligence should not be part of *mens rea.* For him, the mental requirement of criminal responsibility is limited to voluntary conduct and foresight of consequences. Turner outlines three rules for determining the liability of a normal person at common law.

Rule 1 – it must be proved that the conduct of the accused person caused the *actus reus*.

Rule 11 – it must be proved that his conduct was voluntary.

Rule 111 – it must be proved that the accused person realized at the time that conduct would, or might produce results of a certain kind, in other words that he must have foreseen that certain consequences were likely to follow on his acts or omissions. The extent to which this foresight of the consequences must have extended is fixed by law and differs in the case of each specific crime. The lawyer must know, therefore, what these consequences must be in each crime.

Foresight of consequences relate to turners Rule 111. Within foresight of consequences, Turner only included intention and recklessness. He claimed that Rule 111 "does not cover the state of mind of a man who is inadvertent – (without the intention), or negligent in the proper legal signification of the word. According to him, negligence is a different state of mind from intention and recklessness:

It is the state of mind of a man who pursues a course of conduct without adverting at all to the consequences of that conduct, he does not foresee those consequences, much less desires them. The word further indicates that he is in some measure blame worthy, and that we should expect an ordinary, reasonable man to foresee the possibility of the consequences and to regulate his conduct so as to avoid them. This being the meaning of the word 'negligence' as a state of mind, the addition of an adjective, however vituperative, cannot properly alter it.

Turner claimed that the word 'negligence' has been misused and he regretted that it still subsists in the language of criminal law. He argues that negligence should not be considered as a type of *Mens rea*. It is rather, according to Turner, properly understood as inadvertence. Therefore, Turner classifies negligence as inadvertence. He argues further that it could be excluded from *mens rea*, since the word negligence and inadvertence can be used interchangeably.

However, H.C.A. Hart disagreed with turner who agreed that negligence is not a state of mind. The tendency to exclude negligence as a state of mind, according to Hart, stems from the fact that the word negligence and inadvertence are confused. Therefore, the understanding of negligence revolves around the presence of capacity. A negligent person has the capacity to conform to the law. He is held responsible for the capacity he failed to use or exercise when he should.

3.3 Is it justified to Include Negligence in *Mens rea*?

The real issue is whether it is morally right to include negligence in *Mens rea.* What is needed for responsibility is capacity that the person was in control and could have acted differently. The absence of capacity negated responsibility. The negligence person is blamed for not being careful; otherwise, he would not have acted negligently.

The moral for including negligence in *Mens rea*, according to Hart, rests on the conviction that a grossly negligent person could be held responsible for not taking some elementary precautions, even though he may not have acted deliberately. There is a standard of conduct the negligent person is expected to meet, a standard he failed to meet (although he had the capacity to do so) because he has been culpably careless. The law commission says: A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation would exercise.

Some would think that it is morally wrong to punish someone for ordinary carelessness. As Clarkson and Keating indicated, "negligence is not widely employed as a basis of criminal liability in English law, the most widely notable exception being careless driving contrary to the Road Traffic Act 1988" so, it is not every time negligent act.

SELF-ASSESSMENT EXERCISE

When does one raise negligence to the level of criminal liability?

4.0 CONCLUSION

As we know, intention, recklessness and negligence are forms of mental elements that fall under *Mens rea*. Intention and negligence stand to each other as two poles in opposite direction. And between them is recklessness. As R.A. Duff says one who causes death recklessly falls between these two extremes of liability. He is less culpable than the intentional killer more culpable than a merely negligent agent act in relation to a specified harm, which they choose to bring about. Therefore, there are certain expectations regarding people's conduct. Very often it is said that a reasonable man is supposed to behave in such and such a way.

5.0 SUMMARY

It is argued in this regard that criminal liability for negligence violated the requirement for subjective principles, unless we want to make all offence to fall under strict liability. Where negligence is admitted, there is no proof that the agent chose to bring about the harm or that he was aware of it. Therefore, the fact remains that the required state of mind for conviction is absent and whatever suit might be claimed to impute on him is a matter of degree and judgment on which views may differ. In any case, the distinction between recklessness and negligence should be maintained.

6.0 TUTOR MARKED ASSIGNMENT

i. How can the line between intention and recklessness be drawn?
ii. Is it morally right to include negligence as a component of *Mens rea?*

7.0 REFERENCE / FURTHER READING

Akintunde, A.K.R., (1960) The Nigerian Legal System, Owerri Spectrum Law Publishing.

Duff, R.A., (1990) Intention, Agency and Criminal liability: Philosophy of Action and the Criminal law, Cambridge, Basil Blackwell.

Eze Melami, (1999) Outline of Nigerian Legal System Lagos, Grace Publisher Inc.

Freeman, M.D.A., (1994) Lloyd's Introduction to Jurisprudence, London, Sweet and Maxwell Ltd.

UNIT 5 THE LEGAL PROFESSION IN NIGERIA

CONTENTS

1.0 Introduction

Every legal system has developed for itself a system of practice, which enables qualified legal personnel to represent persons in a court of law. The different legal systems of the world are the writ, the common law legal system, the continental or the Romano- Germanic legal system, the Socialist legal system, and the Hindu legal system. All these systems have peculiar characteristics, which also affect the way, and

manner a person qualifies to appear and practice as a legal practitioner within a given system. Hence the conditions of admission to the legal profession differ in each state or legal system. Those who are lawyers and admitted to the practice of law according to the rules of the individual state may exercise their profession only before the courts of that state or country. Therefore, this unit examines the development of the practice of law in Nigeria, etc.

2.0 OBJECTIVES

In this unit, you will know the following:

i. Development of legal practice in Nigeria.
ii. Current qualifications of persons who can practice law in Nigeria.
iii. Duties of a legal practitioner.

3.0 MAIN CONTENTS

3.1 Development of legal practice in Nigeria

It is trite that the legal profession derived its origin from the English legal system and was introduced into Nigeria in the second half of the 19th century. Before this time, there were shades of traditional practices geared towards addressing the issue of law and justice in different communities in Nigeria. Disputes were presided over by the elders, family heads, kings or paramount rulers, chiefs and titled men. The sole purpose was to restore social equilibrium through reconciliation of parties and to give severe sentences where the need arose.

However, the first type of British court established in Nigeria was around 1849 when due to interest in commerce around the ports of Brass, Calabar, Bonny, Okrika, and Opobo, the British consulate established courts of Equity to resolve trade disputes between Africans and Europeans. Subsequently courts were also established in Lagos. Such courts include the Police Court, the Petty Debt Court, the Court of Civil and Criminal Justice, the Courts of Requests and the West African Court of Appeal, from then on the courts spread across country.

These developments brought to limelight the need for professionally qualified legal practitioners to appear before the courts. Until 1880 when the first Nigerian to be qualified as a lawyer returned to Nigeria having been called to the inner temple, there were no such trained legal practitioners in Nigeria. Hence in August 1880, Christopher Alexander Sapara Williams was enrolled in Nigeria, as the first Nigerian to practice law as a professional in Nigeria.

The enactment of the Supreme Court Ordinance of 1876 marked a turning point in the admission of persons to the practice of law in Nigeria. By the powers conferred on the Chief Justice by the 1876 ordinance, he made order 8, rule 1, which provided for the admission of local attorney subject to "a licence or enrichment for six months to appear and act in the capacity of a Barrister and Solicitor or Proctor". But as it were, the 1876 ordinance was repealed and replaced by the Supreme Court Ordinance 1943. Under this

Ordinance only qualified legally trained practitioners were to practice law in Nigeria. Even at this, it was still obvious that English trained Barristers and solicitors had some deficiencies practicing law in Nigeria.

The above anomalies and inadequacies led to the appointment if the Unsworth Committee in April 1959. The Committee was charged "to consider and make recommendation for the future of the legal education and admission to practice, the right of audience before the court and the making of reciprocal arrangement in this connection with other countries". The report of the Committee precipitated into the notable Legal Education Act 1962 and the Legal Practitioner Act 1962. It was under this Act that the Law School was set up in Lagos for the practical training of legal practitioners in Nigeria.

3.2 Those who can practice law in Nigeria under the legal practitioners Act of 1962, three categories of persons are entitled to practice law as legal practitioners in Nigeria. These are:

i. Those entitled to practice generally.
ii. Those entitled for the purpose of any particular office, and
iii. Those entitled to practice for the purpose of any particular proceedings.

i Those who are entitled to practice generally as provided for in the Act are persons whose names are enrolled and the Supreme Court as such as person produces a certificate of call to Bar. The issuing of a qualifying certificate is the responsibility of the council of legal Education who in appropriate circumstances waive some of the requirements for the acquisition of such a certificate. Partial exemptions also exist for law graduates of common law universities who have taught for at least five years, and non-common law graduates who have taught for at least ten years in a faculty of law in a Nigerian university. This exemption qualifies the affected candidates to be eligible for admission into part II of the course.

ii. Those entitled to practice by virtue of office include but not limited to the Attorney General, Solicitor General, Director of Public Prosecution of the state or Federal or any other person so appointed by specific order to that effect.

iii. Others who are entitled to practice by warrant include such persons who are entitled to practice law in their own jurisdiction where the legal system is similar to that of Nigeria. Such persons will apply to the Chief justice of the Federation for that purpose. The Chief Justice may be warrant authorize such a person to practice in Nigeria for that purpose after payment of the prescribed fee. Such permission lapse after the final determination of that particular case.

3.3 Duties of a Legal Practitioner

A legal practitioner has four main duties, which have been classified as responsibilities.

These include:

i. His duty to the legal profession
ii. His duty to the Court
iii. His duty to his Client
iv. His duty to the members of the bar.

(i) His duty to the legal profession:

It is the duty of every member of the bar at all times to uphold the dignity and high standard of his profession. He should refrain from engaging in any other occupation, which has association with, may adversely affect the reputation of the Bar. It is unprofessional for a Barrister to solicit professional employment by circulars, advertisements, through touts or by personal communications or interviews. Except in special circumstances or for some other urgent reason, a member of the Bar, should not call at a client's house or place of business for the purpose of giving to or taking instruction from client. It is unprofessional conduct for a legal practitioner to claim that he has paid his annual practicing fee when in the real sense he has not done so. It is unprofessional conduct for a lawyer to accept employment as an advocate in a matter, which he has previously acted in a judicial capacity.

(ii) His duty to the Court:-

The advocate, when he appears in court, owes the court the duty to respect and assist the court in discerning the truth, which is the primary aim of doing justice. It is the duty of counsel to give absolute respect to the Bench. By the provision of Rule 1 (10) R.P.C.

A lawyer should be punctual in all courts appearance and whenever possible give appropriate notice for all tardiness or absence. Where a counsel is absent from court without adequate notice, the court may in his discretion strike out or adjourn the case or proceed with hearing without the counsel. While appearing before any court a counsel must be properly dressed as provided for in the rules of professional conduct and must maintain decorum. A barrister should never show marked attention or unusual hospitality to a judge. Counsel should rise when addressing or being addressed by the judge and his conduct before the court or his colleagues should be characterized by candor and fairness.

Failing to observe the duty to the court may attract contempt of court.

(iii) His duty to his client:-

A counsel must fully and properly present his clients case and must insist on an opportunity to present his clients case. The lawyer has a duty to accept brief in a court, which he professes to practice, at a professional fee. In **Udo V. State and Udofia V. State**, failure to accept brief or represent a client effectively was declare unprofessional. A legal practitioner must not accept compensation, commission, rebate or other

advantage from others against his client within the Knowledge or consent of his client, after full disclosure. The court agreed on this principle of law in the case of **John Daba Brothers VJ.O. Ojesipe.** By the provision of Rule 12, Rules of Professional conduct (RPC), a lawyer should give candid and honest advice to his client. Hence in **Cocottompoulouis V. P.Z & Co. Ltd**, the court held that it is the duty of solicitor to show reasonable diligence and caution and to warn his client against the initiation of a case, which is purely speculative and devoid of merits. The same view was respected in **Textile and Allied Products (Nig) Ltd V. Henry Stephen Shipping Ltd.**

(iv) His duty to his colleagues:-

As professional colleagues the legal practitioner owes a duty to his fellow advocate. He must treat his colleague with respect and utmost courtesy. He must not engage in verbal warfare with his colleague, his objections, requests and observation should in every case be addressed to the judge. Counsel should adhere strictly to all express promises or agreement made to opposing counsel or fellow advocate. In **United Mining and Finance Corporation Ltd. V. Beacher Hamilton J**, held that; the court will summarily enforce undertakings taken by the solicitor in that character. A lawyer must avoid sharp practices especially towards his colleagues. He cannot obtain judgment in favour of his client without affording the fellow advocate a reasonable notice.

4.0 CONCLUSION

In this unit, we have examined the development of the practice of law in Nigeria, those who could practice law in Nigeria and duties of a legal practitioner. Nevertheless, it is pertinent to known that those who practice law must live by examples. They must be disciplined and honest. Lawyers, no doubt, are the month piece of their clients. Therefore they owe allegiance and justice, to their clients and the citizenry also.

SELF-ASSESSMENT EXERCISE

What duty does the advocate owe before he appears in court?

5.0 SUMMARY

The practice of law is a worthy calling. It is a noble course our country had afforded intellectual pleasure with dignity and independence. Hence the most productive, unselfish and wholly satisfying repayment of the obligation is constructive work to increase the effectives of our judicial system and the welfare of the profession and the people at large.

6.0 TUTOR MARKED ASSIGNMENT

i. What are the duties of a legal practitioner in Nigeria?
ii. Give a brief history of development of legal practice in Nigeria.

7.0 REFERENCES /FUTHER READING

Akintunde, A.K.R., (1960) The Nigerian Legal System, Owerri Spectrum Law Publishing.

Eze Melami, (1999) Outline of Nigerian Legal System Lagos, Grace Publisher Inc.

Freeman, M.D.A., (1994) Lloyd's Introduction to Jurisprudence, London, Sweet and Maxwell Ltd.

MODULE 5

UNIT 1 THE HIERARCHY OF COURTS IN NIGERIA

CONTENTS

1.0 INTRODUCTION

Our focus here is on the hierarchy of Nigeria Courts with particular reference to their composition and jurisdiction. The 1973 Constitution and chapter vii of the Constitution of the Federal Republic of Nigeria, 1999, respectively, deal with the Nigerian Judicature. This chapter contains sections 230 to 296 all of which have to do with the explanation and description of the court system in Nigeria in respect of establishment, appointments, Jurisdictions, composition/constitution, powers, practice, procedures, enforcement and interpretation of legal/constitutional provisions. Therefore, under Sections 230 to 285 of the Constitution, the following courts were established:

A. The Supreme Court
B. The Court of Appeal
C. The Federal High Court
D. The State High Court
E. The Sharia Court of Appeal of the FCT Abuja
F. The Customary Court of Appeal
G. The Election Tribunals.

The Constitution goes further to state that any other court may be established by virtue of an Act of National Assembly or the law of a State House of Assembly shall also be recognized by the Constitution. In this regards, the various tribunals and specialized courts like National Industrial Court, Industrial Arbitration Panel, Juvenile Court, as well as the state courts like the Magistrate and Area Court are constitutionally recognized.

At the end of this unit, you are expected to understand the following:

(i) The hierarchy of Nigeria courts
(ii) The composition and Jurisdiction of the courts
(iii) The appointment of the Chief Justice of Nigeria and all other Justice of the court.
(iv) Difference between Sharia and Customary Courts of Appeal

3.0 MAIN CONTENT

3.1 Supreme Court:

As the name implies, this is the nation's highest court. In respect of appeals, the Supreme Court is the final port of call. The Constitution of 1979 and 1999 respectively, stipulate that the court shall consist of such number of justices not exceeding 15 and 21 respectively at every point in time and should be headed by the Chief Justice of Nigeria.

Ordinarily, there are not less than five (5) numbers who sit during an appeal (i.e a Normal Court). However, the Supreme Court can sit as a ***Full court,*** where there are seven (7) member sitting on the bench in the following situations.

(i) Where the Supreme Court is exercising its original jurisdiction.

(ii) Where the question arising from the appeal before the Supreme Court is on interpretation and application of the constitution
(iii) Where the appeal bothers on the question of fundamental human rights
(iv) Where the Supreme Court is ordinarily an appellate Court that determines appeals on a final note from the court of appeal the constitution counters original jurisdiction on the court so as hear civil case of first instance where:

a. There is a dispute between a state and the Federation, or
b. There is a dispute between a state and another state.

It must however be noted that original jurisdiction of the Supreme Court has been suspended by virtue of Decree No. 1 of 1984.

A person can be appointed as a Justice of the Supreme Court or Chief Justice of Nigeria if:

a. He has qualified to be a legal practitioner in Nigeria and
b. He has been so qualified for at least 15 years proceeding the date of appointment.

The appointment of the Chief Justice of Nigeria in a civilian regime is made by the President on the recommendation of the National Judicial Council subject to the confirmation of the Senate, while in Military regime it is done by the Military President at his discretion. The appointment of other Justices of the Supreme Court is equally made by the President upon the advice of the Advisory Judicial Committee. A Justice of the Supreme Court must retire upon attaining the age of 70 and his tenure may otherwise be terminated by the President in the event of a case of corruption or any other inability to discharge the function of his office.

3.2 Court of Appeal:

Court of Appeal is essentially a court which jurisdiction is appellate. It hears appeals from the Federal and State High Courts, Sharia and Customary Courts of Appeals as well as the Code of Conduct Tribunal. The Court of Appeal is empowered in certain instances to determine appeals from the Disciplinary Committees of some professional bodies as well as any other court or tribunal in respect of which decision a Statute expressly or impliedly confers appellate jurisdiction on the Court of Appeal.

The court should consist of such number of Justices not less than 49 at a time not less than 3 according to section 237 of 1999 Constitution, of whom must be learned in Islamic Personal Law and not less than 3 learned in Customary Law. The court is headed by one of its justices called President of Court of Appeal. It is properly constituted by 3 justices for the purpose of exercising any jurisdiction conferred upon it by the constitution or any other law. There are 9 divisions of the Court of Appeal – Lagos, Ibadan, Benin, Port-Hacourt, Jos, Kaduna, Enugu, Calabar, Ilorin and FCT Abuja, where it is based.

Qualification for appointment as the President or Judge of the Court of Appeal is based on the appointee having.

(a) Qualified to practice as a legal practitioner in Nigeria
(b) For a period not less than 12 years

The same age of 70 for retirement for justice of the Supreme Court and conditions for termination of appointment also apply.

3.3 Federal High Court:

This court was formally known as the ***Federal Revenue Court*** The 1979 Constitution adopted it and changed its name to Federal High Court. It was further confirmed under section 249 (1) of the 1999 constitution.

The Court consists of a Chief Judge of the Federal High Court and such number of the Federal High Judges as may be prescribed by an Act of the National Assembly. The Court is duly constituted if it comprises at least one judge of that court: (S. 249 (2) (a) (b). and S. 253

The Chief Judge must not be less than 10 years in legal profession.

3.4 State High Court:

It was established by the 1979 Constitution. It is presided over by a person called a judge who must be at least 10 years old in legal profession.

State High Court is a Court of unlimited jurisdiction in the sense that it has powers to hear and determine any criminal and civil matter under both the State Law and Federal Laws. The unlimited jurisdiction of the State High court does no however, extend to the matters exclusively reserved for the Federal High Court by the Decree 107, as listed above.

The High Court may also exercise supervisory jurisdiction over the other inferior courts like magistrate court, district court etc. high Court also exercises appellate jurisdiction in the sense that it serves as an appeal court for the cases coming from the other lower courts. The retirement age for the Judges of both the Federal and State High Court is 65 years.

3.5 Sharia and Customary Court of Appeal:

The Constitution provides for the existence and composition of each of these courts. The Sharia Court of Appeal presently exists in the Northern States. It hears and determines appeals from the Sharia Courts in respect of matters arising from operation of Islamic personal law. The Sharia Court of Appeal is properly constituted by 3 ***Khadis,*** and is headed by a Grand ***Khadi*** A ***Khadi*** is a person who is versed in Islamic Personal Law without less than 10 years experience. The Court is to hear and determine appeals from Customary Courts. Generally appeal lies from both the Sharia

and Customary Courts of appeal to the Court of Appeal directly. While Sharia Court of Appeal was established under section 260 (1) of the 1999 Constitution, the Customary Court of Appeal was established under section 265 (1) of the 1999 constitution.

3.6 Magistrate Courts:

The Magistrate Courts were established under different Laws applicable in different states of the Federal Republic of Nigeria, including Abuja, which make provisions for the creation and jurisdiction of several grades of Magistrate Courts. The following grading is peculiar to all the Northern States and the FCT. Abuja.

(i) The Chief Magistrate
(i) Magistrate Grade I
(ii) Magistrate Grade II
(iii) Magistrate Grade III

The following grading on the other hand can be found in most of the Southern States.

(i) The Chief Magistrate
(ii) Senior Magistrate Grade I
(iii) Senior Magistrate Grade II
(iv) Senior Magistrate Grade III
(v) Magistrate Grade I
(vi) Magistrate Grade II
(vii) Magistrate Grade III

Before a person can be appointed as a Magistrate except a Magistrate Grade III he must have qualified as a legal practitioner in Nigeria for a reasonable period preceding the date of his appointment.

Generally appeal lies from the decision of a Magistrate Court to the High Court.

3.7 Election Tribunals:

Tribunals are established on an ad-hoc basis. The law establishing tribunal usually specifies the purpose and jurisdiction of each tribunal. The decision of the tribunal is subject to the ratification of the National Assembly, the House of Assembly of a State or other recognized authority. However, Election Tribunals were established by section 285 (1) of the 1999 Constitution, and known as the National Assembly Election Tribunals.

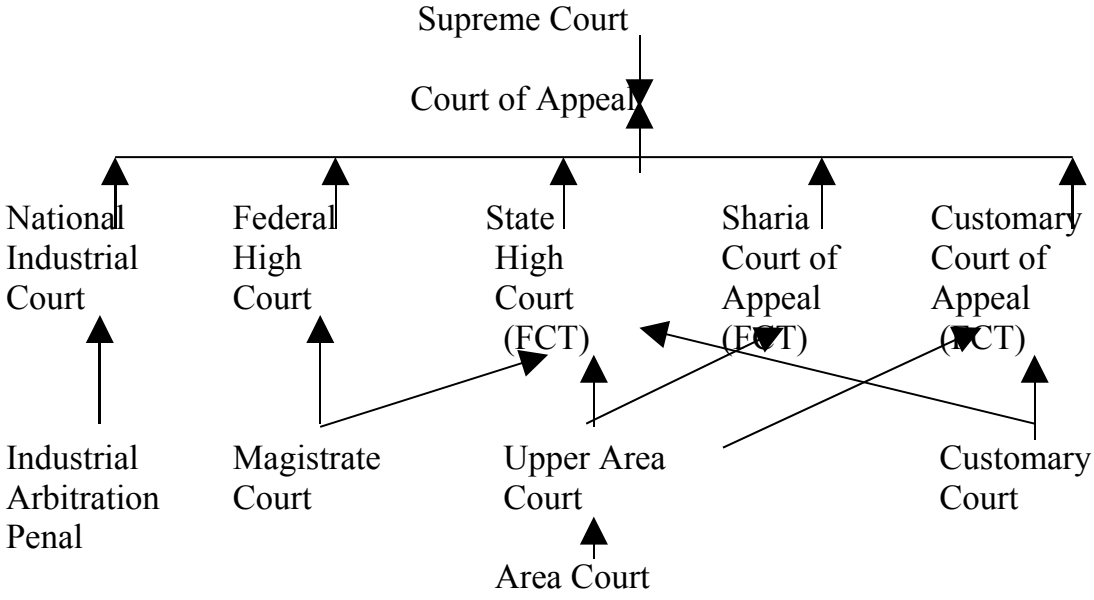
The tribunals have original jurisdiction, to the exclusion of any court or tribunal, to hear and determine petitions as to whether:

(i) any person has been validly elected as a member of the National Assembly
(ii) The term of office of any person under the constitution has ceased
(iii) the seat of a member of the Senate or a member of the House of Representative has become vacant, and

(iv) a request or petition brought before the election tribunal has been properly or improperly brought.

Also, in each of the Federation, there exit election tribunals known as the Governorship and Legislative Houses Election Tribunals. These tribunals have, to the exclusion of any other court or tribunal, original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy as a member of any Legislative house.

3.8 THE HIERARCHICAL DIAGRAM OF THE NIGERIAN COURTS:



Courtesy: Federal High Court Abuja

SELF-ASSESSMENT EXERCISE

Give an insight about the electoral Act in Nigeria.

4.0 CONCLUSION

A good knowledge of courts system in Nigeria as well as the hierarchy of the Nigerian Courts is therefore, essential in appreciating the composition and jurisdiction of our courts. What is important about our courts system is the degree of the force of law of a decision, case or precedent according to the hierarchy of the court. The judgments of the highest court in Nigeria such as the Supreme Court at Abuja and the Court of Appeal, which has several divisions sitting in various parts of the country, have from the time always commanded the greatest respect.

5.0 SUMMARY

The general rule of precedent or order of precedence established long ago in England in the 19th century and which is consistently observed in the Nigerian legal system is that

decisions of the higher courts bind the lower courts, in Nigeria however, it is not the province of judges to make law, but to interpret and apply the law as it is, whether it be English law, Statute law, Customary law etc. Hence, judicial legislation does not obtained in Nigeria. Where there is a gap in the law, it is not courts, but for the legislature to amend and reform the law.

6.0 TUTOR MARKED ASSIGNMENT

(i) Define the roles of the Supreme Court
(ii) Differentiate the Supreme Court from an Appeal Court

7.0 REFERENCE/FURTHER READINGS

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POL. 124 NIGERIAN LEGAL SYSTEM

UNIT 2: JUDICIARY AND DEMOCRACY IN NIGERIA

CONTENTS:

1.0 INTRODUCTION

The judiciary known in legal parlance as the temple of Justice has been defined as the branch of government invested with the judicial power, the system of courts in a country, the body of judges, and the bench. That branch of government that is intended to interpret, and apply the law. However, the survival of our democracy, it has been

argued, depends almost entirely on how effectively the third arm of the government – the judiciary – is able to play its constitutionally assigned role as the arbiter of disputes. But in developing democracies like ours, the effectiveness of the judiciary in this regard sometimes sets it on collision course with especially the Executive, because of the inevitability of judicial pronouncements adversely affecting the Executive or its agencies sometimes.

2.0 OBJECTIVES

In this Unit you will know the following:-

(i) The role of judiciary in the emerging democracy.
(ii) How independent can a judge be in a complex society like ours?
(iii) The position of judiciary during the Military era.

3.0 MAIN CONTENT

3.1 The emerging posture of the Judiciary for Democracy:

The judiciary has in fact, being playing a pivotal role in its efforts to rescue the country from the recklessness of the executive and the legislation. Confronted with their lawlessness, they said that Nigeria's democracy was still young. The implication is that the growth of democracy will be fast-tracked in Nigeria so that everybody will learn to do things according to law and learn not to exceed his or her jurisdiction. In this regard therefore, if the power of the judiciary is enhanced, it will go a long way in sustaining and encouraging democracy.

However, it is commendable that the judiciary has always survived those moments of Military rule with the least interference. Successive military regimes assume executive and legislative, but very limited judicial functions. The Military ruled by Decrees and Edicts and even if it has conceded that the citizenry was often denied the benefit of democracy, it is a fact, Military regime in Nigeria have been more active in the area of law reforms than the civilian regimes. Decrees and Edicts were passed with dispatch even in areas where civilian legislators were traditionally fettered by political considerations and bureaucratic red tape. Except for the breaches fundamental rights and abuses of the rule of law, plus legislative ease has advanced the development of Nigerian law.

It is noteworthy that all successive Military administrations provide for the supremacy of Decrees over the Constitution with the provisions of the latter superseding in the event of conflict, and thereby reversing the concept of constitutional supremacy. However, the Nigerian judiciary has come of age. It has of recent been on the side of the Constitution. When judiciary is working, ultimately, people will be acting with caution, people will be happy with democracy and government will have the time to be concerned with development projects and so on.

3.2 The Role of Judges in a Democratic Nigeria:

Although, the Military regimes of the past and present administration in their apparent resolve to keep the judiciary down, did leave the country to operate under such

procedures that were archaic and hampered the dispensation of justice. The untoward consequences have been the people's apathy towards litigation, as it was perceived as an exercise in futility. If this trend had continued however, in the long run, the citizenry would have been the ultimate losers, when the rule of law is relegated to the behest of those who wield political power.

In Nigeria, however, it is not the province of judges to make law, but to interpret and apply the law as it is, whether it be English law, Statute law, customary law and so forth. Therefore judicial legislation does not obtain in Nigeria. Where there is a gap in the law, it is not for the courts, but for the legislature to amend and reform the law. The role of judges in Nigeria is essentially to apply the law as made by the legislature. This is the view of the positive school of law, or positive theory of law, which is that, law, is as made or as it is, whether good or bad until it is changed by amendment or repeal. Therefore, as interpreters of the law, a court is not to assign meanings to the clear, plain and unambiguous provisions of a Statute so as to make it conform to the courts' own view rather than what it ought to be.

3.3 The Separation of Powers in Nigeria:

The most significant challenge to the entrenchment of separation of powers is Executive's dominance over the other two arms of government in Nigeria. This derives from the advantage the Executive enjoyed during the long history of Military rule. This culture of Executive dominance has been carried over to civil rule, and it appears to have been worsened by the emergence of a strong and influential Presidency of 1999 – 2007. At all levels of government, the relative weakness of the Legislature vis-à-vis the Executive is shown in the excesses of the Executive and in the attempts to control the Legislature, especially Executive influence in the oversight over the Executive.

However, the Legislature has been able to resist the Executive on a number of significant issues. While the President vetoed 10 of the bills passed by the two houses, the national parliament used its powers to override four of presidential vetoes. Hence a significant number of Nigerians think that the Legislature is fairly effective in exercising oversight over the Executive.

Thus, since the return to democratic rule in Nigeria in 1999, the Judiciary has been able to demonstrate its independence and competence in landmark judgments concerning the powers of the National Assembly to extend the tenure of office of local government Chairmen, the registration of political parties, state control over natural resources, and the management of the Federation Account, among others.

SELF-ASSESSMENT EXERCISE

What are the most significant challenges to the entrenchment of separation of powers between the arms of government in Nigeria?

4.0 CONCLUSION

In this Unit we have discussed the judiciary and democracy in Nigeria, the role of judges, and the influence or impact of Military regimes in our judiciary. Thus, we conclude this Unit by saying, that against all odds, the judiciary has continued to discharge its functions very well and courageously too. Judges are able to catch up with

the dynamics of our ever changing society and are recharging course bearing in mind the famous words in the Justinian Institute, Ignorantia Judicis est Calamitas Innocientis, meaning the ignorance of the judges is the calamity of the innocent.

5.0 SUMMARY

Judiciary is now working in conformity with the basic doctrine of separation of powers. If we have a vibrant judiciary, there is the tendency that democracy will be deepened, because people in the three arms of government – executive, judiciary and legislature, will know that they are supposed to check one another.

6.0 TUTOR MARKED ASSIGNMENT

Compare and contrast the role of Nigerian judiciary under a democratic administration and under the Military regimes

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UNIT 3: JUDICIAL SETTLEMENTS OF DISPUTES

CONTENTS:

1.0 INTRODUCTION

In social interaction, conflicts are bound to arise and quite often the conventional judicial arrangement is not capacious enough or unable to resolve all disputes. Law, over the years, has striven to evolve an efficient means of resolving disputes in the modern time. However, few individuals and States may not be so disposed to take advantage of the existing legal frameworks. The methods, which the law has evolved, are of two categories namely adjudicatory and non-adjudicatory methods.

2.0 OBJECTIVES

In this Unit you will be able to understand the following:

(i) The meaning of dispute resolution.
(ii) The methods of settling disputes in the modern time.
(iii) That the role of a judge can be likened to that of an umpire in resolving a dispute to a logical conclusion.
(iv) That the adjudicator has to follow certain standard procedures or methods in resolving the disputes.

3.0 MAIN CONTENT

3.1 Adjudicatory Method:

This is a formal method of resolving disputes. It involves the appearance of parties and their witnesses before formal institutions or authorities such as the law court or tribunal established by law. Thus, adjudication in its legal sense connotes judicial settlement of disputes whether between individuals or between states, in a general sense, it refers to the process of settling disputes peacefully by anybody with authority to make a decision or award binding on the parties. The methods are usually set in motion through the lawsuit or litigation. It is important to note that a particular event that gives rise to a legal dispute before the court is usually made up of myriad of facts linked together like a chord. For the judge or adjudicator to resolve the dispute, he must first of all ascertain the facts of the case and then apply the law to the facts. Therefore, adjudication may be

defined as the process of deciding matters in dispute by the decision of a court, tribunal, commission, or other body binding on the parties.

3.2 Non-Adjudicatory Method:

This method does not involve the appearance of parties before formal institutions or authorities, the calling of witnesses, the finding of facts and the apportionment of blame. Most industrial relations disputes are resolved by bargaining between the parties or possibly by mediation. Indeed, law also has to be malleable and aimed at soothing frayed nerves and reducing animosities and enhancing harmonious relations among hitherto disputing parties. This is largely the basic contribution of these para-judicial mechanisms for settlement of disputes to the Nigerian legal system. However, the non-ad judicatory method may not be done in formal institutions such as the law court, but that notwithstanding, since the law recognizes the method and lays rules for their operations.

Thus, the two main forms of non-adjudicatory methods of dispute resolution are:

(i) Reconciliation; and
(ii) Conciliation

(i) Reconciliation:

This is a process whereby the parties to a dispute confer with each other and reach an agreement on how to restore or bring back cordiality or harmony in their relationships. The only parties to the reconciliation are the disputants themselves.

(ii) Conciliation:

Conciliation denotes the action of bringing into harmony or effecting a settlement between conflicting groups or individuals. The process generally involves aboard, commission, agency, or some other groups which studies the facts, makes proposals to the disputants, and attempts to arrive at a settlement of the conflict. Nevertheless, the proposals are in the form of a recommendation and are not a binding award or judgment. The disputants are therefore free to accept or reject the findings and proposals as presented. Thus, the main distinguishing factor between conciliation and reconciliation is the difference in the number of parties involved. Here, a third party is involved. There are two main forms of conciliation namely:-

(i) Mediation;
(ii) Arbitration;

(i) Mediation:

In this type of conciliation, the third party called the "**Mediator"** rarely inquires into the facts of the case and does not attempt to apportion blame. Rather, he seeks to provide an acceptable formula for compromise and harmonious co-existence between the parties. He merely offers suggestions on possible terms of settlement between the parties, which have no binding force in the sense that the disputants are left to decide whether or not to accept the suggestion. Thus, mediation has been defined by Oppenheim as the "direct conduct of negotiations between parties at issue on the basis

of proposals made by the mediator". Hence, it consists in an attempt by a third party to reconcile the opposing claims of the parties in conflict by making a non-binding proposal to that effect. In essence, mediation emphasizes the positive aspects of law. It enjoins on the parties to a dispute the need and benefits of maintaining law and order through a return to peace and incontestable **status quo ante**. Voluntary acceptance of the proposed settlement otherwise the process is arbitration.

(ii) Arbitration:

Here the third party known as an "arbitrator" probes into the facts of the case in a fair details and renders a decision on merit. He however avoids making an emphatic decision on who is right or wrong. Thus, arbitration according to Fewick, as distinct from other procedures of pacific settlement "is the submission of a controversy between states to judges of their own choice who are to decide on the basis of respect for law and whose award in the case is final." What distinguishes arbitration from other forms of mediation and conciliation is that while decisions or award of the arbitrator(s) is final and legally binding, it is not binding for conciliators.

SELF-ASSESSMENT EXERCISE

Explain the methods of settling disputes in the modern time.

4.0 CONCLUSION

In this Unit, we have examined and fully discussed various methods of dispute resolution, such as the adjudicatory and non-adjudicatory – methods. We also discussed the forms of non-adjudicatory methods namely, reconciliation and conciliation and mediation and arbitration. Thus, law over the years has striven to evolve efficient means of resolving disputes in the modern time.

5.0 SUMMARY

The facts of the case raise issues relating to the primitive method of resolving a dispute and continuous effort of man in the modern time to evolve an efficient means of conflict resolution. Disputes were resolved during the Middle Ages by proofs rather than trials such as trial by ordeal. The method was crude, uncivilized of the old. Such methods are no longer acceptable and have even been criminalized. Therefore, whichever method is used today is a more benign way of resolving conflicts.

6.0 TUTOR MARKED ASSIGNMENTS

(i) Define judicial settlement of disputes and distinguish between the adjudicatory and non-adjudicatory methods of dispute resolution.

(ii) What do you consider as the best approach to resolve a dispute?

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UNIT 4: CONSTITUTION AND CONSTITUTIONAL DEMOCRACY

CONTENTS:

1.0 INTRODUCTION

Nation States reserve the power and rights to stipulate some rules of interpersonal and group relationships and to prescribe the basic principles that guide socio-economic and political organization, and exchange relations. Such rules as agreed upon and endorsed by the parliament become the cardinal elements that characterize the Constitution of a given nation-state. However, such elements are either written or unwritten, but form the super-structure or edifice upon which a particular State is organized and upon which socio-economic competition takes place.

2.0 OBJECTIVES

In this Unit, you will be able to understand the following:-

(i) What constitutionalism is all about
(ii) That a written constitution is a basic law that determines exchange relations
(iii) Constitutional Democracy

3.0 MAIN CONTENT

3.1 Meaning of the Constitution:

Longman Dictionary of Contemporary English has defined Constitution as, "the system of laws and principles, usually written down, according to which a country or an organization is governed." According to the BBC English Dictionary, "the Constitution of a country or organization is the system of laws which formally states people's rights and duties".

In a formal sense, constitution refers to:

(i) A fundamental legal document.
(ii) The fundamental institutions of a state the laws, customs and great conventions or
(iii) The total system of laws and customs

Bryce defined Constitution as "the aggregate of the laws and customs through and under which the public life of a State goes on, or the complex totality of laws embodying the principles and rules whereby the community is organized, governed, and held together. Thus, Constitution can be aptly defined as laws and principles according to which a State is governed. The objects of a Constitution are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operation of the sovereign power. Constitution can be written or unwritten.

Nigerian Constitution in Focus:

Nigeria has a written Constitution, and this in no doubt, is superior to all other laws. The 1999 Constitution has therefore, vividly emphasized the supremacy of the Constitution. Section 1 – (1) has stressed that, this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Section 1 Sub-Section 2 also states that the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

And Section1 Sub-Section 3 of the Constitution has even laid more emphasis on the supremacy of the Constitution by asserting thus: If any other law is inconsistent with the provisions of this constitution, this Constitution shall prevail, and that other laws shall, to the extent of the inconsistency, be void. As a matter of fact, the Constitution of any country seeks to provide acceptable framework for inflation and societal reproduction. The 1999 Constitution of the Federal Republic of Nigeria, like previous Constitutions, has a broad purpose of promoting the good government and welfare of all persons in the country on the principles of freedom, equality and justice, and for the purpose of consolidating the unity our people.

3.2 Rigid and Flexible Constitutions:

According to the ease or difficulty with which Constitutions can be amended they are sometimes divided into rigid and flexible constitutions. Constitutions may be rigid in form or principle, but flexible in substance or practice. For instance, the U.S. Constitutions is difficult to amend but broad enough in text to be interpreted flexibly.

Great Britain has an unwritten Constitution composed of customs, Conventions and regular Acts of parliament. Every country has either written or unwritten Constitution. It is only in truly democratic countries that Constitutions actually limit the powers of government. In Nigeria, the government operates like a Leviathan and political leaders appropriate the institutes of governance to subvert the Constitution and undermine the rule of law.

3.3 Constitutional Democracy in Nigeria:

Nigeria returned to constitutional democracy in 1999 with a presidential, federal Constitution. There have been demands by various civil society organizations, the executive and the legislature for review of the Constitution. A national Political Reform Conference (NPRC) set up in 2005 proposed many constitutional amendments which became controversial, especially the provision to extend the tenure of the executive by another term, and were not passed by the two houses of the National Assembly in 2006. Thus, the process of constitutional review was aborted. Nevertheless, the present government of President Yar'Adua has yet again set up Constitutional Review Committee comprising of some eminent and galaxy Nigerians to look into the areas of the constitution that need to be reviewed, amended, tinkered and what have you.

The principle of checks and balances, which is central to the presidential system, has been difficult to practice, large because the executive overshadows the legislature and judiciary, a legacy of the long period of military rule. Nigeria achieved a major landmark in its democratic evolution by the relatively successful conclusion of the 2003 elections, the first to be done by a civilian regime. However, many international and local election observers have condemned the conduct of the 2007 elections, warranting the President, Alhaji Umaru Musa Yar'Adua, to set up an Electoral Reform Panel in August 2007 to propose changes that will guarantee free and fair elections in the future.

Thus, without doubt, Nigeria has come a long way in its practice of constitutional democracy since 1999. Compared to the Military period, there have been huge improvements in respect for human rights, in equitable distribution of resources and competition for power. Democracy institutions that were established in 1999 are gradually maturing in performing their functions and understanding the limits of their powers.

3.4 Democracy and Political Governance in Nigeria:

In recent times, there have been recommendations as well by various civil society organizations and other institutions, to improve the status of democracy and political governance in Nigeria, and some of these key recommendations are the following: -

(i) Standards and codes not yet ratified should be ratified and domesticated in the shortest possible time;

(ii) The Economic Reform Programme should be faithfully implemented to sustain macro-economic stability;
(iii) Appropriate laws should be passed to institutionalize the economic reforms of the government.
(iv) Capacity-building to deepen new budget orientation and to institutionalize monitoring and evaluation of budget implementation by civil society organizations (CSOs);
(v) Capacity-building of public servants to operate the Public Procurement Law;
(vi) Passage and operation of the Fiscal Responsibility Bill, strengthening of support to anti-corruption agencies (EFCC & ICPC) to fight economic crimes and speedy trial of corruption cases.

SELF-ASSESSMENT EXERCISE
Explain the level of constitutionalism in Nigeria.

4.0 CONCLUSION
In this Unit, we have focused our discussions on, the meaning of Constitution, rigid and flexible constitutions, constitutional democracy in Nigeria and, democracy and political governance in Nigeria. Thus, it is pertinent to conclude that corporate governance should be improved, and the rule of law up-held for the welfare of the people.

5.0 SUMMARY
In Nigeria for instance, post-colonial political leaderships had tended to reduce the major problem associated with political instability and bad governance to the constitution. As a result, this has resorted to frequent and unrestrained review of existing constitutions.

6.0 TUTOR MARKED ASSIGNMENT
(i) Define Constitution and explain Rigid and Flexible Constitutions.
(ii) What is constitutional Democracy and explain some of the key recommendations to improve political governance in Nigeria.

7.0 REFERENCES/FURTHER READINGS
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UNIT 5 CRIME CONTROL IN NIGERIA

CONTENTS

1.0 INTRODUCTION

The Nigerian state is a historical phenomenon. The state as a conceptual variable refers tot eh totality of the materiality of political class domination in a society. However the incidence of crime, organs of crime control, elements of crime and then the relationship between criminal and civil offences, are what we are relating in this unit. But our central focus is to study and understand the trends and patterns of crime control and the extent which the Nigeria State has tackled the issue of crime in the post-military Nigeria.

2.0 OBJECTIVES

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

(i) The meaning of crime, and its elements
(ii) Crime control in post-military Nigeria
(iii) The role of civil society organization other agencies to fight crime in Nigeria.

3.0 MAIN CONTENT

3.1 Defining Crime:

It is not easy to define a crime so as to indicate from the nature of the act precisely what is a crime and what is not a crime; as a result, any definition of a crime based on the intrinsic quality of an act is bound to fail. This is because conduct may at once be both a crime and a civil wrong, for example stealing, assault.

However, crime refers to a grave and serious form of anti-social behaviour. It is an act of commission or of omission, which tends to the prejudice of the community and is forbidden by law under pain of punishment inflicted by the State – Oputa Curzon noted ‘that crime is any act or omission result from human conduct which is considered in itself or in its outcome to be harmful and which the state wishes to prevent which

renders the person responsible liable to some kind of punishment as the result of the state proceedings which are usually initiated on behalf of the state and which are designed to ascertain the nature, extent, and the legal consequences of that person's responsibility.

Tappan defines crime "as an intentional act or omission in violation of criminal law, committed without defense or justification and sanctioned by the states as a felony or misdemeanor. Thus, from the above definition, one would conceive crime as any act or conduct of an individual or group, or violation of the criminal law of the society. However, if the act or conduct does not violate the criminal law of the society then the act or conduct does not constitute a crime.

3.2 Element of Crime:

There are certain conditions that have to be present before an act can be considered as crime. Sutherland and Cressey have drawn attention to the seven interrelated and overlapping conditions, which can make an act a crime, these are:

(i) There must be harm or injury inflicted on some other person(s) by the actor

(ii) The act must be prohibited by the criminal law at the time it was committed

(iii) There must be intentional or reckless conduct which causes the harm or injury directly or indirectly

(iv) There must be ***mens rea*** or criminal intent on the part of the actor when he decides to engage in the act. The intention or motive of the actor must be shown to be willful and deliberate in engaging in the outlawed conduct

(v) There must be a coincidence of *mens rea* and *actus reas*. The mental element (criminal intent) must correspond with physical element (the harmful conduct)

(vi) There must be a casual relationship between the outlawed harm and the voluntary misconduct. This means that if A shot B and B dies later in hospital from typhoid fever, there is no direct link between the gun-shot wound and the death of B.

(vii) There must be legally prescribed punishment for the outlawed conduct. If there is no legally sanctioned punishment for the conduct, that conduct does not constitute a crime.

3.3 Fighting Corruption in the Political Sphere:

Corruption is a criminal act and is a huge challenge in the public administration in Nigeria. It is at the core of the crisis of governance, the establishment of a stable democratic order, rule of law, development and the welfare of citizens. Of all forms of corruption, political corruption has remained a major obstacle to national progress in Nigeria. The current democratic regime has put in place mechanisms that can prosecute the war against corruption, while there is improved awareness on the part of the citizenry of the need to fight corruption. The Economic and Financial Crimes Commission (EFCC) has recorded significant landmarks in the fight against corruption by bringing to book big men engaged in corruption waters. But not much progress has been made in dealing with political corruption in electoral fraud and vote buying as

demonstrated by the 2003 elections and 2007 elections. In general, there is a need to check the excessive use of money in politics.

3.4 Fighting Corruption and Money Laundering:

The Nigeria Government and Corruption Study (2003) measured the perceptions of Nigerians on the major problems of development and ranked corruption in the public sector only second to unemployment, while corruption in the private sector was ranked 12th. In 2001 the Nigeria Police in general was adjusted the most corrupt public institution in the country. Most Nigerians surveyed believed that the key organs of bureaucracy and governance (Federal and State Executive Councils and Local Government councils, political parties, members of the National Assembly) were very dishonest.

Since 1999, the Federal Government has shown determination to tackle corruption, as well as improve transparency and accountability. Government equaled its commitment through a number of initiatives and best practices, including, the "no longer business as usual." Independent Corruption Practices Commission (ICPC), Economic and Finance Crime Commission (EFCC), Police, Customs, Judiciary, Prisons, NAFDAC, Immigration etc. and establishment of the Budget Monitoring and Price Intelligence Unit (BMPIU), are a holistic approach in the strengthening and modernization of institutions whose duty it is to foster and/or engender compliance.

However, the fight against corruption and money laundering in Nigeria faces some challenges, such as the time and resources, the capabilities of the EFCC and ICPC, which are limited. The Nigerian Police, constitutionally empowered to enforce criminal laws, is itself not insulated by the stormy and prevailing social ills. Their actions rather recycle crime and deeper the sophistication of such acts.

SELF-ASSESSMENT EXERCISE

Can you say that crime has been controlled to a reasonable extent in the post-military Nigeria.

4.0 CONCLUSION

In this unit, we have discussed what crime is and crime control in our society. We discussed also the elements of crime, corruption in the political sphere and its remedial steps. Fighting corruption and money laundering was also discussed. Thus, we conclude that crime inflicts social injuries to the society, retardation of social-economic and political progress, and brings bad name to the country.

5.0 SUMMARY

Presently, all the necessary mechanism put in place to deter crime seem not to be working, as there is more crime in our society now than ever before, armed robbery has

become a norm, as bribery and corruption is now a way of life. Moreover, forgery, white collar crimes, thuggery, murder, political assassinations, arson, looting and plumber of public wealth are entrenched, as rape, sexual offences and ritual murders have become endemic in Nigeria Society.

6.0 TUTOR MARKED ASSIGNMENTS

1. What is crime? Explain Elements of crime.
2. In your view, what do you think is/are needed to be done to eradicate crime in Nigeria?

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POL. 124 NIGERIAN LEGAL SYSTEM

MODULE 6

UNIT 1: An Outline of Civil Procedure in Nigeria
UNIT 2: Civil Procedure in the Magistrate
UNIT 3: Commencement of Civil proceeding in High Court
UNIT 4: Interrogations and further and better application
UNIT 5: Enforcement of Judgments

UNIT 1: AN OUTLINE OF CIVIL PROCEDURE IN NIGERIA

CONTENTS:

4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION:

The sources of the law of civil procedure consist of Statutes and subsidiary legislation. The subsidiary legislation forms a large body of the law than the Statutes. Statutes establishing the courts usually contain a few rules of procedure and provide that in general where there are no provisions on any particular matter in the rules of court made under those Statues, appropriate English rules of court are not inconsistent with the Statutes. Thus, generally, Rules of the Supreme Court of England apply in all jurisdictions in Nigeria with respect to matters not dealt with by local enactments, containing rules of court. Therefore, civil law can be used as a generic term to denote the rules of law that govern any given political community. Generally, civil law denotes the whole body of law which is concerned with civil as distinct from criminal proceedings.

2.0 OBJECTIVES

In this unit, you should be able to know the following:-

(i) What civil procedure is
(ii) The difference between the civil procedure and criminal procedure.
(iii) Sources of civil procedure rules.
(iv) Subsidiary legislations.

3.0 MAIN CONTENT

3.1 What is Civil Procedure?

Civil Procedure is the method, or procedure of commencing, conducting and concluding civil matters, trials, or claims in court. Civil proceedings are taken in order to assist individuals to recover property or enforce obligations in their favour. Jackson was of the view that in law the term civil is sometimes used to mean the whole law of some particular state in contrast to international law.

In consideration of the above, civil offence in a given State means an offence against the law of that State which is of course, not military law, criminal law, religious and ecclesiastical law. In fact, the rules, which regulate the conduct of civil proceedings in the law courts or judicial settlement of civil offences, are collectively called civil procedure.

Sources of Civil Procedure rules:

The source or origin of the rules, regulating the civil practice and procedure of courts in Nigeria are:-

(i) The condition, it establishes the judiciary and provides for procedure rules to be made for the court.
(ii) Statutes, establishing the relevant courts.
(iii) Subsidiary legislation, which, provide civil procedure, rules for the relevant court. The subsidiary legislation is usually made by the relevant delegate of power pursuant to the provisions of the Statute establishing the court.
(iv) Rules of practice and procedure of English Courts, which apply where there is no statutory provision.

Thus, the courts specifically established by the Constitution and for which it provides some procedure rules and also gave powers for procedure rules to be made are: Supreme Court of Nigeria, Court of Appeal, Federal High Court, High Court of the Federal Capital Territory, Abuja Sharia Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of the Federal Capital Teritory, Abua, High Court of the State, Sharia Court of Appeal of a State, and Customary Court of Appeal of a State.

3.2 Subsidiary Legislation:

Statutes establishing the various courts usually provide some rules of procedure for the specific courts in question. Alternatively, the procedure rules are made under a separate Statute.

Thus, civil procedure rules are usually made for courts by the relevant delegated authority in the form of subsidiary legislation, pursuant to the Constitution and or the Statute, which specifically established the court. Examples of provisions enabling delegated persons to make civil procedure rules for court in the form of delegated legislations are – Sections 46 (3), 236, 248, 254, 259, 264, 269, 274, 279 and 284 of the 1999 Constitution.

3.3 The Civil Procedure of the Courts:

Practice and procedure rules and forms, regulate and characterize the work of the courts, whether it be civil proceedings or criminal proceedings. Thus, civil and criminal proceedings in the courts must be commenced and prosecuted according to the procedure laid down by the relevant court in its procedure rule or Criminal Procedure Act and equivalent laws in the States, as the case may be.

However, as noted before, the civil procedure rules of courts may be gathered from the following sources: The Constitution, Statutes establishing the relevant court, subsidiary legislations, providing civil rules for the relevant court, and rules of practice and procedure of English Courts which apply in an appropriate court, where there is a gap in the rules, provided that such rule is not in conflict with the statute establishing the court and so forth.

SELF-ASSESSMENT EXERCISE

What civil procedure and in what ways is it distinct from Criminal procedure?

4.0 CONCLUSION

In this Unit, we have defined what civil procedure is all about. We also discussed subsidiary legislations and the civil procedure of the courts. Thus, we can rightly conclude that a civil matter or claim may have a criminal issue or element, in which case, the civil aspect will be decided according to the relevant weight of evidence required by the evidence required by the Evidence Act, which is proof beyond reasonable doubt.

5.0 SUMMARY

The rules of procedure of courts are no more than guides, to help everyone and the courts to do and achieve justice in the shortest and most convenient way. Procedure rules or procedural law do not affect, displace nor detract from substantive law, but they are the procedure, instruments, or tools by which the courts are to achieve the provisions and object of substantive law, which is justice for the parties in a suit and everyone.

6.0 TUTOR MARKED ASSIGNMENT

(i) Explain Civil Procedure and what are the sources of Civil Procedure Rules?
(ii) Outline the civil procedure of the courts and subsidiary legislations.

7.0 REFERENCES/FURTHER READING

Akintunde Olusegun Obilade, (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.
Ese Malemi, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Nnanyelugo Okoro and Aloysius – Michaels Okolie, (2004) – Law, Politics and Mass Media In Nigeria, Nsukka, Prize Publishers.
Sanni, A. O., (1999) – Introduction to Nigerian Legal Method, Ile-Ife, Kuntel Publishing House.

The 1999 Constitution of the Federal Republic of Nigeria

UNIT 2: CIVIL PROCEDURE IN THE MAGISTRATE COURT:

CONTENTS:

1.0 INTRODUCTION

In general, civil procedure in the various Magistrate Courts is uniform but there are some important differences. It is intended to discuss here the rules of civil procedure in the Magistrate Court of Lagos State. Thus, the Civil procedure of a Magistrate Court may be summarized by considering the salient stages of the procedure such as the choice of court and issue of summons, pre-trial stage and settlement, default action, trial and enforcement of judgment.

2.0 OBJECTIVES

In this Unit, you will be able to understand the following:-

(i) The civil procedure of a Magistrate Court with reference to Magistrate Court of Lagos State.
(ii) About the pre-trial stage and settlement.
(iii) The role of the Magistrate.
(iv) What happens to the defaulter? Etc.

3.0 MAIN CONTENT

3.1 Choice of Court and Issue of Summons:

The plaintiff, that is, the person who is suing and asking for relief is expected to commence or initiate proceedings in the Magistrate Court in one of the following districts:

(i) Where the defendant resides, or
(ii) Conducts his business, or

(iii) District where the causes of action arose wholly or partly.

The plaintiff or his counsel commences the action by filing in the court a request for a summons, which may be ordinary summons or default summons which is issued for debts or liquidation money demands setting out the details of the claim, which summons is then served by the court bailiff on the defendant, that is, the person who has been sued.

An infant may sue by his next friend and may defend by his guardian. His next friend is usually his father or a person. No person is to act as next friend unless he has signed a written authority for the purpose, the authority has been filed in the Court Registry and he gives his own written consent to act in that capacity.

Lunatics and persons of unsound mind not adjudged lunatics may sue and defend an action by their committee. Persons of unsound mind may sue by their friends with the consent of the next friends and defend an action by guardians appointed for that purpose.

3.2 Originating Summons:

An originating summons is a summons other than a summons in a pending cause or matter. It is a summons (a writ of summons), which originates an action. It is expressly provided in the High Court rules that any person who claims to be interested under a deed, will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

An originating summons procedure is appropriate where the main or only point in dispute is the construction of a Statute or other enactment or the construction of a document or where the main or only point in dispute is some other question of law. It is not appropriate where a substantial dispute of fact is likely to arise. An originating summons dispenses with the need for pleadings.

3.3 Pre-trial stage and settlement:

Where the defendant fails to do anything by taking one of the steps enumerated by the Court, upon expiration of the time limited for the defendant to either enter appearance and defend the claim, or settle the matter, the plaintiff may file in an application on notice for judgment supported by an affidavit which will be heard by the Magistrate and judgment given thereon, in conclusion of the case, unless the defendant enters appearance and defends the action. Alternatively, the action may be determined without going to trial or at any time before judgment, if the parties reach a settlement and inform the court, in this instance:

(i) The matter may be discontinued by being struck out with or without cost, or

(ii) The parties may file terms of settlement in court which is then pronounced as the judgment of the court in the case.

3.4 Default Action:

Where the plaintiff is claiming a liquidated sum, that is, a fixed sum or debt which amount is known or capable of being assessed, the plaintiff should commence the action by way of a default summons or default action, so that, upon the defendant failing to take necessary step to resolve the case or defend it, the plaintiff will have judgment entered against the defendant on an application on notice.

3.5 Trial

Where pleadings have been filed, the party on whom the burden of proof lies in respect of the material issues or questions between the parties must begin by stating his case. Then he must produce his evidence and examine his witnesses. When he has concluded his evidence, he must ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party who began is entitled to sum up the evidence already given and comment on it.

However, the other party states his case. The case on both sides is then considered closed. The Magistrate then considers all the evidence before him and gives judgment to the party, who has evidence on the balance of probability in his favour, or the party who has discharged the burden of proof cast on him on the balance of probability or on a preponderance of evidence as required by the Evidence Act or Law in the State.

SELF-ASSESSMENT EXERCISE

What is your understanding of the civil procedure of a Magistrate Court with reference to Magistrate Court of Lagos State.

4.0 CONCLUSION

It is apt to conclude this unit by reminding ourselves the areas discussed, and these are, the choice of court and issues of summons, originating summons. We have also discussed pre-trial stage and settlement, default action and finally, trial.

5.0 SUMMARY

As a general rule, every entity recognized as a person by the law can sue and be sued and any entity not recognized by the law as a person can neither sue nor be sued. But there are certain classes of persons under disability, for example, infants, and lunatics.

6.0 TUTOR MARKED ASSIGNMENT

What are the salient stages of civil procedure in the Nigerian Courts?

7.0 REFERENCES/FURTHER READING

Akintunde Olusegun Obilade, (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc

John Ohireime Asein, (1998) – Introduction to Nigerian Legal System, Ibadan, Sam Bookman Publishers.

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UNIT 3: COMMENCEMENT OF CIVIL PROCEEDING IN THE HIGH COURT

CONTENTS:

3.5 Pleadings
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment
7.0 References/Further Reading

1.0 INTRODUCTION

A party who has been wronged or is aggrieved and wishes to seek relief in a High Court usually consults a lawyer for legal advice, who takes down the facts of his case and instructions. If the matter is not urgent and needing immediate action in court to forestall irreparable damage, the lawyer may as a first step write a letter of demand to the would be defendant demanding that a debt be paid, a wrong be put right and or monetary compensation be paid to his aggrieved client as the case may be and give a period of time for the demand to be met, failure of which action is thereafter filed, with or without giving further notice to the would be defendant or alleged wrong-doer.

2.0 OBJECTIVES

At the end of this Unit, you should know the following:

(i) How a case starts in the courts.
(ii) The stages before the final conclusion.
(iii) Settlement, and
(iv) Pleadings and its objectives.

3.0 MAIN CONTENT

3.1 Commencement of Action:

An action may be commenced in the High Court by a counsel filing one or a combination of the following papers in court:-

(i) Writ of Summons, or originating summons, together with a statement of claim, or
(ii) Exparte motion, with or without a writ of summons and a statement of claim, which may be filed later.
(iii) Petition, as may be necessary, such as in matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debts and so forth.

A writ of summons when filed is sealed by embossing the court's name on it for service by bailiff on the defendant to give him notice of the claim, made against him and requiring him to acknowledge service and to defend it, if he does not admit the claim. A statement of claim may be filed along with the writ or later on within 14 days of the service of the writ on the defendant.

A writ usually contains the following endorsements:

(i) Names of the parties to the suit, that is:
    (a) The name of the Plaintiff and his address;
    (b) Name of the defendant and his address, and
(c) Name of the plaintiff's solicitor and his business address for service of court processes.

(ii) An endorsement of the claim against the defendant:

A writ is required to be served on the defendant personally. The life of a writ is 12 months, within which time it has to be served, although its life may be renewed before it expires to enable it to be served.

3.2 Appearance:

A defendant may enter an appearance to a writ after an acknowledgement of the writ by sending by post to the Registrar a memorandum of appearance together with a copy of the memorandum. Where the defendant appears in person, the memorandum must be signed by him and must contain an address for service, which address must be within the jurisdiction of the High Court.

However, where a defendant fails to enter appearance, within the time frame, the plaintiff, may by a motion on notice obtain interlocutory or final judgment against the defendant in default of appearance and or failure to defend the action. As a final judgment, the judgment is final with respect to the liability of the defendant to pay damages as well as with respect to the quantum of damages.

3.3 Settlement:

Parties to an action may also settle the dispute for valuable consideration or without consideration and withdraw the action without filing terms of settlement in which cases the action will be struck out by court or by filing terms of settlement in court, which will pronounce it as consent judgment of the court in conclusion of the action.

3.4 Summary Judgment:

Summary judgment is a procedure or device available for promptly and expeditiously obtaining judgment and disposing off a controversy or matter without a trial. It is usually available where:

(i) There is default of appearance, and or
(ii) Failure to file a defence, or
(iii) When there is no dispute as to either material facts or inferences.

This procedure permits any party to a civil action to move for a summary judgment on a claim, counter claim or cross-claim where he believes that there is no genuine issue of material fact to be tried and that he is entitled to judgment as a matter of law, in any of the situations listed above.

3.5 Pleadings:

Pleadings are written statements served by a party on his opponent and containing the allegations of fact on which the party relies. They enable the parties to determine areas on which they are agreed and areas on which there is a controversy between them. Certain facts stated by a party may be admitted by his opponent, in that case the facts need not be proved.

Thus, pleadings enable each party to know what facts he had to prove at the trial and surprise, which might follow from one party rising at the trial facts that his opponent did not anticipate, is avoided. The principal advantage of pleadings is that they enable the parties to determine the precise issues in controversy between them.

The Object of Pleadings includes:-

(i) To state the claims of the parties.
(ii) To give the parties time for considered reply.
(iii) To ascertain the issues in dispute or controversy between the parties which requires trial and decision by court?
(iv) To eradicate irrelevant matter, and
(v) To avoid a party spring a surprise by raising an issue he did not plead during the trial.

Thus, a pleading must not state or set out law but may raise an issue of law but without reaching conclusions of law.

SELF-ASSESSMENT EXERCISE

How does a case start in the court?

4.0 CONCLUSION

In this Unit, we have vividly discussed on how a dispute commences into an action, what writ is all about, how a defendant enters an appearance to a writ after acknowledging the service of a writ, settlement of disputes, summary judgment, and pleadings and its object. Thus, a court may order a stay, that is, a suspension of proceedings in an action temporarily for good reasons.

5.0 SUMMARY

As I have mentioned above, a court has an inherent jurisdiction or power to stay proceedings in a claim for any of the following, until something requisite is done or until a party has complied with an order. However, a stay of proceedings may be permanent, if to proceed with the action would be improper or the suit is frivolous, vexatious or an abuse of court process, that is, an abnormal use of the court process.

6.0 TUTOR MARKED ASSIGNMENT

Explain any 3 of the following:-

(i) Commencement of action
(ii) A writ
(iii) Appearance
(iv) Pleadings
(v) The Object of Pleadings.

7.0 REFERENCES/FURTHER READING

Akintunde Olusegun Obilade, (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Kiralty, A. K. R., (1960) – The English Legal System, - London, Sweet and Maxwell.

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UNIT 4: INTERROGATIONS AND FURTHER AND BETTER PARTICULARS

CONTENTS:

1.0 INTRODUCTION

These are questions, which one party may by notice or application file in court, require the other party to answer on oath. The answer may then be read at the trial. Whether a particular question may or may not be asked is a matter to be decided by the judge. Request for particulars or for further and better particulars are designed to make clear an opponent's allegations, which if he fails to prove, he will as a general rule lose his case. Discovery, further and better particulars and interrogatories are concerned with evidence and where the person in custody of required information fails to produce it, then other methods may be used to proof such fact.

2.0 OBJECTIVES

In this Unit you should be know the following:

(i) Means of interrogatory;
(ii) Summons for Direction;
(iii) Trial of a case.

3.0 MAIN CONTENT

3.1 Summons for Directions:

After the close of pleadings, the plaintiff usually files a summons for direction, returnable in not less than 14 days. A summons for direction is really in application to court to set down the case for trial, that is, a date for the hearing of the matter.

On the other hand, a plaintiff may take out within seven days from the time the pleadings are deemed to be closed a summons under rule 1 of Order 26 of the High Court (Civil Procedure) Rules of Lagos State for the purpose of giving the court or a judge in Chamber the chance of considering the preparations for the trial of the action. The court or judge in Chambers may thus deal as far as possible with interlocutory applications and he may give such directions with respect to the course of the action as seems best adapted to secure the just, expeditious and economical disposal of the action. This summons is therefore known as summons for directions. Thus, the filing of summons for direction in court is to make parties prepare for trial of the action, so that all appropriate pre-trial matters, which are outstanding, can be expeditiously dealt with and allow for a date for trial to be fixed.

3.2 Proceedings at the Trial:

On the date fixed for trial, the parties and their witnesses usually assemble in court for the trial. They come to court with the documents or other things required as exhibits. Where a witness refuses to appear in court, a subpoena may be issued on him to attend court. A subpoena is a summons to appear in court and give evidence, that is, testify and or tender an exhibit, such as a document in evidence, on the condition that reasonable expenses will be paid to him, by the party calling him as a witness. Witness, who ignore a subpoena are in contempt of court and may be punished for such contempt, by a fine or imprisonment.

Absence of Parties:

Where a cause on the Weekly Cause List is called and neither of the parties (i.e. the Plaintiff and the defendant) appears, the action or the cause must be struck out by the court unless it sees good reasons to the contrary. It may be adjourned, otherwise, if a letter is sent to the court asking for adjournment. If the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden lies

upon him. Where the defendant appears and the plaintiff does not appear, the defendant is entitled to judgment dismissing the action if he has no counterclaim but if he has, he may prove it so far as the burden of proof lies upon him. However, any judgment obtained where one party does not appear at the trial may be set aside by the court on the application of the party absent, on such terms as may seem fit.

3.3 Judgment

After the closing speeches or addresses of counsel, the judge sums up, that is, he considers or evaluates the evidence given in the case and then gives judgment on the same day. Where a judge requires more time to consider the case, he may reserve judgment and adjourn the matter for judgment at such later date. On the judgment date, the judge then gives verdict stating the facts and legal issues in the case, explain the appropriate burden and standard of proof and states the basis of the judgment, and enters judgment in favour of the appropriate party and also makes such Orders as are relevant in the case.

Where the plaintiff proves his case, judgment will be given in his favour. However, where he fails to prove his case, judgment will not be entered in his favour and the defendant will escape liability. In civil cases, the burden of proof on a plaintiff is proof on a balance of probabilities or proof on a preponderance of evidence.

SELF-ASSESSMENT EXERCISE

Explain Means of interrogatory and Summons for Direction.

4.0 CONCLUSION

In this Unit, we have discussed the introduction which starts with the interrogations and further and better particulars. Coming to the Main Content, we have also discussed the summons for directions, proceedings at the trial, and the judgment. Thus, we shall be discussing enforcement of judgment in the next Unit.

5.0 SUMMARY

Trial of a case is usually in open courts and take place only when the plaintiff opens his case and states the facts on which he relies, in line with his pleadings, or statement of claim. The plaintiff's witnesses, if any are examined in chief, cross-examined and re-examined, where necessary. Documents and answer to interrogatories are presented by the plaintiff and or witnesses and tendered as exhibits and the plaintiff's case closed. The defendant at the close of the plaintiff's case may submit that there is NO case to answer, stating his reasons. Closing addresses by the plaintiff and defendant's counsels end their case while judgment is awaited.

6.0 TUTOR MARKED ASSIGNMENT

(i) What do you understand by summons for direction?

(ii) Where a witness refuses to appear in court, a subpoena is issued on him to attend court. What is subpoena in relation to proceedings at the Trial?

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O. (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Kiralfy, A. K. R., (1960) – The English Legal System, London, Sweet and Maxwell

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UNIT 5: ENFORCEMENT OF JUDGMENTS

CONTENTS:

1.0 INTRODUCTION

A party in whose favour a monetary judgment is given is known as the **judgment creditor** and his opponent, the party against whom the judgment is given, is the **judgment debtor**. The judgment extinguishes the rights of the judgment creditor in respect of the judgment debt. The judgment creditor may enforce the judgment under the Sheriffs and Civil Process Law and the judgments (Enforcement) Rules by any of these methods, i.e. a writ of attachment and sale of property, garnishee proceedings, a writ of sequestration, a writ of possession, a writ of delivery, etc.

2.0 OBJECTIVES

In this Unit, you should be able to know the following:

(i) What is enforcement of judgments?
(ii) To distinguish the judgment creditor from the judgment debtor.
(iii) Conditions under which the plaintiff may enforce the judgment.

3.0 MAIN CONTENT

3.1 Judgment for payment of money:

This may be enforced by:-

(i) **A writ of fife:** directing the Sheriff to seize the debtor's goods or properties through bailiffs for sale in satisfaction of the debt. Thus, executing the writ may attach and sell –

(a) Any moveable property to which the judgment debtor is entitled but which is not in his possession or subject to a lieu or right of some other person to the immediate possession of the property, and

(b) Any shares in any public company or corporation to which the judgment debtor is entitled. The attachment of such movable property or shares affected under an order of court by delivering an office copy of the order to any person bound by it.

(ii) A Charging Order:

May be made over the debtor's land, shares or other property for payment of the debt. When the money is not paid, such property may be sold upon application to court, in order to satisfy the debt.

(iii) **A writ of Sequestration:**

Commands and empowers two or more commissioners to be appointed by the court for the purpose to enter upon all the immovable property of the judgment debtor, to collect the rents and profits of the immovable property and also to take possession of all the goods and movable property of the judgment debtor, until the debtor clears his contempt or the court makes an order to the contrary.

(iv) **Appointment of a receiver:**

Over the debtors property to take over income such as rent and apply it to pay off the judgment creditor and so forth.

(v) **A Garnishee Order:**

May be made to attach money which the debtor has with a third party, such as a bank, so that a credit balance on the debtor's bank account will be diverted from him and paid to the judgment creditor. A plaintiff usually apply to court for a garnishee order nisi which is directed to the bank and the debtor, requiring the bank to send a representative to attend court to show why the money or a part of it should not be used to pay the judgment creditor.

(vi) **Attachment or earnings:**

Earnings may be attached to pay debt. Where a debtor is in employment, a judgment creditor may obtain an order directing the debtor's employer to deduct a specified sum from the defendant debtor's wage or salary and pay it into court for the plaintiff. Attachment is not available against the profit of a self-employed person.

3.2 Judgment for Possession of Land or other Property:

Where a judgment is given or an order is made for the recovery of land or for the delivery of possession of land, in an action other than one between landlord and tenant under the Recovery of Premises Law, the judgment or order is enforceable by a writ of possession in a prescribed form addressed to the Sheriff. Thus, judgment for the possession of land or other property may be enforced by:-

(i) A writ of possession
(ii) A vesting order and so forth
(iii) Judgment for Delivery of Goods may be enforced by a writ of delivery, or an order of specific performance, and so forth.

4.0 CONCLUSION

In this Unit, we have discussed Enforcement of Judgments. In its introduction we have discussed judgment creditor and judgment debtor respectively. We have also dealt upon judgment for payment of money and judgment for possession of land or other property. Thus, we conclude that there are two types of writ of attachment and sale of property. One relates to goods and chattels (movable property) the other relates to immovable property.

SELF-ASSESSMENT EXERCISE

Within the Nigerian judicial system how can judgments be enforced?

5.0 SUMMARY

When judgment has been entered in favour of a party, the judgment if not satisfied within the time frame by law, appealed against or otherwise arrested, the plaintiff may enforce the judgment under the Sheriffs and civil process law and the judgments rules.

6.0 TUTOR MARKED ASSIGNMENT

What is enforcement of judgments? Distinguish the judgment creditor from the judgment debtor

7.0 REFERENCES/FURTHER READING

Akintunde Obilade O., (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

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MODULE 7

UNIT 1 AN OUTLINE OF CRIMINAL PROCEDURE IN NIGERIA

CONTENTS

1.0 INTRODUCTION

The main sources of the law of criminal procedure are the Criminal Procedure Ordinance (in force in Ogun, Ondo and Oyo States), the Criminal Procedure Act (in force throughout the country as Federal Law with respect to Federal matters and in force in Bendel State as state Law), the Criminal Procedure Law of Eastern Nigeria in force in Anambra, Cross River, Imo and Rivers states, the Criminal Procedure Law of Lagos State and the Criminal Procedure Code in force in Bauchi, Benue, Borno, Gongola, Kaduna, Kano, Kwara, Niger, Plateau and Sokoto States. Thus, there are two broad classes of matters that come to court, and these are civil matters, requiring civil mode or procedure of trial, and criminal matters, requiring criminal mode or procedure of trial.

2.0 OBJECTIVES

In this unit, you should know the following:

(i) The meaning of Criminal Procedure
(ii) The Reasoning behind Criminal Procedure
(iii) The Classification of Offences
(iv) That Preliminary inquiry is not a trial
(v) Indictable and non-indictable offences
(vi) The importance of the division of offences into Indictable and non-indictable offences.

3.0 MAIN CONTENT

3.1 What is Criminal Procedure?

Criminal Procedure is the method or procedure of commencing, conducting and concluding criminal proceedings or matters in court. The sources of the rules regulating procedure in Nigerian courts are mainly the criminal procedure Act and its equivalent laws in the Southern States, Criminal Procedure Code and its equivalent laws in the Northern states. Other sources which provide some criminal procedure rules are, the Constitution, Criminal Code and the Penal Code, Statutes establishing tribunals.

However, the Criminal Procedure Act and its equivalent laws apply and regulate criminal procedure in Southern states of Nigeria where the Criminal Code Act and its equivalent laws apply, while the Criminal Procedure Code and its equivalent laws apply and regulate Criminal Procedure in northern states of Nigeria where the Penal Code and its equivalent laws apply. The 1999 Constitution contains some rules of Criminal Procedure, which must be observed in the course of charging and prosecuting a suspect for an offence, which requirements, if ignored may lead to the whole criminal proceedings becoming a nullity.

3.2 The Criminal Code and Penal Code:

Under the Criminal Code and the Penal Code, the criminal procedure is that certain offences cannot be prosecuted.

(i) Without the consent of the Attorney General, for instance, the offence of sedition.
(ii) Certain offences cannot be prosecuted after the time limited by law. An example is the offence of sedition, which cannot be prosecuted after the expiration of six months after its commission if it was a continuous act. The failure of the prosecution to observe these procedures usually leads to a nullity of the whole proceedings.

3.3 Statutes Establishing Tribunals:

Statutes establishing tribunals, court martial and other special courts may stipulate its own procedure and practice which have to be observed, together with the procedures stipulated by the Criminal Procedure Act. A tribunal is a master of its own procedure; provided it observes the rules of natural justice or fair hearing. For this reason, the general rule of law, is that, a tribunal and similar courts are usually the master of their own procedure.

Thus, tribunals and like courts usually determine their own procedure. However, such procedure must not contravene the rules of fair hearing or natural justice, which is a basic requirement of anybody that adjudicates any matter, or who acts in a judicial or quasi-judicial capacity. Anybody who acts in a judicial or quasi-judicial capacity must act in accordance with the rules of natural justice or fair hearing.

3.4 Procedure under the Criminal Procedure Act and Laws:

The Criminal Procedure Act and equivalent law regulate criminal procedure in the southern states. The content of the criminal procedure Act is reproduced as follows:

Section:

1. Short little
2. Interpretation
3. Arrest

10-16 Arrest without warrant and procedure thereon
17-20 Bail on arrest without warrant
21-27 Warrant of arrest and general authority to issue
28-29 Execution of warrant of arrest, etc.

SELF ASSESSMENT EXERCISE

In a criminal procedure how can a crime be classified?

4.0 CONCLUSION

In this unit, we have discussed the introduction the concept of criminal procedure, the Criminal Code and Penal Code, the Statutes establishing tribunals, and procedure under the Criminal Procedure Act and Laws. Thus, we conclude that a warrant of arrest is not to be issued in consequence of a complaint unless the complaint is one made on oath by the complainant himself or by a material witness. Information filed in a high court contains essentially a statement that a person is charged before the high court with a specified offence.

5.0 SUMMARY

Where a compliant has been made to a magistrate's court that person has committed an offence, and an application has been made to the magistrate for the issue of either a summons commanding the person to appear before the court for the purpose of the complaint or a warrant for the arrest of the person, the magistrate may issue a summons or warrant to compel the appearance of that person before him. The summons is directed to the person accused of having committed the offence.

6.0 TUTOR MARKED ASSIGNMENT

(I) Explain Criminal Procedure, its sources and the Criminal Procedure Act and Laws.
(ii) What do you understand by the Statutes Establishing Tribunals?

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O. (1990) - The Nigerian Legal System, Owerri, Spectrum Law Publishing

Ese Melami, (1999) - Outline of Nigerian Legal System, Lagos Grace Publisher Inc.

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Nnanyelugo Okoro and Aloysius - Michael Okolie, (2004) - Law, Politics and Mass Media in Nigeria, Nsukka, Prize Publishers.

UNIT 2 CLASSIFICATION OF OFFENCES

CONTENTS

1.0 INTRODUCTION

Following out Digest of Criminal Law, all offences against the criminal laws of the Federal Government are Federal Offences, such might be drug related offences, smuggling, armed robbery, currency offences etc. Most serious ones are usually listed in the schedule. A state offence is one, which is against the criminal laws of a state. However, offences may be classified in two ways such as indictable and non-indictable offences, felonies, misdemeanors and simple offences.

2.0 OBJECTIVES

In this unit, you should be able to know the following:

(i) What classification is all about
(ii) The important of classification
(iii) What are felonies, misdemeanors and simple offences, and their importance?

3.0 MAIN CONTENT

3.1 Federal and State Control of Criminal Proceedings

The Federal Attorney - General controls all criminal proceedings as regards federal offences. He can delegate this function to a state's Attorney General. Similarly, the state Attorney General can delegate it to the Federal Attorney-General. Of course, it follows by courtesy or comity through letters regatory or delegatory that one state Attorney General to control the criminal proceedings within his own jurisdiction. In the absence of such delegation, one cannot control the proceedings belonging to another, if he does, a quo warrantor may be entered against him and the proceedings nullified. Offences may be classified in two ways as follows:

(i) Indictable offences
(ii) Summary conviction offences or non-indictable offences.

3.2 Indictable and non-indictable offences

Both types of classification are important for the purpose of the law of criminal procedure in the southern states. Neither type of classification exists in the law of criminal procedure in the northern states.

By indictable offences, we refer to an offence which on conviction may be punished by a term of imprisonment exceeding two years, or which on conviction may be punished by imposition of a fine exceeding four hundred naira.

3.3 The importance of the division of offences

The importance of the division of offences into indictable and non-indictable offences lies in the method of trial and in the power of arrest for an offence. Meanwhile, summary conviction offence refers to any offence which is not indictable, any offence punishable by a magistrate's court on summary conviction. Indictable offences are triable on information but they may be tried summarily in certain circumstances. While non-indictable offences are triable summarily and normally not on information.
The power to arrest a person without warrant for an offence depends in part on whether the offence is an indictable offence.

A Felony: is any offence which is declared by law to be a felony, or is punishable, without proof of previous conviction, with death or with imprisonment for three years or more.
A misdemeanor: is any offence, which is declared by law to be a misdemeanor, or is punishable by imprisonment for not less than six months, but less than three years.
A simple offence: any office, which is neither a felony nor a misdemeanor, is a simple offence. However, the classification of offences into felonies, misdemeanors and simple offences is important first of all for the purpose of determining the power of arrest for the offence.
Secondly for the purpose of determining criminal liability or punishment with respect to attempt to commit an offence, preparation to commit an offence, neglect to prevent the commission of an offence, conspiracy to commit an offence, and being an accessory after the fact to an offence, and thirdly for the purpose of determining the ambit of the power of the court to grant bail to an accused person with respect to an offence.

SELF-ASSESSMENT EXERCISE

What are felonies, misdemeanors and simple offences, and their importance.

4.0 CONCLUSION

We have to conclude by reminding ourselves the areas of which we have discussed. We have touched upon the Federal and State control of criminal proceedings, different

divisions of offences, such as, indictable in certain offences, summary conviction in certain circumstance. We also discussed a felony, a misdemeanor, and a simple offence, but most importantly, the essence of classifications of offences. Thus, we conclude that the importance of the classification of offences lies in the method of trial and in the power of arrest for an offence.

5.0 SUMMARY

Thus, once an offence is declared by law to be punishable on summary conviction, it cannot be an indictable offence no matter how heavy the prescribed punishment may be.

6.0 TUTOR MARKED ASSIGNMENT

(i) What are indictable and non-indictable offences?
(ii) Explain a felony, a misdemeanor, and a simple offence.

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O., (1990) - The Nigeria Legal System**,** Owerri, Spectrum Law Publishing.

Nnanyelugo Okoro and Aloysius-Michael Okolie, (2004) - Law, Politics and Mass Media in Nigeria**,** Prize Publishers.

Nweke, S.A.N., (2002) - Principles of Crime Prevention and Detection in Nigeria, Enugu, Ebenezer Productions.

UNIT 3 CRIMINAL PROCEDURE IN THE MAGISTRATE COURT

CONTENTS

1.0 INTRODUCTION

A trial on indictment or information in the High Court is really an elaboration or amplification of a summary trial at the magistrate court. In its pure essence, it is not much different from a summary trial, except for the elaboration of certain procedures. However, the salient stages of criminal procedure at the High Court for trial on information are what is an indictment or information? Proofs of Evidence, Arraignment and plea, plea of guilty, plea of not guilty, prosecution, submission of "No case to answer," Defence, closing address, judgment, discharge, and finding of guilt and sentence.

2.0 OBJECTIVES

In this unit, you should know the following:

(i) An indictment or information
(ii) Examples of an information
(iii) Proofs of Evidence
(iv) Arraignment and plea, etc.

3.0 MAIN CONTENT

3.1 An Indictment or Information:

An indictment or information is accusation of crime brought by the Department of Public Prosecution against an accused for trial in the High Court. An indictment or information, is a Criminal charge brought against a person by the Attorney General or any of his subordinate legal officers on behalf of the state or country and which is for trial at the High Court.

An Information – Examples:
In the High Court, information of crime is usually prosecuted in the name of the relevant state or in the name of the country, as the case may be. For example, using John the Bad, as an accused person, the information may be brought thus:
(i) **State v John the Bad:**
Criminal proceedings brought by the state are usually prosecuted in the name of the state in a state High Court.
(ii) **Federal Republic of Nigeria v John the Bad:**
This is sometimes shortened in law reports as Republic v John the Bad. Criminal proceedings brought or on behalf of the Federal Government of Nigeria are usually prosecuted in a Federal High Court. Some public agencies also prosecute crime in their own name, etc.

3.2 Commencement of Proceeding:

The summons is directed to the person accused of having committed an offence. It must state concisely the substance of the complaint and require him to appear at a certain time and place being, normally, not less than 48 hours after the service of the summons before the court to answer to the complaint and to be further with according to law.

In certain circumstances, notwithstanding the issue of a summons, the presence of the accused may be dispensed with. For example, under section 100 of the Criminal Procedure Law of Lagos State where a magistrate issues a summons in respect of an offence punishment by a fine not exceeding N100 or by imprisonment for a term not exceeding six months or by both such fine and imprisonment, the magistrate may, on the application of the accused if he sees reasons to do so dispense with the personal attendance of the accused provided that the accused pleads guilty in writing or appears by a legal practitioner and pleads by the legal practitioner.

However, where such application is made by an accused with respect to an offence punishable by only a fine not exceeding N100, the magistrate must grant the application provided the accused himself pleads guilty in writing or appears so pleads by a legal practitioner.

A warrant of Arrest: is not to be issued in consequence of a complaint, unless the complainant is one made on oath by the complainant himself or by a material witness.

An information file: in a High Court contains essentially a statement that a person's charged before the High Court with a specified offence.
The information begins with a number of information followed by the following items in the order in which they are set forth:
(a) The title of the case e.g "the state v John Penn."
(b) The name of the High Court, e.g. "In the High Court of Lagos State."

(c) The name of the Judicial Division, e.g "The Ikeja Judicial Division."
(d) The date of preparation of the information, e.g "the 26th day of June, 2008."
(e) A statement of information to the effect that the accused is charged with a specified offence before the court on a specified date, e.g. "At the sessions holden at Ikeja, Lagos state, on the 26th day of June, 2008, the court is informed by the Attorney-General on behalf of the state that John Penn is charged with the following offence, etc. Information must contain a description of the offence charged or where there are more than one offence charged in the same information, a description of each offence in a separate paragraph called "a count."

3.3 Proofs of Evidence:

The proofs of evidence or evidence in proof means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence. Photocopies of the list of the witness, the written statements they made to the police and the list of exhibits, if any, are usually attached to the information filed by the state.

The real essence of attaching these proofs of evidence is to put the accused on notice as to the nature of the case against him, to enable him take steps to prepare and state his defence. This is a fundamental right under the fair hearing provision of the Constitution.

SELF-ASSESSMENT EXERCISE

Discuss what these mean: an information and Proofs of Evidence

4.0 CONCLUSION

In this unit, we have discussed the introduction of criminal procedure in the magistrate court. We have as well dealt with an indictment or information, commencement of proceeding, made references, and finally, discussed proofs of evidence. However, where information contains more than one count, the counts must be numbered consecutively.

5.0 SUMMARY

Bringing a person arrested without a warrant before the court upon a charge in accordance with the appropriate criminal procedure enactment, in the case of proceedings before a magistrates court.

6.0 TUTOR MARKED ASSIGNMENT

(i) Summons is directed to the person accused of having committed an offence;
Comment:
(ii) Explain the following:
(a) A warrant of Arrest
(b) An information of Arrest
(c) Proofs of Evidence, and
(d) Examples of an information

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O. (1990) - The Nigerian Legal System, Owerri Spectrum Law Publishing.

Ese Melami, (1999) - Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Kiralty, A.K.R., (1960) - The English Legal System, London, Sweet and Maxwell.

Nweke, S.A.N., (2002) - Principles of Crime Prevention and Detection in Nigeria, Enugu, Ebenezer Productions.

UNIT 4 PRELIMINARY INQUIRY

CONTENTS

1.0 INTRODUCTION

A preliminary inquiry is an initial or preliminary examination of an indictable offence allegedly committed by an accused person. It is a first screening or hearing held by a magistrate to determine whether a person charged with an indictable offence triable by a High Court, should be held or committed for trial at the High Court. It is a preliminary inquiry into an indictable offence to determine whether there is prima facie evidence to warrant committing the accused for trial at a High Court.

2.0 OBJECTIVES

In this unit, you are expected to learn the following:

(i) What is preliminary inquiry?
(ii) The procedure of a preliminary inquiry
(iii) That it is conducted by a magistrate
(iv) That a prima facie case must be established against the accused.

3.0 MAIN CONTENT

3.1 Preliminary Inquiry into an Indictable Offence

It is a preliminary hearing held in a magistrate court in respect of indictable or serious offences triable in the High Court during which the state is required to produce sufficient evidence to establish that there is probable cause or reason to believe;

(i) That a crime has been committed, and
(ii) That the accused person committed it

Thus, a preliminary inquiry before a magistrate is essentially, a first screening of the criminal charges brought against an accused. The basic function of a preliminary inquiry is to determine whether there is sufficient evidence to hold a trial at the High Court.

Its function is thus not to try the accused. It is simply an inquiry aimed at determining whether there is sufficient evidence to justify a trial of an accused. Further, a preliminary inquiry does not require the same degree of proof, nor quality or evidence that is necessary during trial or for conviction. In Nigeria Criminal Procedure Law, as in England before a person is tried for an indictable or serious offence at the High Court, a preliminary examination of the charge is usually held, before a magistrate to determine whether or not, the accused person should be committed for trial at the High Court at public cost and with the attendant hurdles.

The proceedings open with the magistrate causing the substance of the complaint to be stated to the accused. The accused is not required to make any reply to the complaint and if he does, the magistrate must not record the reply. The next stage is the examination by the magistrate of witness for the prosecution. When anyone of the witnesses is being examined, no other witness should be present unless the magistrate is of opinion that it is necessary or conducive to the ends of justice that any particular witness should be permitted or required to be present during the whole or any part of the examination of any other of the witnesses.

Therefore, magistrate must take into consideration the statement made by the accused and any evidence given by him or his witnesses before deciding whether to commit the accused for trial. Where there is a conflict between the evidence for the accused and the evidence against him, the magistrate must consider the evidence against the accused to be sufficient to put the accused on his trial if that evidence is such as, if un contradicted, would raise a probable presumption of the guilt of the accused.

3.2 The Procedure of a Preliminary Inquiry:

A preliminary inquiry, usually takes the following procedure.

(i) The prosecution calls witnesses who give evidence under oath, which is known as a deposition.

(ii) The witnesses may be crossed examined by the accused and or his counsel and they may be re-examined by the prosecution.

(iii) The evidence of every witness is written down by the magistrate and read out to such witness in the presence of the accused person and the witness, the magistrate, and the interpreter sign the evidence or deposition, if any was used.

(iv) The witnesses are bound over to attend the trial in the event of a trial

(v) The accused, that is, the defence may at this stage submit that there is "No case to answer" and that the charge ought to be dismissed.

(vi) If the evidence or charge is not dismissed, the charge is written down, read and explained to the accused.

(vii) The magistrate then asks the accused, whether he wishes to say anything in answer to the charge, there and then caution and explains to the accused, that he is not obliged to say anything, unless he wishes to and that whatever he says will be written down and may be used in evidence at the trial.

(viii) What the accused person says is written down and read over to him, he signs it and the magistrate signs it, including an interpreter if any was used.
(ix) The accused and his witnesses, if any, given evidence on oath, are cross-examined and may be re-examined by the defence
(x) The defence counsel may address the court once again
(xi) The magistrate then reads his decision in respect of each of the count of the charge or information.

Thus, if the magistrate decides that there is a prima facie case to answer, the accused person is then committed for trial at the High Court. He may or may not be on bail in the meantime, depending on whether or not it is a bailable offence. If a prima facie case is not made out to warrant sending the accused for trial at the High Court at the usual public expense and effort, the charges and evidence are dismissed and the accused is discharged and acquitted or discharged but not acquitted as the case may be.

SELF-ASSESSMENT EXERCISE
Can you say that in Nigeria the procedure of a preliminary inquiry is observed?

4.0 CONCLUSION

If the magistrate considers the evidence against the accused insufficient to put him on his trial, the magistrate must immediately order that the accused be discharged with respect to the charge under inquiry but the discharge is not a bar to any subsequent charge in respect of the same facts. If the magistrate considers the evidence sufficient to put the accused on his trail, he must commit him for trial before the High Court. In that case, the magistrate must until the trial, either grant the accused bail or send him to prison for safe keeping.

5.0 SUMMARY

The procedure for the summary trial by the High Court of indictable offences with respect to which there has been a committal for trial in the High Court is, in general, similar to the procedure for the summary trial of non-indictable offences in magistrates' courts is different.

6.0 TUTOR MARKED ASSIGNMENT

Explain vividly the preliminary inquiry into an indictable offence.

7.0 PREFRENCES/FURTHER READING

Akintunde Obilade O., (1990) - The Nigerian Legal System**,** Owerri, Spectrum Law Publishing.

Ese Melami, (1999) - Outline of Nigeria Legal System**,** Lagos, Grace Publishers Inc.

Kiralty, A.K.R., (1960) - The English Legal System**,** London, Sweet and Maxwell

Tappan P.W., (1960) - Crime, Justice and Correction**,** New York, McGraw Hill Book Co.

UNIT 5 SUMMARY TRIAL

CONTENTS

1.0 INTRODUCTION

Summary trial is all trials in the High Court without the requirement of information and a special procedure. All trials in the magistrate court and summary conviction in any other courts.

A summary trial is a legal proceeding, which is short and concise. It is immediate prosecution in a prompt and simple manner, without the necessity and niceties of filing information in criminal proceeding or the exchange of pleadings between parties in civil proceedings. All bailable offences or minor crimes triable in the magistrate courts and other inferior courts are usually tried summarily. All trials in magistrate courts and other inferior courts whether they are civil or criminal proceedings are tried summarily.

2.0 OBJECTIVES

In this unit, you should be understanding the following:

(i) Non-indictable offences and indictable offences
(ii) Simple offences and summary trial
(iii) After committal for trial

3.0 MAIN CONTENT

3.1 After Committal for Trial:

Normally, when a magistrate, for trial in the High Court, commits an accused person, the trial is on information. But under section 364 of the Criminal Procedure Law of Lagos state, where after such committal, an information against the accused is not file on or such committal an information against the accused is not file n or before the day fixed for the trial or no duly authorized person appears before the High Court to prosecute the case on behalf of the state, the court must try the case summarily.

The court must direct the registrar to charge the accused with the offence in respect of which he has been committed for trial.
Thus, it is open to the court to direct the registrar to charge the accused with any other offence, which is the opinion of the court, is founded on the facts disclosed in the deposition.

3.2 Non-indictable offences by Magistrates Court:

Where a charge, not being one with respect to which there is a committal for trial in the High Court, is to be tried summarily by the High Court of Lagos State or a non-indictable offence is to be tried by a magistrate's court in the state, the first stage at the hearing is the calling of the case for hearing. If the defendant appears and the complainant does not appear, the court must, as a general rule, dismiss the complaint, provided that it is satisfied that the prosecution had had due notice of the time and place hearing. However, there are two exceptions to this rule. First, where the personal attendance of the defendant has been dispensed with under section 100 of the Criminal Procedure Law of Lagos State, it is that section and not this rule that applied.

Secondly, where the court has received a reasonable excuse for the non-appearance of the complaint or his representation and for that reason or for other sufficient reason thinks fit to adjourn the hearing of the case to a future day upon such terms as it thinks just, the rule does not apply. Thus, when a defendant to whom a summons is directed fails to appear or plead guilty under section 100 of the Criminal Procedure Law of Lagos State and no sufficient excuse is offered for his absence the court, if satisfied that the summons has been duly served, may issue a warrant known as a bench warrant for his arrest or if not satisfied that the summons has been duly served may adjourn the hearing of the case to a future day in order that proper service may be effected.

3.3 Indictable Offences:

A magistrate's court may, normally, with the consent of the accused try summarily an adult accused, charged before the court with an indictable offence other than a capital offence. However, where a law officer conducts the prosecution, the magistrate must not deal summarily with the offence without the consent of the law officer. In order to satisfy the requirement of obtaining the consent of the accused to summary trial, the magistrate must inform the accused of his right to be tried by the High Court and he must ask the accused whether he consents to the case being tried summarily by the magistrate's court.

If the magistrate fails to inform the accused of his right to be tried by the High Court, the trial is null and void unless the accused consents at any time before he is asked to make his defence to be tried summarily.

Thus, until a magistrate assumes the power to deal with an indictable offence other than a capital offence summarily, he must deal with it in accordance with the rules governing

preliminary inquiry into an indictable offence. He must assume such power if during the hearing of the charge he is satisfied that it is expedient to deal with the case summarily.

SELF-ASSESSMENT EXERCISE

Explain with examples what a bench warrant means.

4.0 CONCLUSION

In this last unit, we have discussed the issues in the introduction. We also discussed important issues, such as, after committal for trial, non-indictable offences by magistrate court, and finally, indictable offences. Thus, all trials before magistrate courts are summary trials. In the high courts, most trials are on information, that is trials other than summary trials, a few are summary trials.

5.0 SUMMARY

It should be pointed out that if in the course of the hearing of a complaint before a magistrate's court it happens that the court is of the opinion that the offence, on account of its aggravated character or other sufficient reason, is not suitable to be displayed of by such court, the magistrate's court may, instead of adjudicating, hold a preliminary inquiry into the charge and commit the accused for trial before the High Court.

6.0 TUTOR MARKED ASSIGNMENT

Kindly explain the following:

(1) a. Non-indictable offence
b. Indictable offences
c. After committal for trial

(2) Explain what happens in the event of the defendant appearance in the court but the complainant does not appear.

7.0 REFERENCES/FURTHER READING

Akintunde Obilade O., (1990) - The Nigeria Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) - Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Tappan P.W., (1960) - Crime, Justice and Correction, NY, McGraw Hill Bk Co.

POL. 124 NIGERIAN LEGAL SYSTEM

MODULE 8

UNIT 1: Legal Aid and Advices in Nigeria
UNIT 2: Legal Aid Council
UNIT 3: The Necessity of Legal Aid
UNIT 4: How to improve the Service of the Legal Aid Council in Nigeria

UNIT 1: LEGAL AID AND ADVICES IN NIGERIA

CONTENTS:

1.0 INTRODUCTION

Legal aid is the provision of free Legal Services, which is rendered to persons who by reason of their disposable income or circumstances cannot afford legal services. The Constitution provides for the provision of Legal Aid to indigent persons.

2.0 OBJECTIVES

In this Unit, you should be able to understand the following:-

(i) The meaning of Legal Aid.
(ii) Those who commonly enjoy Legal Aid.
(iii) The scope of Legal Aid.
(iv) The importance of Legal Aid.

3.0 MAIN CONTENT

3.1 Legal Aid and Advice in Nigeria.

Legal Aid is commonly made available to several categories of persons which includes:

(i) Low-income earners, whose disposable income or capital fall within the financial limit prescribed by the legal aid Statute.
(ii) Indigent persons.
(iii) Disabled persons who have no visible or reasonable means of livelihood, and
(iv) Other incapacitated persons, such as, prisoners, detainees, other kinds of inmates, such as inmate of a lunatic asylum, destitute, financially stranded immigrants and other persons who by reason of their circumstances have no earnings or are not earning a reasonable income.

The Scope:

The scope of legal services usually provided by government through the Legal Aid Council and by non-governmental organizations and individual legal practitioners includes:

(i) Legal advice or counseling;
(ii) Legal representation in criminal and civil proceedings, and
(iii) Other Legal assistance as may be necessary.

However, an applicant for legal aid must show he has reasonable grounds for:

(i) Asserting a claim, or
(ii) Defending a claim.

3.2 Who provides Legal Aid?

The provider or Legal Aid in other countries, as well as in Nigeria may be categorized as:-

(i) Government, which usually creates a public body or agency such as the Legal Aid Council, by means of a law to administer legal aid to persons who need it.
(ii) Non-governmental Organisations (NGOs) and bodies, and
(iii) Individual legal practitioners and so forth.

3.3 The Scope of the Legal Aid Act

The Legal Aid Act 1976 establishes the Legal Aid Council as a body corporate with perpetual succession to offer legal aid in certain proceedings to persons with inadequate resources as provided by the Act. The Legal Aid Council is administered by a Council, which is headed by a Chairman and with representatives of several government agencies as members. However, the Council has a Director-General as Chief Executive Officer, who is responsible for the day to day running of the affairs of the Council.

The Council is empowered to establish such State branches in the States for the purposes of its services as the National Council of Ministers may from time to time direct. The National Council of Ministers may give directions of a general character to the Council with respect to its functions, which directions the Council shall carry out. The Act defines the scope of legal aid and advice to be given to applicants for legal assistance. It also establishes a fund for the Council known as the Legal Aid Fund for

the activities of the Council. The Federal and State governments, philanthropic persons and bodies are free to make contributions to this fund.

The Act specifies that legal aid shall be granted only to persons whose income do not exceed ₦1,500 per annum. However, the Council has a discretion to offer legal aid to a person whose income exceeds ₦1,500 per annum on a contributory basis. In other words, the Council reserves the right to ask, such a person to make financial contribution in respect of the funding of the legal assistance as the Council may determine.

The Act provides that the Council shall not in anyway be liable to pay costs, however, awarded against a person granted legal aid. In ascertaining the income of an applicant for legal aid; the Council is required to take into account the personal income and the real property of an applicant in order to determine his qualification for legal aid.

Thus, the Council is required to make an annual report to the National Council of Ministers with respect to its operations, transactions and statement of accounts, through the Attorney General of the Federation.

The Attorney General of the Federation is empowered to make regulations generally for the better carrying on of the purposes of the Council. Finally, there is an interpretation section, where various words and terms used in the Act are defined.

SELF-ASSESSMENT EXERCISE

How has Legal Aid mediated for the less privileged in the society?

4.0 CONCLUSION

We have discussed in this Unit, the introduction of Legal Aid, those who are entitled to receive legal aid, the scope. However, legal practitioners for the time being serving the National Youth Service Corps (NYSC) may offer their services to the Council free of charge without payment.

5.0 SUMMARY

The Council is empowered to maintain a list of legal practitioners willing to act for persons receiving legal aid for different purposes, for different courts and for different districts. The provisions for miscellaneous and supplementary matters, makes the Act a workable one. These include the prohibition of the disclosure of information furnished to the Council.

6.0 TUTOR MARKED ASSIGNMENT

(i) What do you understand by the term Legal Aid, and who provides Legal Aid?

(ii) Review the Legal Aid Act.

7.0 REFERENCE/FURTHER READING

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Kiralty, A. K. R., (1960) – The English Legal System, London, Sweet and Maxwell.
Tappan, P. W., (1960) – Crime, Justice and Correction, NY, McGraw Hill Bk. Co.

UNIT 2: LEGAL AID COUNCIL

CONTENTS:

6.0 Tutor Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

The Legal Aid Council is an agency of the Federal Government. It was established by Legal Aid Council Decree No..56 of 1976. The Council is regulated by the Legal Aid Act of 1976, which is an Act to provide for the establishment of the Legal Aid Council, which is responsible for the operation of a scheme for the grant of free legal aid in certain proceedings to persons with inadequate resources. The Legal Aid Act is an Act with 20 sections, some of which sections are broken into sub-sections. The Act also has two schedules. The First Schedule deals with supplementary provisions relating to the Council, the Council, while the second Schedule stipulates the proceedings in respect of which legal aid may be given to an applicant. The Act also contains a subsidiary legislation known as the Legal Aid Regulations, which makes provision for how legal aid should be dispensed by the Council.

2.0 OBJECTIVES

In this Unit, you will know the following:

(i) How the Legal Aid Council renders legal aid to needy persons.
(ii) Legal aid Regulations.
(iii) How NGOs render or offer legal aid, etc.

3.0 MAIN CONTENT

3.1 Legal Aid Regulations:

The Act contains a subsidiary legislation known as the Legal Aid Regulations which makes regulations with respect to circumstances where legal aid may be given, application for legal aid, eligibility for legal aid, the determination of the means and needs of an applicant for legal aid, the valuation of the asset of an applicant, contribution of money to the Council by an applicant whose income exceeds ₦1,500 per annum, choice of a legal practitioner by an applicant from the list of legal practitioners rendering services to the Council in respect of applicants benefiting from legal aid, receipt of monies by legal practitioners, discretionary powers of the Council to terminate legal assistance, production of file in respect of other matters, notice of termination of legal aid, limited liability of the Council, approval of the Council before the briefing of a legal practitioners, termination of legal aid with the consent of the Council of the Council, terms and conditions of matters assigned.

3.2 Non-Governmental Organizations (NGOs):

Non-governmental Organizations (NGOs) also offer legal aid. These bodies are:

(i) Civil rights groups.
(ii) Women Associations, such as the National Council of Women Societies (NCWS).
(iii) Religious bodies, such as, Churches.
(iv) Friendly or humanitarian societies and so forth.

These bodies may have a committee, which holds legal clinics, and give legal advice or other forms of legal assistance to members and to deserving non-members. Among non-governmental organizations, civil rights groups are in the forefront of the provision of legal aid to persons in need. Among the civil right groups in Nigeria are:

(i) Civil Liberties Organization
(ii) Campaign for Democracy
(iii) Constitutional Rights Project
(iv) Committee for the Defence of Human Rights
(v) Universal Defenders of Democracy
(vi) Shelter Rights Initiative and so forth

3.3 Individual Legal Practitioners:

Time and time again, individual lawyers who are moved by the plight of an accused or person in need of legal aid have rendered legal assistance to such person, whether or not, by way of dock brief, out of compassion and charitable convictions in the interest of public good.

SELF-ASSESSMENT EXERCISE

Discuss how the Legal aid Regulations are in consonance with the Nigerian state.

4.0 CONCLUSION:

In this Unit, we have discussed the Legal Aid Regulations, Non-governmental Organizations, and Individual Legal Practitioners. However, it is pertinent to remind ourselves again that the Legal Aid Council is an Agency of the Federal Government, and it was established by the Legal Aid Council Decree No.56 of 1976, as amended by Decree No. 22 of 1994regulating or making provision for how legal aid should be dispensed by the Council.

5.0 SUMMARY

The Legal Aid Council renders legal aid to needy persons in respect of the proceedings in a court or tribunal wholly or partly in respect of crimes of the certain descriptions, or as near to those description as may be, respectively in any criminal code or panel code.

6.0 TUTOR MARKED ASSIGNMENT

What are the duties of NGOs and the Individual Legal Practitioners in ensuring that legal aid reaches to the needy?

7.0 REFERENCES/FURTHER READINGS

Akintunde Obilade O., (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

Kiralty, A. K. R., (1960) – The English Legal System, London, Sweet and Maxwell.

Tappan, P. W., (1960) – Crime, Justice and Correction, NY, McGraw Hill BK. Co.

UNIT 3: THE NECESSITY OF LEGAL AID

CONTENTS:

1.0 INTRODUCTION

Law and the judiciary or the legal system is an effective means of protecting human rights and fundamental freedoms and for guarding against political, economic and social injustice. However, the legal machinery may be hampered by a combination of problems, such as, structural, legal and administrative.

2.0 OBJECTIVES

By the end of this Unit, you should be able to know the following:

(i) Why a breach of due process occur;
(ii) Reasons why people do not seek legal remedy;
(iii) Reasons for the problems of the Legal Aid Council;
(iv) Why legal aid is a necessity; etc.

3.0 MAIN CONTENT

3.1 The Necessity of Legal Aid:

When a violation of human right occurs and the victim cannot seek or obtain redress, due to one or a combination of problems, a breach of due process occurs. A breach of due process occurs in different forms. It may be abuse of power, impunity of members of the armed forces, misuse of discretion, criminal punishment without fair trial, arbitrary arrest, detention without trial or bail, unexplained or unfair denial of bail, torture, cruel, inhuman and degrading treatment, unfair dismissal, discrimination and any unfair legislative, executive or judicial act which contravenes the idea of justice, are all breaches of due process.

One commonest way people deal with problems is to deny its existence. However, in Nigeria as in other nations of the world today, the necessity of providing legal aid for

indigent persons who are in need cannot be over-stressed. It is a social, economic and political necessity, for the emancipation good and advancement of society. Thus, the identification of this need led to the establishment of the Legal Aid Council by the Federal Government of Nigeria in 1976, as an official or public legal aid scheme to provide legal aid to indigent persons in need of legal assistance.

3.2 Reasons why people do not seek legal Remedy:

Some of the factors which often prevent people, especially, low income earners, from seeking or obtaining redress include:

(i) Lack of Funds;
(ii) Illiteracy;
(iii) Ignorance;
(iv) Intimidation; and so forth.

3.3 The problems of the Legal Aid Council:

The problems of the Legal Aid Council in realizing the lofty objective of rendering legal assistance to all indigent person in need of legal aid across the country, include:

(i) The limitation of the scope of legal assistance, the council is by law permitted to give. This narrow mandate makes its services to lack impact and relevance.
(ii) Inadequate funding by government and philanthropic bodies and persons.
(iii) Inadequate facilities to carry out its functions.
(iv) Inadequate personnel.
(v) Lack of nearness to the people. Most offices of the council are located in the Federal and State capitals and their services and addresses are hardly advertised. People do not know where the offices are located; as a result, people are therefore unaware of the Council and ignorant of its services.

Therefore, there is difficulty in reaching the people who need the services of the Council and vice versa. The Council relies mainly on application from persons seeking aid, references from courts, police, prisons and direct contacts for its out reach.

SELF-ASSESSMENT EXERCISE

Given the problems Legal Aid faces currently how can it effectively address the problems of the needy.

4.0 CONCLUSION

However, all over the country, the activities of the Council must be intensified. The Council must have definite direction and focus. Its services must have depth and impact. On the other hand, government must at all times strive to improve the welfare of the people in line with the Fundamental objectives and Directive Principles of State

Policy, contained in Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria. Thus, the government must mobilize the people and also invest in infrastructure, which will help to empower the people, to be in a position where the average person, can have easy access to the basic necessities of life.

5.0 SUMMARY

However, the goals and objectives of this lofty reasoning for establishing the Legal Aid Council by the Federal Government of Nigeria in 1976, would be realized only when there is increase of hope in a person, improvement of awareness and intellect of a person. When people are freed from diseases and dependence, when a person's zeal for life is enhanced, only when a person feels enthusiastic about the future, etc.

6.0 TUTOR MARKED ASSIGNMENT

(i) When do you think that all breaches of due process occur?

(ii) In 1976, the Federal Government of Nigeria, established the Legal Aid Council as a matter of expediency. However, has this lofty objective been achieved?

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O., (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigeria Legal System, Lagos, Grace Publishers Inc.

Kiralty, A. K. R., (1960) – The English Legal System, London, Sweet and Maxwell.

UNIT 4: HOW TO IMPROVE THE SERVICES OF THE LEGAL AID COUNCIL IN NIGERIA

CONTENTS:

1.0 INTRODUCTION

The aims and objectives of the Legal Aid Council are lofty. Achieving its objectives is a necessity in evolving an equitable and just society. Some of the factors that will help improve the rending of legal aid to the people includes, reformation of the Legal Aid Act by way of amendment to widen its scope of legal aid, to enable it make impact, etc.

2.0 OBJECTIVES

By the end of this Unit, you should know the following:

(i) Why the NBA has not done well in rendering legal aid to the needy persons.
(ii) Why the services of other legal aid providers are necessary.
(iii) What to be done for our society to maintain its sense of fairness, etc.,

3.0 MAIN CONTENT

3.1 Improving the Legal Aid to the People:

Some of the factors that will help the rendering of legal aid to the people include:

(i) Reformation of the Legal Aid Act by way of amendment to widen its scope of legal aid, to enable it make impact.
(ii) Review and increase of the numbers of proceedings in respect of which legal aid may be given.
(iii) Increase funding by government and philanthropic bodies and persons.
(iv) Employment of adequate staff, other than external legal practitioners.
(v) Provision of more offices and adequate facilities.
(vi) Increased enlightenment campaign in order to overcome public ignorance and create awareness. Public and private media organization should be encouraged to donate time and space regularly as a social service to promote the council and its services.
(vii) Minor jobs should be handed to young and inexperienced lawyers for a start to enable them learn, whilst experienced lawyers are given the more serious matters, which attract stiff penalty.

3.2 The Role of Other Legal Aid Providers:

Non-governmental bodies that are in the legal aid field are indeed playing a great role and are rendering a vital social service. They are helping directly or indirectly to evolve an equitable and fair society. Indeed, they are nation builders and are partners in progress with government. However, there is always room for improvement and to do more. Therefore, non-governmental organizations, which are into legal aid, especially, civil rights groups and the Nigerian Bar Association (NBA) should strive to:

(i) Extend their services to the States, and the grass root, apart from Lagos, a few other big cities and have a truly national coverage and render their services without discrimination or favour, and

(ii) Public and Private media organization should donate time and space to help legal aid whilst legal aid bodies should come up with programmes on the mass media to educate and enlighten the people on their rights and duties to the country.

The Nigerian Bar Association (NBA):

The Nigerian Bar Association is a body, which recognizes the need for legal aid to the indigent. Article 2 (d) of its Constitution emphasizes, *"The encouragement of the establishment and maintenance of a system of prompt and efficient legal advice and aid for those person in need therefore but who are unable to pay for same"*. However, the NBA has obvious advantages over other bodies, in that, it is a truly widespread and grass root organization. It must be in the forefront and continue to ensure political, economic and social justice and protection of human rights.

The Nigeria Bar Association has without doubt, a vital role to play in the protection of human rights. It is in a good position to do so, because it has branches in almost all the judicial divisions of High Court of justice in Nigeria. It has a ready grass root constituency and can very well play the role of the watchdog of government actions and human rights. Thus, the very nature and calling of lawyers, and the social essence and relevance of the NBA is to protect the rights of all persons.

Why the NBA has not lived up to its obligations?

However, the main reasons why the NBA has not done well in rendering legal aid to needy persons include:

(i) The problem of funding legal aid. The cost of it must be borne by someone.

(ii) Over 80% of lawyers come from low income homes. They have to provide for themselves and support their families, so that even when they want to act on humanitarian grounds, they are constrained, and

(iii) The problem of conservatism among members, to the new and liberal idea of legal aid.

However, despite these problems, the NBA must be in the vanguard of legal aid, for this is its field or profession and endeavour to have a human rights committee at every branch.

SELF-ASSESSMENT EXERCISE

Why are the services of other legal aid providers necessary?

4.0 CONCLUSION

We have discussed the role of other legal aid providers, such as the Nigerian Bar Association, and the Non-governmental Organizations (NGOs) and the constraints hampering the effective rendering of the lofty ideas in maintaining the sense of fairness in our society. But, most importantly, we have discussed and suggested on how to improve the services of the Legal Aid Council of Nigeria.

5.0 SUMMARY

Legal aid to indigent persons remains a crucial human rights problem. Not all the victims have the means to pursue redress.

6.0 TUTOR MARKED ASSIGNMENT

(i) Legal aid to indigent persons remains a critical human rights problem; suggest how to effectively maintain the sense of fairness in our society.

(ii) The Nigerian Bar Association is a body, which recognizes the need for legal aid of the needy; explain why the NBA has not lived up to its obligation in this respect.

7.0 REFERENCES/FURTHER READING

Akintunde Obilade, O., (1990) – The Nigerian Legal System, Owerri, Spectrum Law Publishing.

Ese Melami, (1999) – Outline of Nigerian Legal System, Lagos, Grace Publishers Inc.

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