THE NIGERIAN LEGAL SYSTEM

A Teaching Version — Prof Samba Online University of Nigeria

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IMPRINT

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How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — One Country, Several Laws

Nigeria's legal system is a meeting of laws: the constitution, statutes, received English law, customary law, and Islamic law in its sphere. This chapter maps the whole before its parts are taught.

The system's character

The Nigerian legal system is a plural system built on a single constitutional frame. Within the frame, the common law tradition supplies the courts' method and much doctrine; customary law governs the daily life of most citizens in family, land, and succession; Islamic law operates in its personal-law sphere in the north, through its own courts. The student's first discipline is to know, for any problem, which law governs it.

Pluralism is not disorder: the constitution and the statutes assign each law its field, and the courts police the boundaries.

The historical road in outline

The system grew by reception and legislation: indigenous laws from time immemorial; the introduction of English law through the colonial ordinances, with reception dates that mark the received law's boundary; the growth of legislatures and courts; independence and republican constitutions; military interludes; and the present constitutional order. History here is not decoration: the reception statutes still decide which English law is Nigerian law.

The student should hold the timeline loosely and the reception principle tightly: English common law, doctrines of equity, and statutes of general application in force in England at the reception date were received, subject to local legislation and circumstances.

The constitution's frame

The 1999 Constitution — as amended — is the system's grundnorm: it creates the federation and the states, the legislatures, executives, and judiciaries, and guarantees fundamental rights. Every institution in this book draws its authority from it, and the system's unity is constitutional before it is anything else.

Federalism doubles every map: federal and state legislatures, courts of both levels, and laws of both levels, ordered by the division of powers taught in the Constitutional Law volume.

How this book proceeds

The chapters follow the system's working order: the sources in detail, the courts from the Supreme Court to the customary and Sharia courts, the legal profession, the administration of justice, and law reform. The Courts and Procedure volume then walks a case through the map this book draws.

Worked example

A succession dispute arises in a family whose grandfather married under custom, whose father married under the Marriage Act, and whose land is customary land. Three laws knock at one door. The system's answer is assignment, not confusion: the marriage's form determines the succession regime for the estate it created, the land's tenure determines its own descent, and the court's task is to give each question to its proper law. Pluralism works when its boundaries are kept.

Discussion questions

• What makes Nigeria's system plural, and what makes it one?

• What was received at the reception date, and subject to what?

• Why is the reception principle more important than the timeline?

Chapter summary

In this chapter you have studied the following ground. Nigeria's legal system is a meeting of laws: the constitution, statutes, received English law, customary law, and Islamic law in its sphere. On the system's character: The Nigerian legal system is a plural system built on a single constitutional frame. On the historical road in outline: The system grew by reception and legislation: indigenous laws from time immemorial; the introduction of English law through the colonial ordinances, with reception dates that mark the received law's boundary; the growth of legislatures and courts; independence and republican constitutions; military interludes; and the present constitutional order. On the constitution's frame: The 1999 Constitution — as amended — is the system's grundnorm: it creates the federation and the states, the legislatures, executives, and judiciaries, and guarantees fundamental rights. On how this book proceeds: The chapters follow the system's working order: the sources in detail, the courts from the Supreme Court to the customary and Sharia courts, the legal profession, the administration of justice, and law reform. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — The Sources of Nigerian Law

This chapter teaches each source in working detail: legislation, case law, customary law, Islamic law, and the persuasive materials.

Legislation

Federal Acts and state Laws are the system's most active source, made by the National Assembly and the Houses of Assembly within their constitutional fields, with subsidiary legislation beneath them. The legislative process — bill, readings, assent — and the interpretation method are taught in the Legal Method volume; here the student fixes the hierarchy: constitution, then statute, then subsidiary legislation, each void to the extent of its inconsistency with what stands above.

Military decrees and edicts belong to the system's history and to the law still in force where they survive as existing law, construed under the current constitution's supremacy.

Case law

Judicial precedent binds as the Legal Method volume teaches: the Supreme Court at the apex, its decisions binding all; the Court of Appeal binding the courts below and, in the main, itself; High Courts binding the courts beneath them. Law reporting — official and private series — carries the precedents to the profession.

The doctrine's Nigerian life has its own landmarks: the circumstances in which the Court of Appeal may depart from its previous decisions, and the Supreme Court's sparing departure from its own, are stated in the courts' practice and the leading cases the student will meet in every subject.

Customary law

Customary law is the law of the people's practices, accepted as obligatory. It is proved by evidence — witnesses, books of authority, previous decisions — until judicially noticed. It is enforced only so far as it is not repugnant to natural justice, equity, and good conscience, and not incompatible with any law in force, and not contrary to public policy — the three standing tests.

The repugnancy test is applied to the custom as it operates today, not to its ancestors; customs evolve, and the courts receive the living law. A custom proved and passing the tests is law in its field, not a tolerated exception.

Islamic law and persuasive sources

Islamic law, in its Maliki school predominantly, governs personal law — marriage, family, succession, and waqf — for Muslims within its sphere, administered by Sharia and area courts under the constitution's frame. Its criminal-law application in some states under their enacted codes belongs to those states' legislation and the constitutional debates around it, which the student should study as legislation, not as custom.

Persuasive sources — foreign precedents, especially from common-law jurisdictions, textbooks, and law-reform reports — inform Nigerian courts daily, by quality of reasoning alone.

Worked example

A party invites a court to apply an English decision from 1975 as if it were Nigerian law. The invitation is rephrased by method: post-reception English decisions are persuasive only; Nigerian authority, if it exists, governs; the English case may persuade by its reasoning where Nigerian law is open. The reception boundary is the difference between law and literature.

Discussion questions

• State the legislative hierarchy.

• What three tests must customary law pass?

• What force do post-reception English decisions have?

Chapter summary

In this chapter you have studied the following ground. This chapter teaches each source in working detail: legislation, case law, customary law, Islamic law, and the persuasive materials. On legislation: Federal Acts and state Laws are the system's most active source, made by the National Assembly and the Houses of Assembly within their constitutional fields, with subsidiary legislation beneath them. On case law: Judicial precedent binds as the Legal Method volume teaches: the Supreme Court at the apex, its decisions binding all; the Court of Appeal binding the courts below and, in the main, itself; High Courts binding the courts beneath them. On customary law: Customary law is the law of the people's practices, accepted as obligatory. On islamic law and persuasive sources: Islamic law, in its Maliki school predominantly, governs personal law — marriage, family, succession, and waqf — for Muslims within its sphere, administered by Sharia and area courts under the constitution's frame. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — The Courts — The Superior Courts

This chapter walks the superior courts: the Supreme Court, the Court of Appeal, the Federal High Court, the High Courts of the states and the capital territory, and the specialised superior courts.

The Supreme Court

The Supreme Court is the final court, seated in the capital, hearing appeals from the Court of Appeal in civil and criminal matters, with original jurisdiction in disputes between the federation and the states and between states. Its decisions settle the law for every court and are not appealable anywhere on earth. Its bench is the system's summit, appointed by the constitutional process of recommendation, confirmation, and appointment.

Appeals reach it, in the main, as of right in constitutional and capital matters and by leave elsewhere — leave being the filter that keeps a final court final in quality as well as name.

The Court of Appeal

The Court of Appeal hears appeals from the High Courts, the specialised courts, and the Sharia and Customary Courts of Appeal, sitting in divisions across the country. It is the system's great error-correcting court and the maker of most of the precedent the profession uses daily.

Election petitions have their own appellate road through it, ending, for governorship and presidential petitions, at the stations the constitution appoints.

The High Courts and Federal High Court

The State High Courts and the High Court of the Federal Capital Territory hold general original jurisdiction in civil and criminal matters — the system's workhorse courts of first instance. The Federal High Court holds the constitution's assigned federal fields — revenue, admiralty, banking, intellectual property, and the like — a defined list the jurisdiction cases patrol.

The National Industrial Court takes labour and employment matters exclusively in its sphere; the specialised courts exist so that expertise, not geography, assigns the case.

Jurisdiction — the lifeblood

Jurisdiction is a court's authority to hear a matter, conferred by the constitution and statutes, and it cannot be conferred by consent, waiver, or the parties' wishes. A proceeding without jurisdiction is a nullity however well conducted, and the question may be raised at any stage, even on appeal for the first time. The student's reflex in every case: jurisdiction first, merits after.

Worked example

A suit about a state land title is filed in the Federal High Court because its registry was nearer. However convenient, the subject lies outside the federal list: the court lacks jurisdiction, the proceedings are a nullity, and the plaintiff must begin again in the State High Court, his filing fees a tuition in the system's first lesson.

Discussion questions

• From which court do appeals reach the Supreme Court, and by what roads?

• Why can the parties not confer jurisdiction by consent?

• What is the Federal High Court's jurisdictional character?

Chapter summary

In this chapter you have studied the following ground. This chapter walks the superior courts: the Supreme Court, the Court of Appeal, the Federal High Court, the High Courts of the states and the capital territory, and the specialised superior courts. On the Supreme Court: The Supreme Court is the final court, seated in the capital, hearing appeals from the Court of Appeal in civil and criminal matters, with original jurisdiction in disputes between the federation and the states and between states. On the Court of Appeal: The Court of Appeal hears appeals from the High Courts, the specialised courts, and the Sharia and Customary Courts of Appeal, sitting in divisions across the country. On the High Courts and Federal High Court: The State High Courts and the High Court of the Federal Capital Territory hold general original jurisdiction in civil and criminal matters — the system's workhorse courts of first instance. On jurisdiction — the lifeblood: Jurisdiction is a court's authority to hear a matter, conferred by the constitution and statutes, and it cannot be conferred by consent, waiver, or the parties' wishes. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — The Courts — Lower, Customary, and Sharia Courts

Most citizens meet justice in the lower courts. This chapter teaches the magistrates' courts, the customary and area courts, and the Sharia courts and their appellate courts.

Magistrates' courts

Magistrates' courts carry the great mass of criminal trials of lesser offences and civil claims of modest value, graded by the magistrates' classes and the limits their laws prescribe. Their procedure is summary — swift, oral, direct — and their appeal lies to the High Court. The magistrate is, for most communities, the face of the state's justice, and the system's quality is judged there more than at its summit.

Coroners, juvenile courts, and other specialised lower jurisdictions stand within or beside the magistracy in the states' arrangements.

Customary and area courts

Customary courts — area courts in the northern terminology — apply customary law and the statutes assigned to them, sitting with assessors or panels versed in the custom, in the languages of their communities. Their jurisdiction in land, marriage, succession, and minor crime is the customary system's working floor.

Appeals ascend to the Customary Court of Appeal of the state and the capital territory, a superior court of record for customary-law appeals, and thence, onward roads as the constitution provides.

Sharia courts

Sharia courts of first instance apply Islamic personal law within their sphere; the Sharia Court of Appeal of a state and of the capital territory hears appeals in Islamic personal law — marriage, family relations, succession, and waqf where the parties are Muslims and the constitution's conditions are met. Its bench includes persons learned in Islamic law, as the constitution prescribes.

The appellate structure keeps each tradition's expertise at its own level: customary appeals to customary appellate judges, Sharia appeals to Sharia appellate judges, all beneath the Court of Appeal and the Supreme Court, where the systems reunite.

Tribunals and other bodies

Beneath and beside the courts stand tribunals — rent, land use and allocation committees in their advisory spheres, tax appeal bodies, and the election petition tribunals — each created by statute with defined powers, subject to the courts' supervision. A tribunal is not a court, and its powers are read strictly from its creating statute.

Worked example

A customary marriage's dissolution and the custody of its children come before the customary court of the community, whose panel knows the custom because it is theirs. Appeals, if any, will climb the customary appellate road. The scene is the system's pluralism at its most ordinary: the right court, the right law, the right language, at the citizen's door.

Discussion questions

• Which court carries most citizens' justice, and why does it matter?

• What matters does the Sharia Court of Appeal hear?

• How do tribunals differ from courts?

Chapter summary

In this chapter you have studied the following ground. Most citizens meet justice in the lower courts. On magistrates' courts: Magistrates' courts carry the great mass of criminal trials of lesser offences and civil claims of modest value, graded by the magistrates' classes and the limits their laws prescribe. On customary and area courts: Customary courts — area courts in the northern terminology — apply customary law and the statutes assigned to them, sitting with assessors or panels versed in the custom, in the languages of their communities. On sharia courts: Sharia courts of first instance apply Islamic personal law within their sphere; the Sharia Court of Appeal of a state and of the capital territory hears appeals in Islamic personal law — marriage, family relations, succession, and waqf where the parties are Muslims and the constitution's conditions are met. On tribunals and other bodies: Beneath and beside the courts stand tribunals — rent, land use and allocation committees in their advisory spheres, tax appeal bodies, and the election petition tribunals — each created by statute with defined powers, subject to the courts' supervision. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — The Legal Profession

This chapter teaches the profession that works the system: the Bar, the Bench, legal education, and the profession's ethics and discipline.

One profession, two callings

Nigeria's profession is fused in training and divided in daily work: every legal practitioner is both barrister and solicitor, entitled to audience in all courts and to solicitor's work, though practice specialises by choice. The road runs: a law degree, the Nigerian Law School's vocational year, call to the Bar, and enrolment at the Supreme Court.

The Law School's campuses across the country deliver the practical year — drafting, advocacy, procedure, ethics — and the Council of Legal Education oversees the standard; the qualifying examinations are the profession's gate.

The profession's organs

The Nigerian Bar Association is the profession's collective voice; the General Legal Council regulates; the Legal Practitioners' Disciplinary Committee tries professional misconduct, with appeal to the Supreme Court; the Legal Practitioners' Privileges Committee confers the rank of Senior Advocate on the profession's most distinguished advocates — a rank of merit, worn as a silk gown and a duty of example.

The Bench is recruited principally from the Bar of standing, and from the magistracy and the academy; judicial appointment follows the National Judicial Council's recommendation within the constitutional process.

Ethics and discipline

The Rules of Professional Conduct govern the practitioner's duties: to the court — candour, no misleading, respect; to the client — loyalty, confidentiality, competence; to the profession — collegiality and the prohibition of touting and improper advertising; and in fees and clients' money — the trust account's sanctity. Misconduct ranges from negligence of duty to the infamous, and the sanctions from admonition to striking off.

The practitioner's privilege and the client's confidentiality, met in the Evidence volume, are ethics enforced as law.

Access to justice

The system's promise is tested by access: the Legal Aid Council serves those who cannot pay in defined matters; pro bono practice is the profession's honour-duty; law clinics in the universities — this university's own students among them, in time — carry advice to the communities around them. A legal system is measured, finally, by the justice available to its poorest citizen.

Worked example

A young practitioner, pressed by a client to backdate a document 'as everyone does', refuses and loses the client. The refusal is the profession in one act: the duty to the court and to the law outranks the retainer, and the Rules he swore to at call are the reason the public can trust the next practitioner's documents. Ethics is not the profession's decoration; it is its licence to exist.

Discussion questions

• Trace the road from law degree to enrolment.

• Name the profession's principal organs and their functions.

• What duties does the practitioner owe, and to whom?

Chapter summary

In this chapter you have studied the following ground. This chapter teaches the profession that works the system: the Bar, the Bench, legal education, and the profession's ethics and discipline. On one profession, two callings: Nigeria's profession is fused in training and divided in daily work: every legal practitioner is both barrister and solicitor, entitled to audience in all courts and to solicitor's work, though practice specialises by choice. On the profession's organs: The Nigerian Bar Association is the profession's collective voice; the General Legal Council regulates; the Legal Practitioners' Disciplinary Committee tries professional misconduct, with appeal to the Supreme Court; the Legal Practitioners' Privileges Committee confers the rank of Senior Advocate on the profession's most distinguished advocates — a rank of merit, worn as a silk gown and a duty of example. On ethics and discipline: The Rules of Professional Conduct govern the practitioner's duties: to the court — candour, no misleading, respect; to the client — loyalty, confidentiality, competence; to the profession — collegiality and the prohibition of touting and improper advertising; and in fees and clients' money — the trust account's sanctity. On access to justice: The system's promise is tested by access: the Legal Aid Council serves those who cannot pay in defined matters; pro bono practice is the profession's honour-duty; law clinics in the universities — this university's own students among them, in time — carry advice to the communities around them. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — The Administration of Justice and Law Reform

The final chapter teaches how the system is run and how it improves: judicial administration, the prosecution service, delays and their remedies, alternative dispute resolution, and law reform.

Judicial administration

The judiciary administers itself through the National and State Judicial Councils and the chief judges' offices: appointments' recommendations, discipline, budgets charged for independence, and the assignment of cases. Court administration — registries, bailiffs, records — is the system's unglamorous machinery, on which every right in this book ultimately depends.

Case management, practice directions, and technology — e-filing and virtual hearings in their growing measure — are the modern answers to the system's oldest complaint.

Delay and its remedies

Delay is the Nigerian system's confessed wound: interlocutory appeals, adjournment culture, missing files, and congested dockets. The remedies are structural and disciplinary together: front-loading of processes under the civil procedure rules, limits on interlocutory appeals, costs against delay's authors, alternative dispute resolution diverting suitable cases, and the administration-of-criminal-justice reforms' timelines and non-custodial measures.

The student should learn delay not as fate but as a set of practices, each with its counter-practice.

Alternative dispute resolution

Arbitration, mediation, conciliation, and negotiation resolve disputes outside the courts, by the parties' agreement, under statutes that let courts enforce their outcomes. Arbitration is adjudication by a chosen private tribunal, its award binding and enforceable, challengeable only on narrow grounds; mediation is facilitated settlement, binding as a contract when concluded. The multi-door courthouse — litigation and ADR under one roof — is the modern courthouse's pattern.

Customary arbitration — settlement by elders and family heads by the parties' voluntary submission — is recognised where the submission and the acceptance of the outcome are proved, the system's oldest ADR wearing its newest name.

Law reform

The Law Reform Commission studies and proposes; the legislatures enact; the courts develop the common law within precedent's discipline. Reform's Nigerian agenda is a standing list — obsolete statutes, the received law's localisation, procedure's simplification — and the student's generation will write its next items.

Worked example

A commercial dispute between two trading families, filed in court, is referred by the judge to the court's mediation door; in three sessions the families settle, preserving a trading relationship of twenty years that a judgment would have ended. The settlement is endorsed as the court's judgment. ADR's lesson stands in the outcome: some disputes need a bridge more than a verdict.

Discussion questions

• What are the causes of delay, and what counters each?

• Distinguish arbitration from mediation.

• How does law reform happen in the system?

Chapter summary

In this chapter you have studied the following ground. The final chapter teaches how the system is run and how it improves: judicial administration, the prosecution service, delays and their remedies, alternative dispute resolution, and law reform. On judicial administration: The judiciary administers itself through the National and State Judicial Councils and the chief judges' offices: appointments' recommendations, discipline, budgets charged for independence, and the assignment of cases. On delay and its remedies: Delay is the Nigerian system's confessed wound: interlocutory appeals, adjournment culture, missing files, and congested dockets. On alternative dispute resolution: Arbitration, mediation, conciliation, and negotiation resolve disputes outside the courts, by the parties' agreement, under statutes that let courts enforce their outcomes. On law reform: The Law Reform Commission studies and proposes; the legislatures enact; the courts develop the common law within precedent's discipline. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — One Country, Several Laws

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The system's character; The historical road in outline; The constitution's frame; How this book proceeds. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A succession dispute arises in a family whose grandfather married under custom, whose father married under the Marriage Act, and whose land is customary land. Three laws knock at o..."

Problem 2 — The Sources of Nigerian Law

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Legislation; Case law; Customary law; Islamic law and persuasive sources. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A party invites a court to apply an English decision from 1975 as if it were Nigerian law. The invitation is rephrased by method: post-reception English decisions are persuasive on..."

Problem 3 — The Courts — The Superior Courts

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The Supreme Court; The Court of Appeal; The High Courts and Federal High Court; Jurisdiction — the lifeblood. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A suit about a state land title is filed in the Federal High Court because its registry was nearer. However convenient, the subject lies outside the federal list: the court lacks j..."

Problem 4 — The Courts — Lower, Customary, and Sharia Courts

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Magistrates' courts; Customary and area courts; Sharia courts; Tribunals and other bodies. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A customary marriage's dissolution and the custody of its children come before the customary court of the community, whose panel knows the custom because it is theirs. Appeals, if ..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

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