NATIONAL OPEN UNIVERSITY OF NGERIA

SCHOOL OF LAW

COURSE CODE:LAW 100

COURSE TITLE:INTRODUCTION TO LAW

majority of all disputes are settled without an adjudication by a judge, the proper comparison to be made is between mediation and negotiation between solicitors. Negotiations take place against the background of solicitors' awareness of the parties' legal rights and their assessment of the chances of success in litigation. Negotiations between solicitors, properly conducted, have many of the same advantages of cheapness and flexibility which are attributed to mediation, with the added advantages that the client is represented by a knowledgeable and articulate representative who will endeavour to gain the best possible settlement for the client. Negotiation is a form of alternative dispute resolution which has been at the heart of legal practice for generations.

There must be concerns therefore about whether governments' enthusiasm for ADR is motivated by the best interest of vulnerable citizens or be an overriding concern to process as many disputes as cheaply as possible. Those who are in a position of bargaining strength in a dispute are much more likely to favour mediation than negotiation between solicitors or litigation in the courts. The more vulnerable party in the mediation will not have the advantage of a representative, and if he or she has not received-and understood-proper legal advice, will not have the bargaining chips derived from knowledge of her or his legal entitlements.

Mediation, supported by legal advice and with agreements scrutinized for their fairness by legal representatives after the mediation, has a valuable role to play in the legal system for some people and in some kinds of disputes. However, where the primary motivation for its introduction or encouragement by governments is to cut costs, there is the danger that it will be used inappropriately, and that people will be forced to attend mediation as a precondition to receiving what they really want-an adjudication by the court in accordance with the law.

Access to Justice and the Problem of Centripetal Law

While governments are increasingly encouraging people to settle their own disputes by alternative dispute resolution, and withholding legal aid for civil litigation, they have so far failed to recognize the problem of centripetal laws which have the effect of drawing parties inexorably towards a judicial resolution, rather than conferring upon them the clear bargaining endowments which would facilitate settlements.

Many Nigerian laws are written on the premise that they will be used by courts in deciding cases, rather than by parties in settling disputes in the shadow of the law. Numerous laws confer broad discretions on judges, for example, to set aside unfair contracts or to compensate for deceptive and misleading practices in trade and commerce. Discretion is a

particular feature of family law. Judges have a broad discretion in dividing the property of a husband and wife following marriage breakdown, and in resolving conflicts concerning with whom the children will live and how often the other parent will have contact with them. The legislation does not offer rules or fixed entitlements, but rather it lists the factors which judges should consider. Sometimes, the courts also have a discretion to divide the property of couples who have been in a de facto relationship.

The argument in favour of conferring broad discretions upon judges is that it gives them the necessary flexibility to tailor the relief awarded to the particular circumstances of each case rather than being fettered by fixed rules. However, this presupposes that a large number of cases will be the subject of judicial decision, and that governments are willing to bear the costs of providing access to the courts so that judges are able to achieve fair outcomes in each case. The greater the degree of discretion, the more difficult it is to bargain in the shadow of the law, for where there is a broad discretion, the law casts only an uncertain shadow. Judges may reasonably disagree on the appropriate outcomes of individual cases, and although experienced practitioners learn to predict outcomes with a certain degree of reliability, the complex messages concerning people's "entitlements" conveyed by the courts through the process of adjudication become simplified into some basic categories of case in order to make negotiations easier.

Centripetal laws assume that courts will make the decisions, and regulate the conduct and adjudication of cases within the court setting. Centrifugal laws send clear messages to people about their rights, obligations and entitlements, so that judicial resolution of disputes is made necessary only where the facts of the case or the scope of the rule are in dispute. For example, centripetal laws concerning family property guide judges on how to exercise their discretion when a dispute comes before the courts concerning the allocation of that property on marriage breakdown. Centrifugal laws would give the parties fixed entitlements, such as equal shares in all the property acquired after the marriage other than by gift to one party, by inheritance or as an award of damages for personal injury, subject to a power to vary those equal shares on application by one of the person's will after death where a dependant has not been adequately provided for. Centrifugal laws would provide that the surviving spouse and dependent children should receive fixed proportions of the estate. Centripetal laws empower judges to set aside or vary standard form contracts which contain unfair terms. Centrifugal laws would provide model standard form contracts, and place the onus upon the business which is relying on the standard form contract to justify variations from the legislative model.

Centrifugal laws may sometimes be arbitrary, but they simplify the messages the law gives, thereby reducing the numbers of disputes and assisting in the resolution of disputes by conferring bargaining chips. They provide a framework within which alternative dispute resolution may operate successfully. An emphasis upon private ordering combined with the conferral of broad discretions on judges in the few cases which come to courts, is the worst of all words; but it is the direction in which the Nigeria legal system is healing rapidly.

Conclusion:The Future of Tradition

At the end of the 20th century, Nigerians find themselves at a time when they are reflecting, and must reflect on their future. Questions are being asked not only about what it means for Nigeria to be a truly multicultural society, about the suitability of the federal constitution for a nation as she enter the 21st century, and about basis aspects of the legal system. How relevant are traditional modes of dispute resolution through adversarial litigation for the needs of modern society? Does Nigeria have a "Rolls-Royce" system of justice, when it can only afford a Holden? To what extent are traditional means of legal reasoning based upon premises which are unsustainable? How does the legal system incorporate the needs, aspirations and particular insights of groups which have not hitherto been part of the mainstream of public life.

To these questions about the future, the past may seem only faintly relevant. In one sense, Nigeria's future cannot rest in recollecting its past, for the ties with Britain are no longer as significant as they once were, either economically, politically or culturally. To face the future, Nigerians must be secure in their identity, and embrace the unknown, or at least the little known.

Yet there is another sense in which Nigerians must recollect their past- the historical and ideological origins of their ideas and institutions-in order to chart successfully a new course for the future. It is only in understanding the origins of those aspects of law and society which constitute foundational ideas and assumptions, that we can assess them properly. With a profound understanding of the past, traditions which seem to be superfluous in the modern era may be seen to have a basis in the hard-fought struggles of another age, with implications for the present.

Above all, traditions have an intrinsic value merely for being traditions. The legitimacy of institutions is conferred as much by emotion as by reason, and as much by memory as by present consent. Sometimes, great trees must be felled in order to make way for new growth; but new saplings do not have the roots of the great trees. They are less able to

withstand storms, and are more vulnerable to the winds of change. Vibrant new growth may sometimes be purchased only at the price of instability. Traditions can insulate societies from what Alvin Toffler described as “future shock”.

The strongest traditions have grown from values which have energized a society towards the development of new structure and institutions. The energy which created the French and American revolutions and other revolutions before and since, was born not only from dissatisfaction with the existing situation, but from an ideological commitment, at least among some of the leaders, to a new order. None of the great revolutions in western society, whether social, political, or intellectual, were won without cost. It is in times when shared value are weak, and individual preoccupation displaces a commitment to the common good, that those traditions born in very different times have their greatest value, as representing a shared heritage.

Above all, it is the strength of traditions that, once established, they can outlast the disappearance of those conditions which were essential to their formation and early development. Many of the most significant ideas of the western legal tradition, respect for law, its prominence as a means of social ordering, the importance of law’s moral quality, the virtue of the rule of law, have all survived for a long time after the reasons which made them important values have disappeared from public consciousness. Similarly, the idea of natural human rights continues in our political discourse long after any consensus has gone about the basis for the existence or identification of these rights. Traditions have the virtue that at times, they can take on a life of their own.

Western societies are at a stage of history when they are living off their reserves. The intellectual conditions which gave birth to the traditions and values of legal and political life in western societies are no longer with us in the same way that they once were. The ideas of natural law, which, at their nest, gave to positive law a standard of accountability, and called it onward to greater integrity, have been displaced from their prominence in jurisprudential thought. The Judaeo-Christian worldview, which gave to people a respect for law as intrinsically valuable, and called people to obey that law not only out of fear but out of civil duty, is not internalized in the values of the populace to the extent that it once was. Locke’s theory of natural rights, and Rosseau’s social contract are but a dim memory. Yet through all these changes in the beliefs and value system of the population, the legal and political traditions of western societies continue on.

The western legal tradition has changed much over the centuries of its life. No one century has left it unaltered. It is an evolving tradition, not a static one. The future, in Nigeria, as elsewhere, depends upon recollecting this past, valuing it, and allowing it to be the basis for further change.

Nonetheless, the tradition of law in Nigeria is in urgent need of renewal. The challenge of inclusion is a challenge to make the legal system relevant and accessible to all Nigeria, irrespective of age, disability, ethnicity, gender or wealth. In the new millennium, the challenge of inclusion appears to be the most urgent challenge of all.

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See above 2.1.3.

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