



**NATIONAL OPEN UNIVERSITY OF  
NGERIA**

**SCHOOL OF LAW**

**COURSE CODE:LAW 100**

**COURSE TITLE:INTRODUCTION TO LAW**

<b><u>NAME</u></b> Jurisdiction	<b>COURT OF APPEAL</b>			
	<b>ORIGINAL</b>		<b>APPELLATE</b>	
	<b>CRIMINAL</b>	<b>CIVIL</b>	<b>CRIMINAL</b>	<b>CIVIL</b>
Type of Case Heard	No Jurisdiction	CFRN. 1990; Sec. 239	CFRN. 1990; Sec. 240-248	CFRN. 1990; Sec. 240, 248
Presiding	3 Justices	3 Justices	3 Justices	3 Justices

(CFRN means The Constitution of the Federal Republic of Nigeria), 1990

<b><u>NAME</u></b> Jurisdiction	<b>FEDERAL HIGH COURT</b>		
	<b>ORIGINAL</b>		<b>APPELLATE</b>
	<b>CRIMINAL</b>	<b>CIVIL</b>	
Type of Case Heard	CFRN. 1990; Sec. 251(S) 251 (2), (3)	Unlimited (in Amount and includes Equitable Jurisdiction) CFRN. 1990 Sec. 251	No appellate jurisdiction (civil or criminal)
Presiding	1 Justice	1 Justice	1 Justice

\* Jury is unknown to the modern Nigeria legal system.

### **3.3 The Courts**

#### **3.3.1 Magistrate Courts**

Magistrate Courts are at the bottom of the judicial hierarchy. Magistrate Courts in the Southern States have both civil and criminal jurisdiction. A Magistrate Court hears only criminal matters in the Northern States. Civil matters are heard in the District Courts. The Magistrates are normally appointed from within the public service, usually the Justices Department, although the numbers appointed from private practice are increasing.

In general terms, the criminal jurisdiction of the Magistrate Courts is limited to less serious offences, for example traffic breaches, drunkenness, common assault and so on. These come before the magistrate as simple offences. A magistrate does have a discretion to offer to the defendant that some indictable offences be tried in the Magistrate Court with the consent of the accused. However, charges of a serious nature which have to be disposed off in the High Courts are commenced in the Magistrates Court by way of committal hearing, or preliminary investigation (P). At this hearing the magistrate determines whether a case to answer has been made out against the accused person. If so, he or she is committed for trial before a Judge.

Note that some states have abolished the process of preliminary investigation. Holding charges similarly operate in some states and not in others.

Civil actions where the amount involved is less than a specified sum may be determined in the Magistrate Court. In addition to its ordinary criminal and civil jurisdictions Magistrate Courts sit as Children's Juvenile Court and Coroners Court.

The Magistrate Court also has authority under various federal statutes and state laws to exercise some jurisdiction e.g. proceedings for maintenance under the Maintenance Causes Act.

### **3.3.2 High Court**

The jurisdiction of the High Court is set out in the diagram. The Court is staffed by judges appointed by the State Government normally from practicing barristers. Only one judge chairs the Court whether it is sitting in its original or appellate jurisdiction.

As well as hearing court cases, judges serve on various State tribunals e.g. Armed Robbery and Fire Arms Tribunal, Election Petition Tribunals.

The High Court sits at the highest level in the State court hierarchy and has unlimited jurisdiction in both criminal and civil matters. Generally, its criminal jurisdiction includes murder, attempted murder, manslaughter, serious drug offences and important serious offences such as treason and piracy. You will notice from the diagram that the High Court is presided over by one justice when exercising both original and appellate jurisdiction.

### **3.3.3 Federal High Court**

The Federal High Court was established by the Federal High Court Act primarily to lighten work load of the High Court. It has only original jurisdiction including jurisdiction in industrial matters and bankruptcy.

### **3.3.4 Court of Appeal**

The power of an appeal court will depend upon the legislation which gives that court jurisdiction. Ordinarily, they can allow or dismiss the appeal or refer the matter back to the lower court for a further hearing. This frequently happens in criminal cases where the appellate court decides that a person was wrongly convicted in the lower court and refers the matter back for a re-trial.

### **3.3.5 The Supreme Court**

Already, we have looked at one important function of the Supreme Court in dealing with constitutional matters. In addition, it acts as an appeal court on all matters, subject to some appeal limitations. The Supreme Court is now based in the Federal Capital Tertiary (FCT).

### **3.3.6 The Privy Council**

The Privy Council is really the Judicial Committee of the Privy Council and is made up of eminent English Law Lords. It sits in London, and notable jurists from countries which allow appeals in the Privy Council are sometimes invited to sit on the Privy Council. While no longer relevant to the Nigerian legal system since 1963, it still does hear appeals from some Commonwealth countries and its decisions are regarded as highly persuasive by our Courts.

## **3.4 Other Courts and Tribunals**

There are other courts or tribunals in Nigeria exercising judicial or quasi judicial functions. One example is the Rent Tribunal which deals with disputes between landlords and tenants in premises with specified rental value. This Tribunal operates in an informal manner without the necessity of legal representation (which is not possible unless there are exceptional circumstances).

## **SELF ASSESSMENT EXERCISE 2**

1. Where does the Supreme Court get its power?
2. Has the Supreme Court any original jurisdiction?

## **3.5 Other Components of the Nigerian Legal System**

### **3.5.1 Police**

It is not proposed to discuss the police in detail. Their function is well known. Suffice to say that any legal system needs an enforcement

agency to carry out the decisions of courts. The police play an important part in the judicial process because they initiate almost all of the criminal cases by either warrant or summons, they prosecute cases and deal with offenders.

### **3.5.2 Legal Profession**

While not strictly part of our legal system, the legal profession does play an important function in its operation. You should read the textbooks on the terms used to describe lawyers, the differences between barristers and solicitors etc. In Nigeria, there is no distinction between both. Most professional people need to work with lawyers at some stage and you should know the structure of the legal profession. You should also be aware that the legal profession is continually undergoing change.

## **4.0 CONCLUSION**

You have seen that the Legislature makes laws, the Executive enforces them while the Judiciary interprets and administers. The hierarchy of courts has also been discussed and demonstrated. You should also draw up the organogram. The Jurisdiction of each is of utmost importance since a party invariably stands to lose his/her case if he files her cause in a wrong court. You should also be familiar with the geographical, original and appellate jurisdictions of courts.

Consider some of the following issues:

- The appointment of judges. They are appointed from the leading barristers but is that an appropriate system? One criticism of judges is that they do not truly represent society. If the system was adopted where judges are separately trained for that office – in fact a separate career path from practicing lawyers – then perhaps some of the existing criticisms of judges would diminish. If all persons could apply to be trained as judges upon leaving the Law School (as occurs in some countries), then perhaps a wider cross section of the community and gender would be represented on the bench. Such a system might also meet the criticism that good barristers do not necessarily make good judges.
- The role of barristers is quite a contentious issue. Should barristers robe for court proceedings? One view is that this practice is absurd in this day; others consider that it brings some degree of solemnity and respect for the court system. Note in this context the quote from Dickens following.

- A final contentious matter is whether the profession should be divided between solicitors and barristers, or remain united.

*And I am by no means a wholesale admirer of our legal solemnities, many of which impress me as being exceedingly ludicrous. Strange as it may seem too, there is undoubtedly a degree of protection in the wig and gown – a dismissal of individual responsibility in dressing for the part – which encourages that insolent bearing and language, and that gross perversion of the office of a leader for The Truth, so frequent in our courts of law.*

*Still, I cannot help doubting whether America, in her desire to shake off the absurdities and abuses of the old system, may not have gone too far into the opposite extreme; and whether it is not desirable, especially in the small community of a city like this, where each man knows the other, to surround the administration of justice with some artificial barriers against the ‘Hail fellow, well met’ deportment of everyday life.*

*(Source: Dickens)*

## 5.0 SUMMARY

In this Unit, you have learnt about the judiciary, its jurisdiction and personnel. You also differentiated between federal and state Courts and other components of the Legal System. In the next Unit, we shall discuss the related issues of Separation of Powers and the Rule of Law.

## 6.0 TUTOR-MARKED ASSIGNMENT

1. Draw a diagram of the Courts hierarchy in Nigeria.
2. In what court would you expect the following matters to be disposed off?
  - a. An action against a body corporate for unfair trading practices
  - b. A charge of murder.
  - c. A claim by a person convicted of murder that he did not receive a fair hearing.
  - d. a charge of driving under the influence of alcohol and causing in death by dangerous driving.
  - e. A claim by a defeated presidential candidate that the Electoral Tribunal which had his/her case was bias.

## 7.0 REFERENCES/FURTHER READINGS

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## **UNIT 5 NIGERIAN LEGAL SYSTEM: SEPARATION OF POWER AND RULE OF LAW**

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  - 3.4 Bill of Rights
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### **1.0 INTRODUCTION**

The Separation of Powers and the Rule of Law are important concepts or notions that operate within our legal System. A detailed discussion of these concepts is intended in a course of this nature.

Separation of powers implies the division of governmental authority into three branches of government – legislative, Executive and Judicial – each with specified duties on which neither of the other branches can encroach; the Constitutional doctrine of checks and balances by which the people are protected against tyranny. As we shall see, it is extremely difficult in practice to define precisely each particular power.

On the other hand, Rule of law may mean:

- A substantive legal principle
- The supremacy of regular as opposed to arbitrary power.
- The doctrine that every person is subject to the ordinary law within the jurisdiction.

### **2.0 OBJECTIVE**

At the successful completion of this unit, you should be able to:

- understand the notion of the separation of powers and the rule of law and their operation within Nigeria.



### 3.0 MAIN CONTENT

#### 3.1 Separation of Powers and Rule of Law

##### 3.1.1 Separation of Powers

This concerns the relationship of the organs of government *inter se* (which is a Latin phrase meaning between themselves or among themselves).

The doctrine of the separation of powers is a principle which, it is argued, is basic to democracy and the prevention of tyranny. The doctrine rests on the basis that the organs of government fall into three categories – legislative, executive and judicial all of which are separate from and independent of each other. This structure provides, so the argument runs, a system of checks and balances which is not present in a political system where, in effect, all power is held by one authority. The French political philosopher Montesquieu was a great advocate of the separation of powers and claimed that ‘to the separation of powers of government, the English people owed their liberty’.

Few people would maintain that the separation of powers is possible in a pure form today. In particular, it is impossible to separate the functions of the legislature from the executive. The reason is that the executive itself makes an enormous volume of the rules and regulations which govern our lives through the process of delegated legislation, so there is an immediate overlap of function with the legislative arm.

In any event the doctrine of the separation of powers has found its way into our Constitution. The legislative power is vested in the National Assembly, the executive power is held by the Executive Council (a body of government ministers acting in the name of the State) or the Presidency and the judicial power by the Judiciary.

Just as the relations between the States and the Federation have changed since 1954 (due to a large extent to the interpretation of the Constitution by the Apex Court, the present meaning of the separation of powers doctrine in Nigeria has also been determined by Courts.

In the Australian case of *A-G for Australia & Kirby v R and The Boilermakers Society* [1957] AC 288, the matter in dispute was whether both judicial and non-judicial functions could be combined in one tribunal – in this case a tribunal dealing with industrial disputes. The Apex Court considered that they could not and in the judgment a number of important observations were made:

- A distinction must be drawn between the relationship of the legislature and the executive on the one hand and the relationship between these two arms of government and the judiciary on the other. A separation of the legislative and executive functions is not a critical fact in the preservation of a federation whereas the separation of the judiciary from either of the two arms is most crucial.
- The reason why the separation of the judiciary is most important is because the federation rests upon a distribution of governmental powers and only the judiciary can safeguard this distribution.

A more recent decision confirmed that the doctrine of separation of powers was still powerful in the Australian case of *Brandy v Human Rights and Equal Opportunity Commission and Others* (1994 – 1995) 183 CLR 245. In that case, it was successfully argued that the Commission in having its determinations registered and enforceable as Federal Court Orders was exercising a judicial function and therefore unconstitutional.

In reality in Nigeria, there is not a three way separation of powers but rather a two way split between the executive and legislative on the one hand and the judiciary on the other. In fact, even this two way split can be quite blurred at times because courts have power to lay down their own rules of procedure. This is akin to legislation although in the overall scheme of things, it is not a major source of legislation.

### **3.1.2 The Rule of Law**

This notion deals with the relationship between organs of government and the citizen. One of the constraints on the Federal and State Governments is the existence of the Federal Republic of Nigeria Constitution. Another more nebulous constraint is what is often called the **rule of law**.

The rule of law is not easy to define. It is concerned about a number of concepts and notions some of which are quite vague, yet it is considered to be very important in our legal system. The rule of law is a peculiarly an English concept, yet it is frequently referred to in wider legal debates such as in defining international law and justice.

To some people the rule of law is equated with the existence of public order, meaning that peace exists within a country and that its citizens obey the law. However, this is a very narrow interpretation of the doctrine because if we were to adopt that criterion alone it could be argued that the rule of law existed during the regimes of Stalin and

Hitler, or Abacha, under whose Presidency Nigeria had been referred to as a pariah.

While the existence of public order is part of the rule of law, what is more important is the limitations which are placed on the use of arbitrary power by governments and the corresponding liberties enjoyed by the citizens of a State. Another way to express this principle is to say that the rule of law means that both the rulers and the ruled (the citizens) are under the law.

Historically, the development of the rule of law has been concerned with two main issues:

1. Was the Sovereign under the law, which basically meant was he supreme or was Parliament? This issue was decided finally in the English Bill of Rights of 1689 in favour of Parliament.
2. What constraint should be placed on Parliament to prevent an abuse of its power? The constraint came from two sources:
  - by ensuring that Parliament is a representative legislature; and
  - by the existence of the doctrine of the separation of powers.

In countries like America and Nigeria, there is a third constraint namely - the existence of a written constitution. For example, the Constitution of the Federal Republic of Nigeria places certain limits on the National Assembly and protects human rights, for example, the Constitution protects individual freedom of speech, association, movement etc.

In addition to the constraints which in theory at least should be placed upon the National Assembly, there are a number of other notions which are central to the rule of law:

### **3.2 Equity**

The equal subjection of all classes of people (regardless of class or status) to the ordinary law of the land, administered by the ordinary courts. In particular the way in which the criminal law is administered is regarded as an acid test and there are certain requirements:

- police powers should be limited;
- crimes should be curtailed;
- penal statutes should be strictly construed by the courts; and
- penal statutes should not be retrospective.

### **3.3 Liberty**

There are three fundamental liberties:

- freedom of the person;
- freedom of property; and
- freedom of opinion.

If all of the notions referred to above were in fact present in our system then it would be said that the rule of law exists. In fact, however, there are a number of shortcomings, viz:

1. The constraints on legislature are often quite weak. While legislature is a representative House the use of the party system does give the executive government at least control in the short term, i.e. between elections.
2. The concepts of equality and liberty are vague. They are not bolstered by a written constitution.

However, the Court has found a number of Federal or State laws to be invalid, as being in conflict with the fundamental civil and political rights enshrined in the Constitution. Examples include: freedom of expression, at least in relation to public affairs and political discussion and of association which are indispensable to the efficacy of the system of representative government, for which the Constitution makes provision.

While the fundamental human rights are entrenched in the Constitution of Nigeria, suggestion has been made that there is still a need for a Bill of Rights. The cases for and against such a Bill are concisely set out in Evans et al. (1988, pp 36-8) as follows:

### **3.4 Bill of Rights**

#### **3.4.1 The Case for a Bill of Rights**

Those favouring a Bill of Rights believe it to be the only way to protect fully civil liberties. In summary, the claims are:

- i. A Bill of Rights would provide the means for preventing abuses of power by governments, agencies and the police.
- ii. As a signatory of several international pacts, such as the Declaration of Human Rights (United Nations), and the African Charter, Nigeria has a moral obligation to pass a Bill of Rights