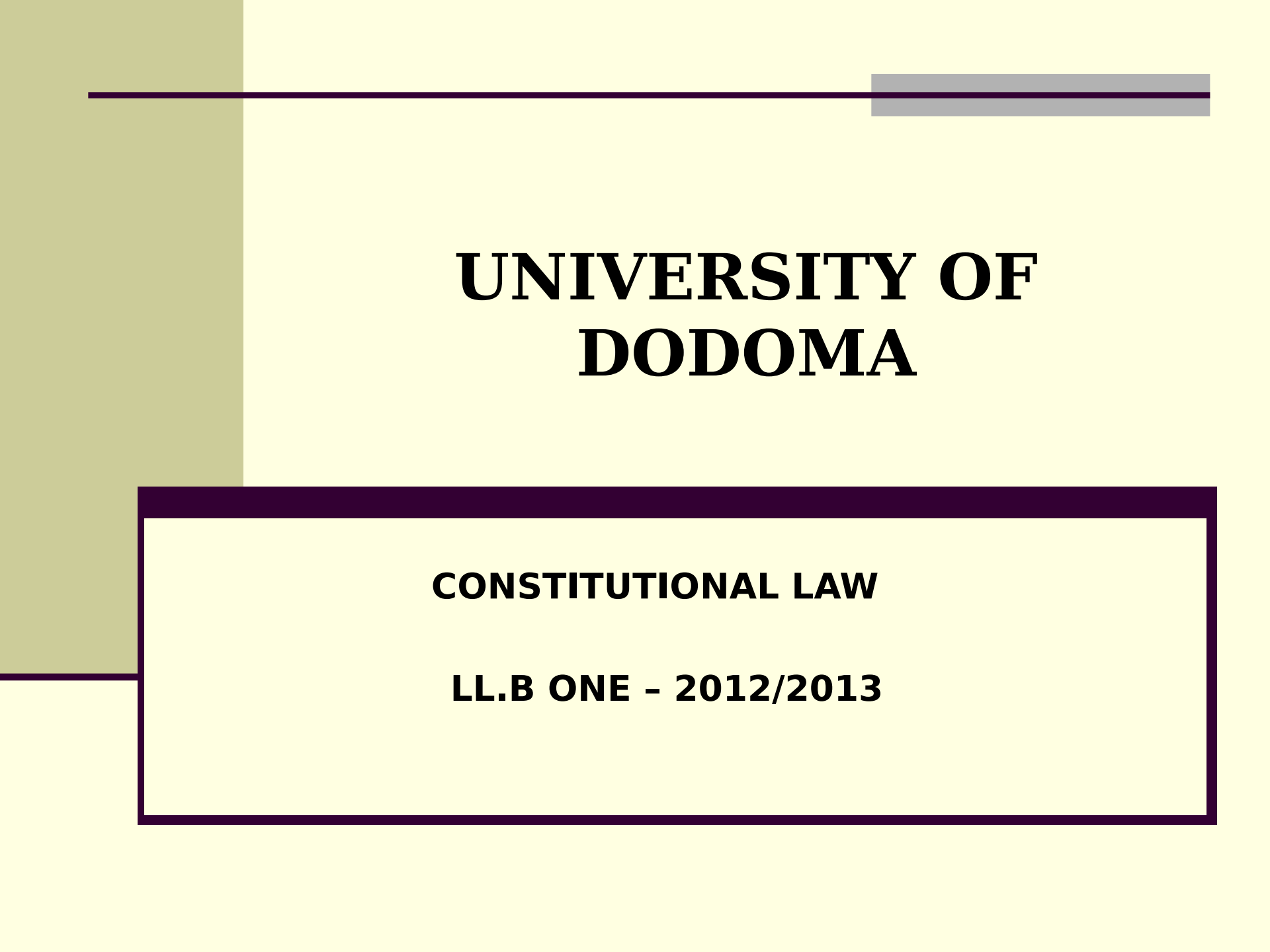




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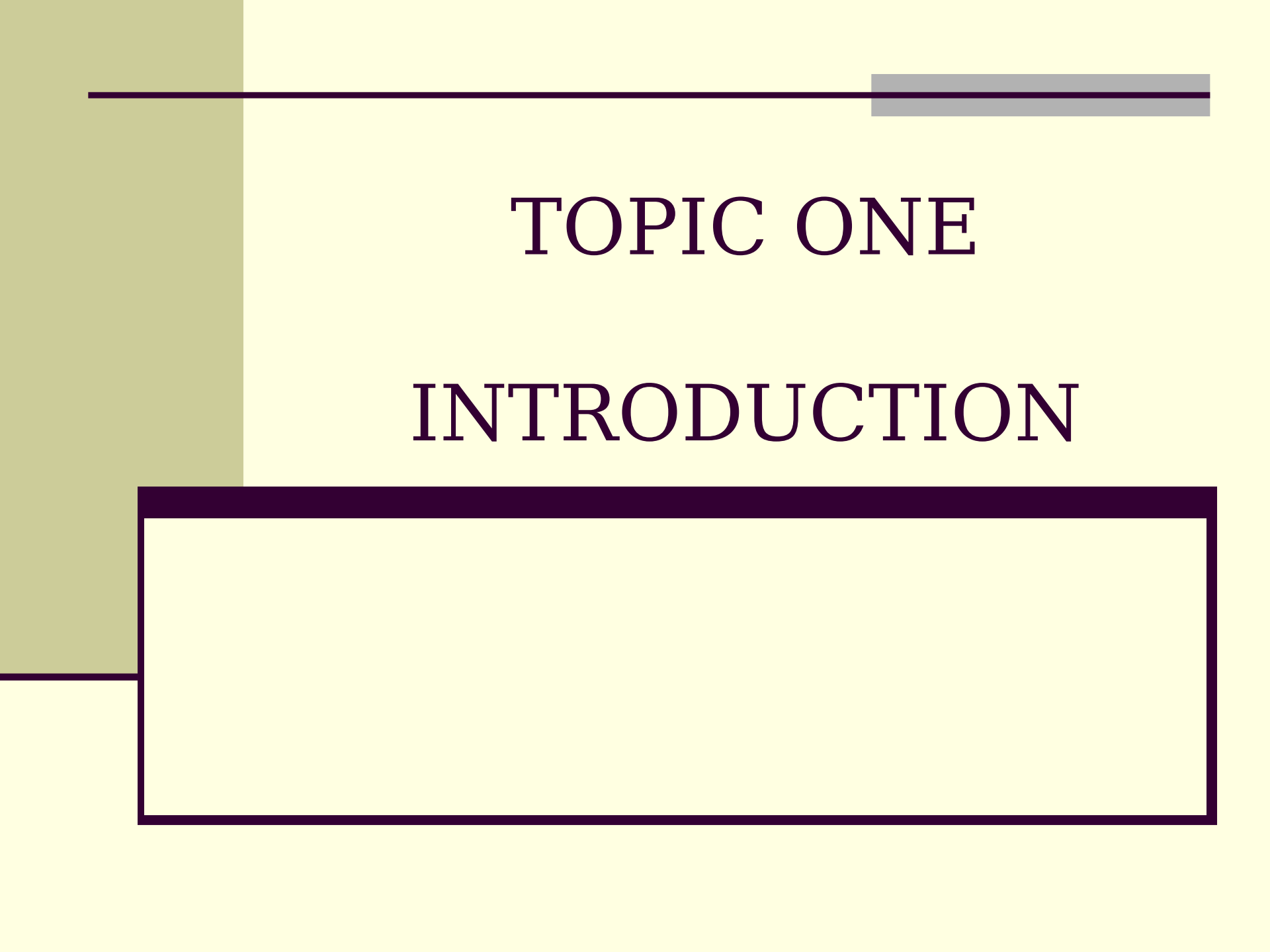
CONSTITUTIONAL LAW

LL.B ONE - 2012/2013

PUNGE, I.S

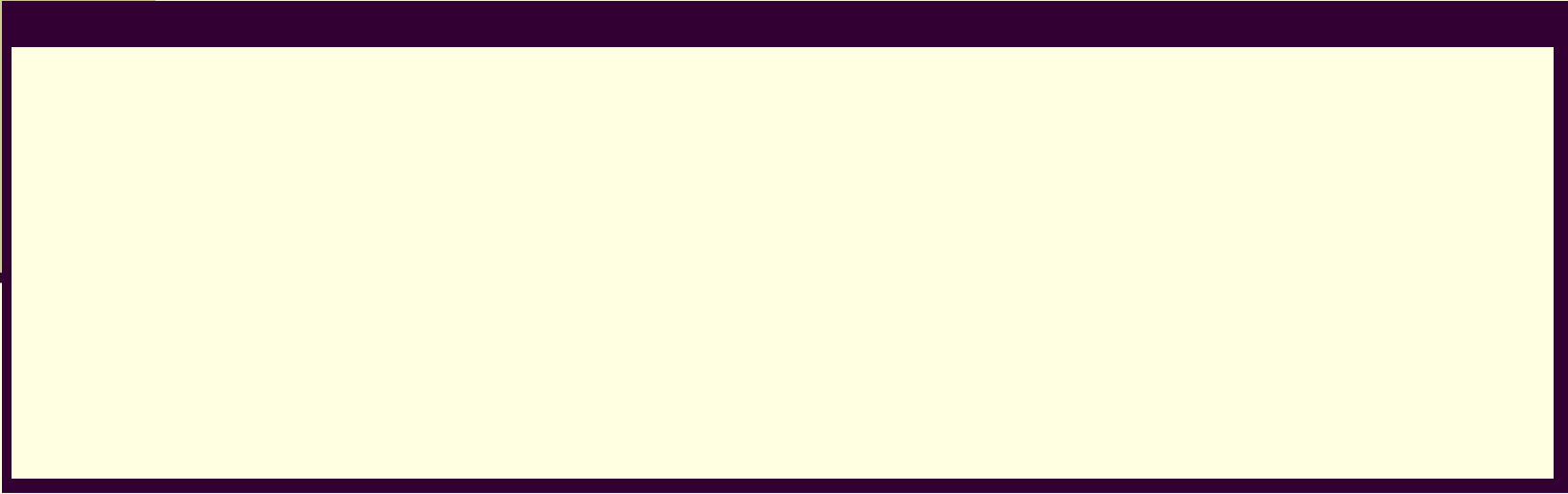
Lecturer in Law

Advocate



TOPIC ONE

INTRODUCTION



Preliminary Remarks

- Constitutional law pervades all areas of law in that there is hardly any department of law which does not, at one time or another become of constitutional importance.
- Constitutional Law is relatively interesting compared to other law classes that are more technical in nature.
- It is abstract in nature and its scope is almost unbounded as it embraces within it multifarious subjects which are non-legal, like, for instance, history, politics, economics, and other social sciences.

Constitutional Law is primarily concerned with the establishment and structuring of the system of government and the division of state power between the legislature, the executive and the judiciary

It provides a framework within which policy can be formulated and original legislation giving effect to that policy can be enacted and interpreted

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- Constitutional law is that part of the Law which relates to the system of government of the country.
 - It covers those laws which regulate the structure of the principal organs of government and their relationship to each other and to the citizen, and determine their main function.



Constitutional law is that department of the science of law which treats of the nature of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law.

CONSTITUTION

- The word Constitution is derived from the verb to "constitute" which means, to set up, ordain, appoint, frame, form, make up or compose.
- Literally means the action of constituting, framing or establishing something.

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- A national/state constitution : The system or body of fundamental principles according to which a nation, state or body politic is constituted and governed.
 - It is the basic law of the country.

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- Some writers adopt the simplistic view point of defining “Constitution” as the means by which a people organize themselves into a political community and define the aims and objectives of their association, the condition of membership, the organs and powers necessary for the conduct of the affairs of the association and duties and responsibilities of those organs to the individual. This kind of arrangement exists even at the lower level of clubs and associations.

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- Nwabueze B.O., *The Presidential Constitution of Nigeria*, has suggested that: “... a constitution refers simply to the frame or composition of a government, to the way in which a government is actually structured in terms of organs, the distribution of powers within it, the relations of the organs inter se, and the procedures for exercising power.”

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- From this definition, we can deduce that a constitution must concern itself with the structures of government as well as organs and the interrelationship of such organs.

The Webster's New Twentieth Century Dictionary defines Constitution as:

- 1) the way in which a government, state, society is organized;
- 2) the system of fundamental laws and principles of government, state, society, corporation etc. written or unwritten;
- 3) a document or set of documents in which these laws and principles are written down.

- This definition emphasizes the function and nature of a constitution.

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- Blacks Law Dictionary defines constitution as “the organic and
 - fundamental law of a nation or state which may be written or unwritten, establishing the character and organising the government and regulating, distributing and limiting the functions of its different departments and prescribing the extent and manner of the exercise of sovereign powers”

Oxford Law Companion

- Constitution is the:

- 1) Body of rules prescribing the major elements of the structure and organisation of any group of persons, including clubs, associations, trade unions, political parties and citizens of a state.
- 2) The fundamental political and legal structure of government of a distinct political community, setting such matters as the Head of State, the legislature, the executive and judiciary, their constitutional powers and relations.

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- It consists of the basic and fundamental laws which the inhabitants of a state consider to be essential for their governance and well being. The constitution lays down political and other state institutions and distributes powers among them and puts limitations on the exercise of those powers.

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- It contains a set of basic principles and laws upon which the state is organized and which establishes the major organs of government, defines their functions and powers and relationship amongst them, and sets out the rights and duties of the citizens.

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- It is a kind of a "power map" and "charter of government". It has been described as a social contract or covenant between the state and its subjects on the manner of governance and exercise of state power.

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- In legal terms, a constitution is the fundamental and supreme law of the country. It is the basic law from which all laws derive their validity.
 - It has legal sanctity or being sacred.

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- It deserves the highest respect and obedience from the leaders and the people alike.
 - It follows therefore that a constitution represents the deepest norms and ideals by which the people govern their political life.

The Nature of the Constitution

The nature of a constitution is determined essentially by the source of its authority i.e. whether or not it is an original act of people, and,

Secondly by the justiciability of its provisions i.e. whether it is enforceable in the court or merely a political charter of government un-amenable to judicial enforcement.

A Constitution whether written or unwritten, rigid or flexible, unitary or federal etc. has two natures:

- 1) It is an expression of the will or desires of the people who make up the state or country
- 2) It is a social contract between the government as an entity and the people on the one hand. It is a contract between those who hold public offices and the people on the second hand, and it is also a social contract between and among the various ethnic peoples who make up a state or country on the third hand.

Purpose/Importance of a Constitution

- A country's constitution provides the rules and principles which:
- (a) provide for the creation and establishment and functioning of the institutions through which the country's citizens may be governed

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- b) govern the relationships of the institutions as between one another; and
 - (c) govern the relationships of the institutions as between them and the country's citizens.

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- It sets out the principles and values upon which the state is organized and governed.
 - The ideals and aspirations provide the country with direction and a vision for the future, and prescribe the legitimate purposes or interest which state power is to be used.

The institutions themselves will perform three functions

The legislative function, making the laws under which the people are governed, performed by the legislature or a series of legislatures

The executive or administrative function, carrying out or administering the law, performed by various executive or administrative agencies

The judicial function, authoritatively interpreting the law and finally resolving disputes arising under the law, performed by the courts.

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- It provides a foundation for orderly government by defining and limiting the powers of government agencies

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- It establishes checks and balances within the main branches of government namely the Executive, the Legislature and the Judiciary, through the doctrine of separation of powers.
 - A constitution establishes government based on the rule of law and which is limited by law.

It provides a legal basis for Governmental operations and makes constitutional government possible.

It prevents anarchy or dictatorial government which knows no legal bounds.

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- It acts like peace treaty. It is negotiated by all the people including the various social forces.
 - It lays down arrangements between conflicting socio-political groups or interests in order to restore peace.

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- As a national socio-political framework or contract, it binds all the parts of the country and the people together giving them a sense of belonging and national consciousness, and thus consolidating national unity.

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- A constitution is an important democratic institution.
 - It safeguards the basic rights and freedoms of the people.

END

