INTRODUCTION.

The Federal Republic of Nigeria is located in the Western part of Africa. It became an independent state on October 1, 1960, after about 100 years Under British colonization, and attained a republican status within the British Commonwealth three years after in 1963. Since independence, Nigeria has come under both military and civil administrations. On 29 May 1999, after a general election which ushered in the present democratic dispensation, popularly referred to as "the Fourth Republic", Chief Olusegun Obasanjo, a retired Army General and a one-time military Head of State, became the President and Commander-in-chief of the Armed Forces. President Olusegun Obasanjo's ruling party, the People's Democratic Party, also won the second term after another general election in April 2003. In view of the fact that 28 of Nigeria's post-independence years were spent under the Military, the country may rightly be said to be experiencing its tender years of democracy.

The Federal Republic of Nigeria is made up of 36 states and a Federal Capital Territory located in Abuja. The states are as follows: Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross-River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, Zamfara. At independence, Nigeria consisted of three regions, namely, the Northern Region, the Eastern Region and the Western Region. Apart from the Mid-Western Region which was carved out of the Western Region in 1964 through the process laid down by the 1963 Republican Constitution, the other five subsequent exercises of creation of states were undertaken by the **Military**. Because of the multiplicity of these states, they are as a matter of convenience and political expediency grouped into the six geo-political zones of North East, North West, North Central, South East, South West and South South.

There are close to 250 cultural groups in Nigeria, but the three major languages are Hausa, Igbo and Yoruba, while English is the official language (the reason being that we were colonized by Britain).

NIGERIA'S LEGAL SYSTEM

The Nigerian legal system is based on the English common law legal tradition by virtue of colonization (by the British people) and the attendant incidence of reception of English law through the process of legal transplant. According to Obilade (1979) English law has a tremendous influence on the Nigerian legal system, and "English law forms a substantial part of Nigerian law". The sources of Nigerian law are:

1· The Constitution

2· The Legislation

3· English law

4· Customary law

5· Islamic law,and judicial precedents e.t.c.

The Constitution of the Federal Republic of Nigeria 1999 regulates the distribution of legislative business between the National Assembly, which has power to make laws for the Federation and the House of Assembly for each State of the Federation. The current legislation in force at the federal level is largely contained in the Laws of the Federation of Nigeria 1990 (LFN). Laws made after the 1990 law revision exercise of **the federal laws** are to be found in the Annual Volumes of the Laws of the Federal Republic of Nigeria. Federal laws under the Military, known as **Decrees**, and state laws, known as **Edicts**, form the bulk the primary legislation.

Each of the 36 states and the Federal Capital Territory (FCT) Abuja has its own laws. Some states have in recent times undertaken law revision exercises to present their laws in a compact and comprehensive form to guarantee easy access. Most of the pre-1990 Decrees were incorporated into the LFN and those patently incompatible with the new constitutional order were repealed on the eve of the inauguration of a new democratic government in May 1999. Primary and subordinate legislation in force on the coming into operation of the Constitution are treated by the Constitution as existing laws and deemed to have been made by the appropriate legislative body with competence to do so under the 1999 Nigerian Constitution. **Legislation** has been described as the most important source of Nigerian law. **This is partly because all other sources of Nigerian law are considered as such by virtue of a piece of legislation or the other.**

English Law

This consists of:

(a) The received English law comprising of:

(i) The common law;

(ii) The doctrines of equity;

(iii) statutes of general application in force in England on January 1, 1900;

(iv) statutes and subsidiary legislation on specified matters and

(b)English law (statutes) made before October 1, 1960 and extending to Nigeria which are not yet repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation. The failure to review most of these laws especially in the field of criminal law has

occasioned the existence of what may be described as impracticable laws or legal provisions which are honoured more in breach than in observance. Despite the influence of English Law, the Nigerian legal system is very complex because of legal pluralism.

Customary Law

The traditional classification of customary law is into the following categories:

1· Ethnic/Non-Moslem

2· Moslem law/ Sharia

In the states in the Southern/Northern part of the country, Moslem/Islamic law, where it exists, is integrated into and has always been treated as an aspect of the customary law. Since 1956, however, Islamic law has been administered in the Northern states as a separate and distinct system. Even then it has only been in relation to Muslim personal law. However, it is better to accord Islamic law its distinct status as a separate source of law because of its peculiarities in terms of origin, nature and territorial and personal scope of application. In recent times the judiciary has been able to create courts in the north for those who don't want to undergo the sharia court or judgement by the **alkahali.**

Ethnic / Non-Moslem Law

The **ethnic customary** law is the indigenous law that applies to the members of the different ethnic groups. Nigeria is made up of several ethnic groups each with its own variety of customary law**. Customary law is a system of law that reflects the culture, customs, values and habits of the people whose activities it regulates**. It has been described as a mirror of accepted usage. Customary law is particularly dominant in the area of personal and family relations like **marriage, divorce, guardianship and custody** of **children and succession**.

Naturally, differences in the customary laws of different ethnic groups do exist and this must be taken for granted. Even within an ethnic group, instances of pockets of differences in aspects of customary law are noticeable. For example, the marriage customs and inheritance rules of the Ibos of the South Eastern Nigeria are different from those of the Yorubas of the South Western Nigeria. Beyond this the customary values and systems of various Yoruba sub-ethnic groups are bound to be different even if they are in the same State. Unfortunately, ethnic customary law is unwritten, uncertain and difficult to ascertain. It is flexible and has the capacity to adapt to social and economic changes without losing its character.

There have been instances of legislative interventions to modify and at times abrogate rules of customary law. Customary law is usually enforced in customary courts, the courts at the lowest rung of the hierarchy of courts, which in most cases are presided over by non-legally trained personnel, though higher courts are equally permitted to observe and to enforce the observance of rules of customary law by their enabling laws. It is to be noted the bulk of causes on the Cause List of customary courts, especially in South Western Nigeria, are matters relating to the dissolution of traditional marriages.

Islamic Law / Sharia / Moslem Law.

Islamic law, unlike ethnic customary law, is written. Its principles are clearly defined and articulated. This system of law has worked with detailed thoroughness and incisive precision. It is based on the Islamic religion and was introduced into Nigeria by its practitioners as a consequence of a successful process of Islamization.

This system of law is based on the Holy Koran and the teachings of Prophet Muhammad. In some areas Islamic law after its introduction completely supplanted the pre-existing system of customary laws whereas in other areas it became incorporated with customary law and the two systems have become fused and are jointly administered. Islamic law is being enforced in some states of Nigeria especially in the Northern part where populations are predominantly Moslem.

The scope of operation of Islamic law has been broadened since the introduction of the Sharia legal system in the present democratic dispensation in a number of Northern states such as Zamfara, Kano, Kaduna, and Sokoto among others. The principal feature of this new development is the introduction of religious based criminal offences, especially on matters of morality and the introduction of punishments sanctioned by the Koran. The apex court, the Supreme Court of Nigeria, has not had the opportunity to pronounce on the constitutionality of punishments like amputation and stoning of a person to death, which the Sharia prescribes for certain offenses.

Judicial Precedents

The Supreme Court is the highest court of the land. It replaced the Judicial Committee of the Privy Council in 1963 as the final court of appeal. The Court of Appeal (originally known as the Federal Court of Appeal) was established in 1976 as a national penultimate court to entertain appeals from the High Courts, which are the trial courts of general jurisdiction. The Court of Appeal sits in 10 Judicial Divisions scattered throughout the country but it is still a single court and is ordinarily bound by its own decisions.

The Court of Appeal and all lower courts are bound by the decisions of this Supreme Court. The High Courts and other courts of coordinate and subordinate jurisdiction are equally bound by the decisions of the Court of Appeal. The doctrine of judicial precedents does not apply rigidly to certain courts like the customary/area courts and the Sharia courts in Nigeria.

Judiciary

By virtue of Section 6 (1) of the Nigerian Constitution 1999 the following courts are established in the Federal Republic of Nigeria:

1. The Supreme Court of Nigeria;
2. The Court of Appeal;
3. The Federal High Court;
4. The High Court of the Federal Capital Territory,
5. A High Court of a State
6. The Sharia Court of Appeal of (FCT)
7. A Sharia Court of Appeal of a State;
8. The Customary Court of Appeal of the Federal Capital Territory, Abuja;
9. A Customary Court of Appeal of a State

The courts established by the Constitution are the only superior courts of record in Nigeria. The Constitution empowers the National Assembly and the Houses of Assembly to establish courts with subordinate jurisdiction to the High Courts. Courts established pursuant to the Constitution are invariably inferior courts of record notwithstanding the status of the officer presiding in the courts.

The Supreme Court is the highest court and all decisions from the court are binding on all other courts. In Nigeria, the state court structure dovetails into the federal court structure at the level of the Court of Appeal. The Court of Appeal entertains appeals from the decisions of the High Courts, the Sharia Courts of Appeal and the Customary Courts of Appeal. Appeals from the decisions of the Court of Appeal go to the Supreme Court. In effect the Supreme Court is not only a Supreme Court on federal matters, it is also the final court in respect of state laws. However, in terms of administrative responsibility**, State High Courts** are the most important courts in each state. This assertion is strengthened because whereas the Constitution has established a High Court for each State directly, each state has an option to establish a Sharia Court of Appeal or a Customary Court of Appeal.

The inferior courts which are established pursuant to constitutional provisions include Magistrate Courts, District Courts, Area/Sharia Courts, and Customary Courts. By and large these courts are established by State Laws, except for the Federal Capital Territory and the judicial hierarchy and the nomenclatures of inferior courts are dissimilar. The High Courts and other specialized courts exercise supervisory and appellate jurisdiction over the inferior courts.

Supreme Court

↓

Court of Appeal

↓

High Court (Federal High Court, High Court of FCT and High Courts of States); Sharia Court of Appeal, Customary Court of Appeal

↓

Magistrates'/District Court

↓

Customary Courts/Area Courts/Sharia Courts

Notwithstanding the federal status of Nigeria, the federal and the state court systems are not in two parallel lines. It is only to a limited extent that it may be asserted that each state has its own legal system as it will be shown below.

GOVERNMENT BODIES

The system of government in the Federal Republic of Nigeria is modelled after the American presidential system with the following arms of government:

1. · The Legislature
2. · The Executive
3. · The Judiciary

Legislature

The Federal Legislature is responsible for law making and it follows law making procedures as specified in Sections 58 and 59 of the 1999 Constitution. The legislature is bicameral and made up of the:

1. Senate
2. House of Representatives

The Senate is made up of 109 elected members while the House of Representatives has 360 members. The membership of the Senate is on the basis of equality of states with each state having three Senators. The Federal Capital Territory (FCT) is represented by one senator. The number of Representatives elected by each State is determined on the basis of population.

Each state also has its own law making organ known as the House of Assembly. The members elected into the Houses of Assembly represent the various state constituencies usually delineated on the basis of population.

All legislators are elected for a **4 year term**, though the electorates reserve the power to recall any legislator.

Executive

The Executive power of the Federation is vested in the President by virtue of Section 5(1) (a) of the 1999 Constitution. Such powers can be administered directly or through the Vice-President or Ministers or officers of the Government. Similarly in the states the executive power of a state is vested in the Governor and may be exercised directly by the Governor or through the Deputy Governor, Commissioners or other public officers.

See the Nigerian constitution for the functions of the executive.

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5. A High Court of a State

6. The Sharia Court of Appeal of the Federal Capital Territory, Abuja;

7. A Sharia Court of Appeal of a State;

8. The Customary Court of Appeal of the Federal Capital Territory, Abuja;

9. A Customary Court of Appeal of a State

The courts established by the Constitution are the only superior courts of record in Nigeria. The Constitution empowers the National Assembly and the Houses of Assembly to establish courts with subordinate jurisdiction to the High Courts. Courts established pursuant to the Constitution are invariably inferior courts of record notwithstanding the status of the officer presiding in the courts.

The Supreme Court is the highest court and all decisions from the court are binding on all other courts. In Nigeria, the state court structure dovetails into the federal court structure at the level of the Court of Appeal. The Court of Appeal entertains appeals from the decisions of the High Courts, the Sharia Courts of Appeal and the Customary Courts of Appeal. Appeals from the decisions of the Court of Appeal go to the Supreme Court. In effect the Supreme Court is not only a Supreme Court on federal matters, it is also the final court in respect of state laws.

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PRIMARY & SECONDARY SOURCES OF INFORMATION

Like all jurisdictions of the world, legal literature of the Nigeria is made up of primary and secondary sources. The list of these materials is exhaustive but we will attempt to mention a few. Copies of some of these materials are available in the Library of Congress and the Institute of Advanced Legal Studies, London.

Primary Sources

There are many law reports that have been published over the years. There is no government organ solely responsible for law reporting. However, individual law reports published on a commercial basis are thriving, even though the life-span of some of these publications is epileptic because of the high cost of production. The following is a list of law reports that have been published over the years:

1. Nigeria Law Report
2. All Nigeria Law Reports
3. Nigerian Monthly Law Reports
4. Law Reports of Nigeria
5. Federation of Nigeria Law Reports (Published by Evans Brothers (Nigerian Publishers) Limited)
6. Selected Judgments of the West African Court of Appeal (WACA)
7. Western Region of Nigeria Law Reports
8. Eastern Region of Nigeria Law Reports
9. Northern Region of Nigeria Law Reports
10. Sharia Law reports of Nigeria
11. Customary law in Nigeria through the cases
12. Quarterly Law Reports of Nigeria (Published by University Press Ltd., Ibadan)
13. Nigerian Weekly Law Reports (Published by Nigerian Law Publications Ltd, Lewis Street, Lagos)

14. Nigerian Constitutional Law Reports (Published by Nigerian Law Publications Ltd, Lagos)
15. Supreme Court of Nigeria Judgments (Published by Liberty Publishers, Kaduna)
16. Nigerian Supreme Court Cases (Published by Deji Sasegbon & Co., 203 Ikorodu Road, Lagos)
17. Supreme Court Reports (Published by Law Breed & Co Ltd)
18. Nigerian Commercial Law Cases
19. Weekly Reports of Nigeria (Published by Legal Text Publishing Co. Ltd, Ikeja, Lagos)
20. Supreme Court Monthly (Published by St. Paul's Publishing House 221, Obafemi Awolowo Way, Oke Ado, Ibadan)

Some Nigerian daily newspapers have a comprehensive section for law reporting and other legal matters (especially unreported judgments) as listed below:

1. The Guardian (Tuesdays)

2. This Day (Tuesdays)

3. The Vanguard (Fridays)

The International Centre for Nigerian Law, a private organization, has a comprehensive link with access to some Nigerian legislation and cases on http://www.nigeria-law.org.

Secondary Sources

Members of Nigerian academia, the bench, and the bar have written a lot of legal textbooks. This list is exhaustive but we will attempt to mention a few of them.

1. Adesanya, S.A., Laws of Matrimonial Causes, Ibadan: Ibadan University Press, 1973.
2. Agbede, I. O., Themes on Conflict of Laws, Ibadan: Shaneson, 1989
3. Agbede, I. O. Legal Pluralism, Ibadan: Shaneson, 1991.
4. Aguda, Akinola, The Law of Evidence Ibadan Spectrum Books Limited, 1966.
5. Akande, J., Miscellany at Law and Gender Relations Lagos: MIJ Professional Publishers, 2000.
6. Akande, J.O. The Constitution of the Federal Republic of Nigeria 1999 with annotations Lagos: MIJ Professional Publishers, 1999.
7. Asein, J. O., Introduction to the Nigerian Legal System, Ibadan: Sam Bookman, 1998.
8. Babalola, A. Injunctions and Enforcement of Orders Ile-Ife: Obafemi Awolowo University Press, 2000.

9. Doherty, O. Legal practice and management in Nigeria, London: Cavendish Publishing, 1998.
10. Elegido, J. M., Jurisprudence, Ibadan: Spectrum Books Limited, 1994.
11. Elias, T.O., Nigerian Land Law, 4th ed., London: Sweet & Maxwell, 1971.

Journals

1. Nigerian Law Journal (Journal of the Nigerian Association of Law Teachers)
2. Nigerian Law and Practice Journal (Journal of the Nigerian Law School)
3. Nigerian Current Law Review (Journal of the Nigerian Institute for Advanced Legal Studies)
4. Ahmadu Bello University Law Journal
5. Obafemi Awolowo University Law Journal
6. The Nigerian Journal of Contemporary Law (Journal of the Faculty of Law, University of Lagos)
7. Ibadan University Law Review
8. The Calabar Law Journal (Journal of the Faculty of Law, University of Calabar, Nigeria)
9. The Commercial and Industrial Law Review
10. Nigerian Bar Journal (Journal of the Nigerian Bar Association)
11. Ibadan Bar Journal (Journal of the Nigerian Bar Association, Ibadan Branch)

Legal Publishers

The following are prominent legal publishers in Nigeria:

1. MIJ Professional Publishers
2. Nigerian Institute of Advance Legal Studies
3. Nigerian Law Publications
4. Spectrum Books Ltd

Government Publications

There is the Federal Government Press Department which is responsible for the publication and sale of Gazettes and other government notices. The Federal Government Press is located in Lagos and Abuja. Some Federal Government publications can be accessed at: http://www.nigeria.gov.ng/eGovernment/publications.html. Each state has a government press which is also responsible for state government publications.

International Law

Nigeria is a signatory to many international instruments. Nigeria is a member of the United Nations, The Commonwealth among others. It is also important to note that several Nigerian judges have served and are still serving on a number of international tribunals and courts.

LEGAL EDUCATION

The Council of Legal Education is the supervisory body responsible for the accreditation, control and management of legal education in Nigeria. The Council is in charge of the Nigerian Law School, a vocational institution responsible for the education and training of prospective legal practitioners in Nigeria. The Nigerian Law School's headquarters is located in Abuja and there are other 3 campuses of the Nigerian Law School in Enugu, Kano and Lagos. Persons wishing to study law in Nigeria must first undergo undergraduate training in Nigerian universities for the award of an LL.B degree after which they proceed to the Nigerian Law School for practical training in any of its campuses.

Successful candidates in the Bar Final examinations are called to the Nigerian Bar if they satisfy the Benchers that they are of good character. The Council of Legal Education also recognizes some foreign degree holders from accredited overseas institutions for purposes of admission. In order to qualify to practise as a legal practitioner in Nigeria, a person called to the Nigerian Bar must enroll as a Solicitor and Advocate of the Court of the Supreme Court of Nigeria.

LEGAL PROFESSION

It is by virtue of enrolment at the Supreme Court that an individual can become a legal practitioner and a member of the legal profession in Nigeria. A legal practitioner is enrolled in Nigeria both as a Solicitor and Advocate (Barrister) because, unlike in England, the legal profession is fused. The activities and conduct of members of the legal profession are regulated by statutory bodies like the General Council of the Bar and the Body of Benchers. The bodies are established by the Legal Practitioners Act, Cap. 207, LFN 1990.

The Nigerian Bar Association (N.B.A) is the foremost professional association in the legal profession. Though the N.B.A. is not a statutory body, it is recognized by statutes and it appoints members to supervisory bodies in the legal profession. In fact the representatives of the N.B.A. participate in the deliberation of a constitutional organ, the National Judicial Council, for the purpose of considering the names of persons for appointment to the superior courts of record. The N.B.A. which had been organized at national level before independence now has 86 recognized branches organized along judicial divisions of State High Courts, with at least one Branch in each of the 36 states.