

1.0 CONCEPT OF LAW

Definition: Although there is no universal definition for law, nevertheless it is defined by a Legal Dictionary as: “A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.” In U.S. law, the word law refers to any rule that if broken subjects a party to criminal punishment or civil liability. It can however be defined also as “those rules and regulations, backed by sanctions when flouted, which guide the conduct and behaviour of members of a community or society, and which they accept and consider as binding them.”

1.1 Sources of Law in Nigeria:

- **Customary Law:** This law is otherwise called Native law and Custom. They are the rules, norms, ethics, customs, traditions, social principles, codes and tenets practiced in a society and are enforced by authorities to bring the conducts of the citizens into a control. They are mostly unwritten rules.
- **Legislation:** It is the function of the parliament or the appropriate law – making bodies to legislate orders and regulation, edicts, acts, statutes, decrees, bye – laws, etc.,
- **Case – law:** The most authoritative courts of the land lay down some rules or precedents of law which are binding on the lower courts; these are called case – law.

The two types of case – law are:

- (i) **Common law:** these are principles of law that have been developed in cases decided over the centuries by the judges of the higher courts, where statutory rules are not involved, called judicial precedents. Examples are: (i) a set of common law rules relating to the formalities that must be gone through in order to enter a legally binding contract, (ii) the principles of the law of negligence whereby any person in breach of duty of care towards another may be liable to pay compensation for any damages suffered if that other person is injured as a result of the breach.
- (ii) **Codes of Guidance and other Official Advice:**
Other than the rules (statute - law) which need to pass through the appropriate legislative process or the case law which is handed down by the higher courts, there are other rule of practice found in the a variety of Codes of Guidance issued by the appropriate government or the professional bodies, that are applicable only to the concerned area, trade or profession.

1.2 DISTINCTION BETWEEN CIVIL LAW AND CRIMINAL LAW

(1) A body of rules that delineate private rights and remedies, and govern disputes between individuals in such areas as contracts, property, and Family Law; distinct from criminal or public law. Civil law systems, which trace their roots to ancient Rome, are governed by doctrines developed and compiled by legal scholars. Legislators and administrators in civil law countries use these doctrines to fashion a code by which all legal controversies are decided.

The civil law system is derived from the Roman *Corpus Juris Civilis* of Emperor Justinian; it differs from a common-law system, which relies on prior decisions to determine the outcome of a lawsuit. Most European and South American countries have a civil law system. England and most of the countries it dominated or colonized, including Canada and the United States, have a common-law system. However, within these countries, Louisiana, Quebec, and Puerto Rico exhibit the influence of French and Spanish settlers in their use of civil law systems. Civil law is the system of law concerned with private relations between members of a community rather than criminal, military, or religious affairs. "The owners can prosecute the individuals under civil law for trespassing." **Civil law** is a branch of the law. In common law countries such as England, Wales, and the United States; the term refers to non-criminal law. The law relating to civil wrongs and quasi-contracts is part of the civil law. The law of property is embraced by civil law. Civil law can, like criminal law, be divided into substantive law and procedural law. The rights and duties of individuals amongst themselves is the primary concern of civil law. It is often suggested that civil proceedings are taken for the purpose of obtaining compensation for injury, and may thus be distinguished from criminal proceedings, whose purpose is to inflict punishment. However, exemplary or punitive damages may be awarded in civil proceedings. It was also formerly possible for common informers to sue for a penalty in civil proceedings.

Because some courts have both civil and criminal jurisdiction, civil proceedings cannot be defined as those taken in civil courts. In the United States, the expression "civil courts" is used as a "shorthand for trial courts in civil cases".

(2) **Criminal law** or **penal law** is the body of law that relates to crime. It regulates social conduct and proscribes whatever is threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people. It includes the punishment of people who violate these laws. Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation than on punishment. Criminal law a system of law concerned with the punishment of offenders. "It is the function of the criminal law to punish."

Civil Action: A civil action is any legal action that is not a criminal action. Civil actions are between private individuals, unlike criminal actions which are between the crown and the accused. Examples of civil actions are claims for debt, for damages arising from motor vehicle accidents, divorces, adoptions, matrimonial property actions, foreclosures, and administration of estates following a death. The persons involved in a civil action are called the parties. *A lawsuit brought to enforce, redress, or protect rights of private litigants—the plaintiffs and the defendants—not a criminal proceeding.*

Criminal Action: *The procedure by which a person accused of committing a crime is charged, brought to trial, and judged.* The main part of a criminal action is the trial in which the innocence or guilt of the accused is determined. If the defendant is not found guilty, he or she will be acquitted of the charges. If the defendant is found to be guilty, a suitable punishment, such as a fine, imprisonment, or even a death sentence, will be imposed depending upon the punishment provided in the statute under which he or she was prosecuted.

1.3 The Supreme Court of Nigeria (SCN)

SCN is the highest court in Nigeria, and is located in the Central District, Abuja, in what is known as the Three Arms Zone, so called due to the proximity of the offices of the Presidential Complex, the National Assembly, and the Supreme Court.

1.3.1 Overview

In 1963, the Federal Republic of Nigeria was proclaimed and Nnamdi Azikiwe became its first President. Appeals from the Federal Supreme Court to the Judicial Committee of the Privy Council were abolished at that point, and the Supreme Court became the highest court in Nigeria. In 1976, the Court of Appeal (originally known as the Federal Court of Appeal) was established as a national court to entertain appeals from the High Courts of each of Nigeria's 36 states, which are the trial courts of general jurisdiction. The Supreme Court in its current form was shaped by the Supreme Court Act of 1990 and by Chapter VII of the 1999 Constitution of Nigeria.

Under the 1999 constitution, the Supreme Court has both original and appellate jurisdictions, has the sole authority and jurisdiction to entertain appeals from Court of Appeal, having appellate jurisdiction over all lower federal courts and highest state courts. Decisions rendered by the court are binding on all courts in Nigeria except the Supreme Court itself.

1.3.2 Structure and organization

The Supreme Court is composed of the Chief Justice of Nigeria and such number of justices not more than 21, appointed by the President on the recommendation of the National Judicial Council, (NJC) and subject to confirmation by the Senate. Justices of the Supreme Court must be qualified to practice law in Nigeria, and must have been so qualified for a period not less than fifteen years. Justices of the Supreme Court of Nigeria have a mandatory retirement age of 70 years.

Court System in Nigeria: The Nigerian legal system is based on the English Common Law. In 1963, Nigeria became a Republic; the judicial committee of the Privy Council was abolished and **the Supreme Court of Nigeria**. The highest court in Nigeria is situated in Abuja. In 1976, **the Court of Appeal** was established as a national court. Next in hierarchy to the Court of Appeal are **the High courts** of the thirty six states. The high courts are trial courts.

Cases can be referred to higher courts if one party is not pleased with any judgment because under the 1999 constitution, the Supreme Court has both original and appellate jurisdictions. However, the last place where any case can be heard is the Supreme Court. The decisions rendered by the court are binding on all other courts except the Supreme Court itself. In many states in the Northern part of the country, **the Sharia Penal Code** is in operation. Offences such as theft, homosexuality, alcohol consumption, fornication and adultery attract such punishment as stoning, lashing and long prison sentences. Nigeria's legal system is headed by the **Minister of Justice and Attorney General** of the Federal Republic of Nigeria.

1.3.3 JURISDICTION AND COURTS ESTABLISHED BY THE CONSTITUTION

Jurisdiction is genuine and fundamental in every proceeding in court. If a court adjudicates over a matter which it has no jurisdiction, no matter how brilliant the judgment is, its efforts and proceedings are nullity abinitio. Jurisdiction may be by reference to constitution or composition of the court. The law specifies the number of judges that must seat in a given matter failing which the court cannot competently handle the matter. Jurisdiction may also be determined by geographical area of operation of the court. The leading authority on the essentials of jurisdiction is the case of *Madukolu V. Nkemdilim* (1962) S.C.N.L.R 341.

A court has jurisdiction:

- i. When it properly constituted as regards members and qualifications of the members of the Bench and no number is disqualified for any reason.
- ii. When the subject matter of the case is within its jurisdiction.
- iii. And when the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

1.3.3.1 CATEGORIES OF COURTS IN NIGERIA

1. Supreme Court
2. Court of Appeal
3. Federal High Court
4. High Court of the Federal Capital Territory
5. High Court of a State
6. Sharia and Customary Court of Appeal of the Federal Capital Territory
7. Sharia and Customary Court of Appeal of a State

(1a) SUPREME COURT OF NIGERIA:

This is the highest in the hierarchy of courts in Nigeria. Section 232(1) of CFRN 1999 provides for the establishment of the Supreme Court. The composition consists of the Chief Justice of Nigeria and such number of justice not exceeding twenty-one (21) as may be prescribed by an Act of the National Assembly. Appointment of Chief Justice of Nigeria and other Justice of the Supreme Court are appointed by the President of the Federal Republic of Nigeria on the recommendation of National Judicial Council subject to confirmation of such appointment by the senate.

(1b) JURISDICTION: The Supreme Court has both original and appellate jurisdiction.

(i) Original Jurisdiction:

Section 232(1) of 1999 CFRN provides that the Supreme Court shall to the exclusion of any other court have original jurisdiction in any dispute between:

- (a) Federation and a State,
- (b) Between States
- (c) Original jurisdiction as may be conferred by the National Assembly.

Additional Original Jurisdiction conferred upon the Supreme Court by Section 232(1) shall to the exclusion of any other court, have original jurisdiction in any dispute between:

- (a) National Assembly and the President
- (b) National Assembly and any State House of Assembly
- (c) National Assembly and a State of the Federation.

(ii) Appellate Jurisdiction

An appellate court derives its jurisdiction from the statute creating it, including the 1999 constitution and other enabling statutory provisions. The constitution provides that no any other court of Law in Nigeria has power/authority to hear and determine appeals from the Court of Appeal. The Supreme

Court has the exclusive jurisdiction. The decision/judgment of the Supreme Court is final and appeal lies to nowhere. Section 234 of CFRN provides that for the purpose of exercising any jurisdiction conferred upon it. Supreme Court shall be properly constituted if it consists of not less than five (5) justices of S.C.

However, the Supreme Court shall be duly constituted by seven (7) justices. Such instances include the following

- (i) Interpretation of Constitution
- (ii) A question whether any of the provisions relating to fundamental human rights has been, is being or is likely to be contravened, or
- (iii) The exercise of its original jurisdiction .

However, there are occasions where the Supreme Court can set aside its decision in certain circumstances. Such cases are as follows:

- (i) If the judgment is obtained by fraud
- (ii) If the judgment is a nullity such as when the court itself was not competent or
- (iii) If the court is misled into giving judgment under a mistaken belief that the parties had consented to it, or
- (iv) If the judgment is given in the absence of jurisdiction

The Chief Justice of Nigeria is empowered under the 1999 constitution. Section 234 to make rules for regulating the practice and procedure of the Supreme Court.

1.2 COURT OF APPEAL:

Court of Appeal (CA) is next to the Supreme Court in the hierarchy of Nigeria Court System. The Court is established by Section 237 of 1999 CFRN. Its composition consists of a President of the Court of Appeal and other Justice of the Court of Appeal not less than forty-nine (49) in number. Three of which shall be learned in Islamic Personal Law and three others learned in Customary Law. The President of the Court of Appeal is appointed by the President of Federal Republic of Nigeria based on the recommendation of the National Judicial Council subject to the confirmation of the Senate. The Court of Appeal has both original and appellate jurisdiction.

(1.2.1 JURISDICTION:

(i) Original Jurisdiction:

Section 239 of the 1999 CFRN provides for the original jurisdiction of the Court of Appeal in respect of the following matters.

- (i) Whether any person has been validly elected to the office of the President or Vice President.
- (ii) Whether the term of the office of the President or Vice President has ceased or
- (iii) whether the office of the President or Vice President has become vacant.

(ii) Appellate Jurisdiction

Section 240 of CFRN provides that the Court of Appeal shall have appellate jurisdiction to the exclusion of any other court of law in Nigeria to hear appeals from the Federal High Court, State High Courts including FCT and other Lower Courts. The Court shall be duly constituted if it consists of not less than three (3) justices of Court of Appeal.

However, it could be more than three (3) justices depending on the nature and circumstances of the appeal or the matter before the court. And Section 248 of the 1999 CFRN empowers the President of the CA to make rules for regulating practice and procedure of the court of Appeal.

(1.3) FEDERAL HIGH COURT

This is a Federal Court established by Section 249(1) of the 1991 CFRN and consists of a Chief Judge and such number of Judges as may be prescribed by an Act of the National Assembly. The Chief Judge and other Judges of the Federal High Court are appointed by Mr. President on the recommendation of National Judicial Council subject to the confirmation of the Chief Judge only. Jurisdiction of the FHC covers the entire country.

(i) The Exclusive Jurisdiction of FHC according to Section 251(1) of the 1999 CFRN covers the following matters:

- (i) Revenue of Government
 - (ii) Taxation
 - (iii) Custom and excise
 - (iv) Banking and Fiscal Measures
 - (v) Operation of CRMA
 - (vi) Copyright, Trade mark, patent and designs
 - (vii) Admiralty
 - (viii) Diplomatic, Consular of trade representatives
 - (ix) Citizenship
 - (x) Bankruptcy and insolvency
 - (xi) Aviation and safety of aircraft
 - (xii) Arms and ammunition
 - (xiii) Drugs and poisons
 - (xiv) Mines and Minerals
 - (xv) Weights and measures
 - (xvi) Administration and management of any government agency e.t.c.
 - (xvii) Interpretation of constitution as it affects the Federal Government and its agencies
 - (xviii) Action for declaration or injunction against the Federal Government and its agencies
- And any other jurisdiction conferred by the National Assembly.

(ii) In addition to the exclusive jurisdiction of the **FHC, the Court also exercise concurrent jurisdiction with the State High Court** in respect of the following:

(a) Enforcement of fundamental human rights. (b) Reference of questions as to interpretation of constitution. In *Grace Jack V. University of Agriculture, Markurdi* (2004) NWLR (part 865) 2009 SC held that by virtue of order 1 Rule 2 of the fundamental right (Enforcement Procedure) Rules made pursuant to the 1999 CFRN, the Federal High Court and the State High Court have concurrent jurisdiction in respect of the enforcement of Federal High Court.

The Federal High Court has in the followings matters: (a) Decisions of Appeal Commissioners established under companies Income Tax Act and the Personal Income Tax Act. (b) Decisions of the Customs, Immigration and Prison Services Board. (c) Decisions of Magistrates' Courts in respect of matters transferred to such courts in pursuant to the Act. (d) Decisions on any other body established by or under any Federal enactment of law in respect of matters concerning which jurisdiction is conferred by the Act. The FHC is duly constituted by one judge.

(1.4) THE STATES HIGH COURT AND THE FEDERAL CAPITAL TERRITORY, ABUJA

The State High Court is established for each state of the Federation by Section 270(1) of 1999 CFRN and consists of a Chief Judge of the state and such number of judges as may be prescribed by the House of Assembly of the State. Their appointment is made by the Governor on the recommendation of National Judicial Council. The jurisdiction of the State High Court is provided for in Section 272(1) as follows:

(i) "The High Court of a State shall have **jurisdiction to hear and determine any civil proceeding** in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue". "The **jurisdiction conferred on the State High Court by Section 272(1) covers original, appellate as well as supervisory jurisdiction**".

A High Court of a State shall be duly constituted if it consists of at least one judge of that court. Section 257(1) and 272 of the CFRN provide for general jurisdiction of the High Court of Federal Capital Territory and state respectively.

(ii) **The general jurisdiction of the High Court is limited by the following provisions:**

(a) Exclusive jurisdiction of Federal High Court in Section 251(1) (b) The jurisdiction of the Sharia Court of Appeal in matters of Islamic Personal Law in Section 277. (c) The jurisdiction of the Customary Court of Appeal in respect of Customary Law in Section 282.

Both the Federal High Court and State High Court perform concurrent jurisdiction in respect of two matters: (a) Enforcement of Fundamental Human Rights. (b) Reference of questions as to interpretation or application of the constitution.

(iii) **Transfer of Cases from Federal High Court to the State High Court**

vice-versa. Section 22(2) of the Federal High Court Act (amended/empowers) the Federal High Court to transfer cases wrongly commenced in it to the State High Court instead of being struck out. State High Court to the Federal High Court, although Section 22(3) of the Federal High Court Act (as amended) provides that the High Court of the States and Federal Capital Territory shall not strike out but transfer a matter wrongly commenced in the court.

(1.5) SHARIA COURT OF APPEAL

The Sharia Court of Appeal is established by Section 275 of the 1999 CFRN for any state that requires it but mandatory in the Federal Capital Territory.

The Court consists of a Grand Kadi and such other number of Kadis of the Court as may be prescribed by the House of Assembly in the case of a state.

The Grand Kadi and the Kadis of the Sharia Court of Appeal of a state are appointed by the Governor on the recommendation of National Judicial Commission (NJC) subject to the confirmation of such appointment by the House of Assembly of that state in the case of the Grand Kadi only.

In the Federal Capital Territory, the appointment of the Grand Kadi is by the President on the recommendation of NJC subject to confirmation of such appointment by the Senate.

Section 262 of the 1999 CFRN provides that the Sharia Court of Appeal shall exercise both appellate and supervisory jurisdiction in civil proceeding involving questions of Islamic Personal Law. For the purpose of exercising its jurisdiction, the Sharia Court of Appeal shall be duly constituted if it consists of at least three (3) Kadis of that Court.

(1.6) CUSTOMARY COURT OF APPEAL

The Customary Court of Appeal is established by the 1999 CFRN for any state of the Federation that requires it but mandatory for the FCT.

The Court consists of a President of Customary Court of Appeal and such other judge of the court as it may be prescribed by the House of Assembly in the case of a state. The President and Judges of the Customary Court of Appeal of a state are appointed by the State Governor on the recommendation of National Judicial Council subject to the confirmation of such appointment by the House of Assembly in the case of the President of the Court only.

In case of the FCT, the appointment is made by the President of Federal Republic Nigeria on the recommendation of National Judicial Commission subject to the confirmation of Senate in case of the President of the Court only.

The Customary of Appeal has no original jurisdiction but has both Appellate and Supervisory Jurisdiction in civil proceedings involving question of customary law as may be prescribed by law of House of Assembly in case of a state or Act of National Assembly in the case of the Federal Capital Territory. The Customary Court of Appeal shall be duly constituted if it consists of at least three (3) Judges of that court.

(1.7) COURT ESTABLISHED BY STATES AND THE FEDERAL CAPITAL TERRITORY

Apart from the seven (7) Superior Court of Records created by the CFRN, all the states of Federal and the Federal Capital Territory, Abuja have enacted laws establishing inferior courts. These courts are:

1. **The Magistrate Courts** established by the Magistrate Court Law of the State of Southern Nigeria. Apart from minor variations relating to the Grades of the Magistrates and their financial limits, the subject matter in respect of which Magistrates' Courts are vested with jurisdiction are more or less the same in all the states of the Federation. The state is divided into magisterial districts by the Chief Judge of the State and a Magistrate Court is established for each district. For example, currently there are six grades of Magistrate Courts in Lagos State vis:

(i) Chief Magistrate Grade 1, (ii) Chief Magistrate Grade 2, (iii) Senior Magistrate Grade 1, (iv) Senior Magistrate Grade 2, (v) Magistrate Grade 1, (vi) Magistrate Grade 2

Magistrates only hear matters that are within their magisterial district and do transfer wrongly instituted matters to the appropriate magisterial district.

(a) Subject Matters

Their jurisdiction covers the following subject matters:

- (i) All personal actions arising from contract or from tort or from both.
- (ii) All actions between landlord and tenant
- (iii) All actions for recovery of penalty, rates, expenses or contribution
- (iv) Actions to grant injunction or order to stay waste or for the detention and preservation of any property or to restrain breach of contract or torts.

(b) Financial Limits

Their jurisdiction covers the following financial limits:

- (i) Chief Magistrate Grade 1 and 2 - One million naira (N1m) only;
- (ii) Senior Magistrate Grade 1 and 2 - Seven hundred and fifty thousand naira (N750,000.00) only;
- (iii) Magistrate Grade 1 and 2 - Five hundred thousand naira (N500,000.00) only.

(1.8) DISTRICT COURTS

District Courts are established by the District Court Act/Laws for the Federal Capital Territory, Abuja and the states of Northern Nigeria. The various states in the North have their laws establishing and defining the jurisdiction it covers.

In the Federal Capital Territory, Abuja for example, there are six (6) grades of District Judges vis: (i) Chief District Judge 1; (ii) Chief District Judge 2; (iii) Senior District 1; (iv) Senior District2; (v) District Judge 1 (vi) District Judge 2.

(a) Subject Matter

All grades of District Judges are vested with jurisdiction in respect of the following matters:

- (a) All personal suits arising from contract or tort or both
- (b) All personal suits between landlord and tenant for possession of premises ,
- (c) All nations for recovery of any penalty, rates, expenses and contribution
- (d) Actions for grant of injunction e.t.c.

(b) Financial Limit

The financial limits of the various grades District Court Judges in respect of financial limit.

- (i) Chief District Judge I - Two hundred and fifty thousand naira (N250,000.00) only
- (ii) Chief District Judge II - Two hundred thousand naira (N200,000.00) only
- (iii) Senior District Judge I - One hundred and fifty thousand naira (N150,000.00) only
- (iv) Senior District Judge II - One hundred thousand naira (N100,000.00) only
- (v) District Judge I - Fifty thousand naira (N50,000.00) only
- (vi) District Judge II - Twenty-five thousand naira (N25,000.00) only

(1.9) AREA COURT

Area Courts exist in the Northern parts of Nigeria including the Federal Capital Territory, Abuja. For example, in Kano State, there are three (3) grades Area Court Judges under the Area Court Law of Kano State.

- (i) The Upper Area Court;
- (ii) The Area Court I;
- (iii) The Area Court II.

(i) The jurisdiction of the Area Court under that Law includes the following:

- (a) All questions of Islamic Personal Law;
- (b) Matrimonial Causes and matters between persons

married under customary law; (c) Suit relating to custody of children under customary law (d) Civil actions involving debt demand and damages; (e) Matters relating to succession to property and the administration of estate under customary law; (f) Matters concerning ownership, possession or occupation of land.

(1.10) SHARIA COURT

Sharia Court is a feature of the judicial system of the Northern States. Some states in the Northern Nigeria have established the Sharia Court. For example, in Zamfara State. The court is divided into 3 grades as follows: (i) Upper Sharia Court (ii) Higher Sharia Court (iii) Sharia Court. The jurisdiction of the Sharia Court relates to Civil Proceedings in Islamic Law in respect of right, power, duty, liability, privilege, interest, obligation or claim in issue.

(1.11) CUSTOMARY COURT

Customary Courts are established by Customary Court Law of the States of Southern Nigeria as an alternative to the Area Courts in the North. The jurisdiction of Customary Court in Lagos State for example covers the following:

- (i) Matrimonial Causes and other matters between persons married under customary law
- (ii) Suits relating to guardianship and custody of children under customary law
- (iii) Matters relating to inheritance upon intestacy and the administration of intestate estate under customary law
- (iv) Other cases or matter for debt demanding or damages.

The jurisdiction of the court is limited to the value of five hundred naira (N500.00) only.

(1.12) NATIONAL INDUSTRIAL COURT

The National Industrial Court is not one of the courts directly established by the constitution. The court is created by an Act of National Assembly. The Court consists of the president and not less than twelve (12) judges. The president of the court and the judges are appointed by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate in the case of President only. The court has an exclusive jurisdiction in the following matters:

- i. Labour including trade unions, industrial relations, environment, conditions of work, health, safety, welfare of labour and incidental matters.
- ii. Grant of order to restrain strike, lock-out or any industrial action.
- iii. Determination of any question as to the interpretation of any collective agreement, arbitral award relating to labour, terms of settlement of labour dispute, trade union constitution and any judgement of the court. The court shall be duly constituted by not less than three (3) judges when sitting. However, a single judge may sit and hear interlocutory application or a preliminary matter in any proceeding.