



**NATIONAL OPEN UNIVERSITY OF  
NGERIA**

**SCHOOL OF LAW**

**COURSE CODE:LAW 100**

**COURSE TITLE:INTRODUCTION TO LAW**

Adamu and Mariam will have a **duty of care** cast on them as occupiers of the shop premises to take reasonable care to prevent damage from reasonably foreseeable risks to persons entering the shop.

If a customer is injured as a result of **negligence** by Adamu and Mariam with respect to the static condition of the shop (e.g. slippery floor) that customer may sue the occupiers and recover compensation.

Tort law may also cast a duty on Adamu and Mariam with respect to any dangerous items they may sell across the counter. For example where Adamu and Mariam are aware that the manufacturer has supplied no instructions with respect to the dangerous propensities of an item, and Adamu and Mariam are aware of those propensities but fail to warn a purchaser, they may be held liable to that purchaser for any injuries resulting from that dangerous propensity (e.g. risk of electrical shock when used in a certain way).

### **(b) ‘Repair of Electrical Household Goods’**

The common law principles of bailment will apply to the repair side of Adamu and Mariam’s proposed business.

Each time Adamu and Mariam or their company contract for the repair of an electrical appliance there will be a bailment of those goods from the consumer to the repairer. The consumer is the bailor of goods for repair, to the repairer who is the bailee.

In **essence**, a bailment is a **temporary parting with possession of goods by their owner to a person called a bailee**, for a specified purpose (eg repair) with an implied understanding that the goods will be returned to the possession of the owner (bailor) when that purpose is fulfilled.

Where there is a bailment of goods (in this instance pursuant to a contract for repair) the bailee comes under a **duty to take reasonable care** in all the circumstances, of the goods of the bailor while they are in the possession of the bailee such that if they are damaged or destroyed or lost through negligence, while in the possession of the bailee, the bailor may sue for damages and recover the loss sustained from the bailee.

### 3.2.10 ‘Intend to employ one junior ... permanent full-time...’

#### Labour/Industrial Law

Adamu and Mariam intend to **employ** one permanent full-time employee. They will be required under the *Workers’ Compensation Act* to take out a policy of insurance against accident or injury occurring to that employee while in the course of his or her employment. Such compulsory insurance by the employer offers protection to the employee against accident or injury which is work related.

The employer (Adamu and Mariam) will have certain **common law duties** to **safeguard** the **employee** from unreasonable risks in regard to the fundamental conditions of employment the safety of plant, premises and method of work.

Adamu and Mariam will be required to take reasonable care to provide for the employee both a safe system of work and a safe place of work. Any breach of this duty by the employer may subject that employer to a claim for damages by the employee.

Issues raised in the preceding pages are many but not exhaustive but they suffice to create an awareness of the impact of the law in many areas of life.

## 4.0 CONCLUSION

In this Unit, you learnt about the impact of law on the simple plan by Adamu and Mariam to establish a business. The feasibility survey is much more extensive than is ordinarily conceived. It involves the consideration of a wide range of laws. You can relate this to your studentship with NOUN, when it first occurred to you and now that you have read this unit. You would have seen the wide difference in the factors you thought of, the laws and regulation you considered if at all, and those you have breached or honoured.

## 5.0 SUMMARY

Simple buying and selling of any article which you regularly do has legal implications. It may involve different classes of law, e.g. law of contract, tort law or even criminal law and other miscellaneous laws. So also is the common landlord and tenant relationship, partnership or other commercial transactions and business associations. A little understanding of the law therefore is important to every citizen.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Read Passages I and II over again and answer the following questions:

1. Name the classes of laws involved
2. Discuss the objective of each of them

## **7.0 REFERENCES/FURTHER READINGS**

SR. 1.1: Murphy & Stewart. Access this link to find information on preparing for law exams.

You may also find chapter 12 from Crosling & Murphy 1996, How to Study Business law, 2<sup>nd</sup> edn, Butterworth, Sydney, useful to provide some insight and assistance in studying law for the first time. It is a recommended reading only.

SR 1.2: Scott.

## **UNIT 2 THE NATURE, SOURCES AND CLASSIFICATION OF LAW**

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### **1.0 INTRODUCTION**

A simple everyday activity or undertaking can involve numerous areas of laws. Altogether, they regulate, control, enforce, punish or bring about reparation. In this unit, we shall be looking into the sources of these laws.

### **2.0 OBJECTIVES**

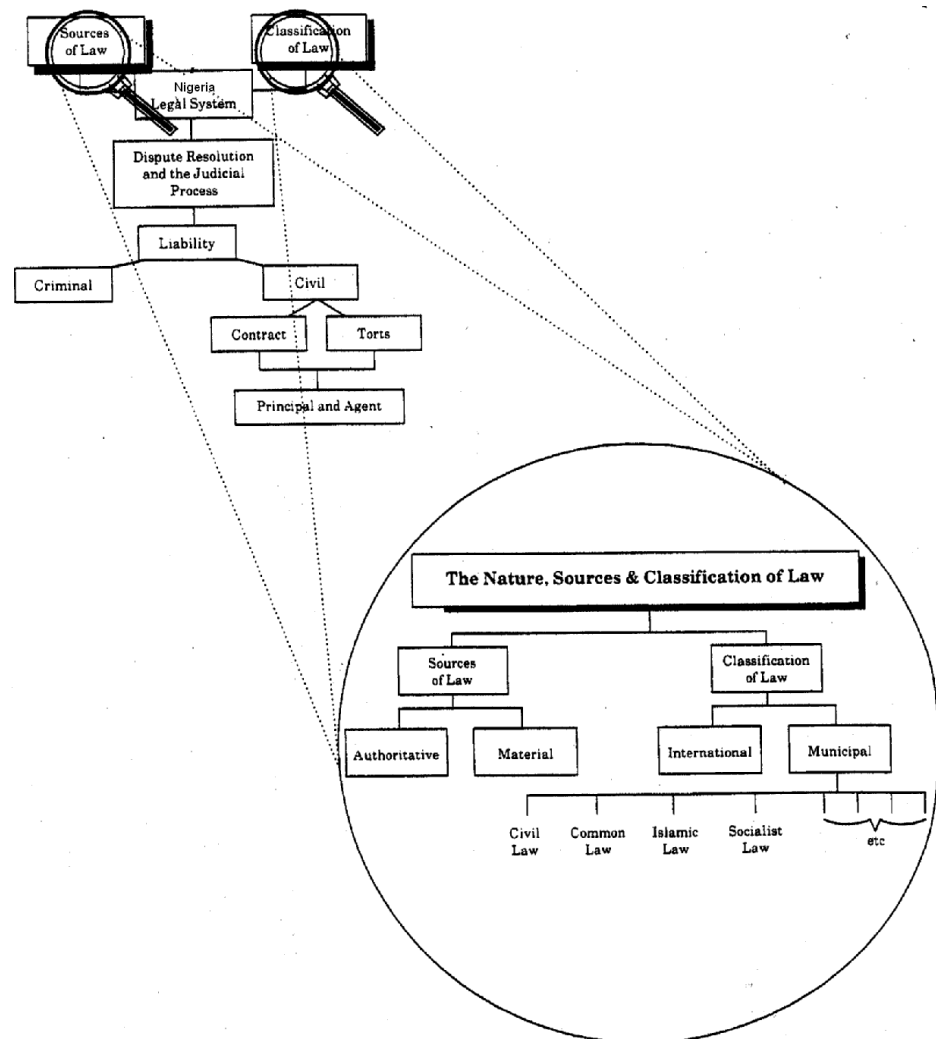
On successful completion of this unit, you should be able to:

- describe, explain, illustrate, and critique the Nigeria legal system
- describe briefly the evolution of the judiciary as a source of law
- explain the significance of the doctrine of precedent to the common law system

- describe briefly the evolution of parliament s a source of law
- explain how a government policy may become part of our statute law
- outline the evolution of an independent Nigeria legal system
- identify the sources of law which apply to Nigerian citizen
- distinguish between different classifications of law by giving appropriate examples.

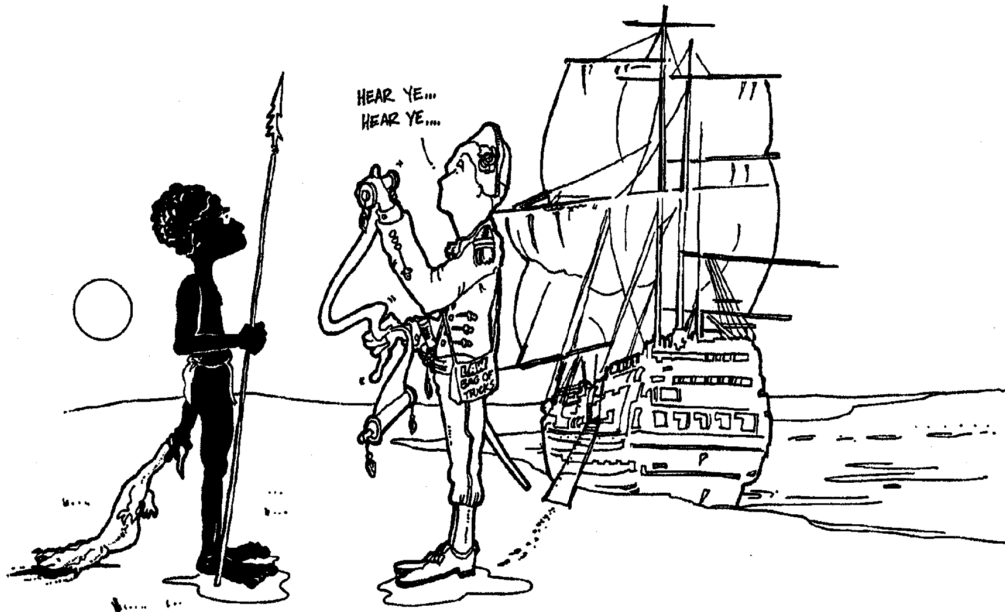
### 3.0 MAIN CONTENT

#### 3.1 The Nature, Sources and Classification of Law

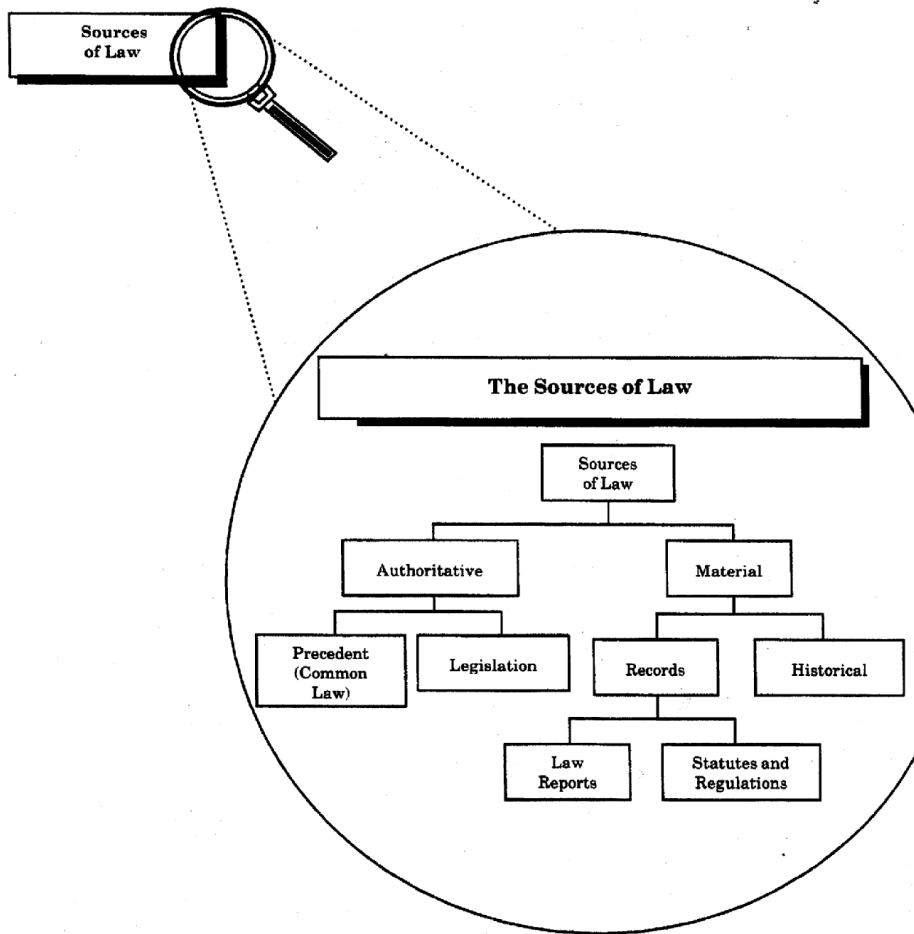


(From University of Southern Queensland, Australia Study Book: Introduction to Law)

### 3.1.1 The Nature of Law



### 3.2 The Sources of Law



### 3.2.1 Authoritative Sources

There are two main sources from which laws derive their authority:

- Judge made law or common law; or
- National and State Assemblies (Parliament)

A broad overview of the development of both the Judiciary and National/State Assembly as sources of law is necessary in order to understand the English Legal System, which formed the basis for our own Nigerian legal system.

### 3.2.2 ‘Statute Law’ and ‘Judge-Made Law’

Take particular note of:

- Development of the common law
- The growth of equity
- Reception of English Law in Nigeria
- Law Reports
- The Doctrine of Precedent – only read the first two pages of Turner on this topic. The balance will be dealt with in module 4
- Statute law
- The Making of Statutes
- Delegated Legislation.

### 3.2.3 Advantages and Disadvantages of Statutory Law

In their discussion of the Legislature as a source of law, Vermeesch and Lindgren (1992: 24) set out the advantages and disadvantages of legislation as a lawmaking process as follows:

- (a) Advantages. The Act of the National Assembly may reflect change in community standards. The argument is that the National Assembly is more responsive to electoral concerns than the judiciary, judges being appointed, effectively, until a ripe old age. The statute may be enacted after thorough inquiry into the need for the proposed law by bodies such as law reform commissions or specialist House of Representative or Senate committees. This contrasts with the decision of the judge which is made on the basis of evidence selected by the parties to strengthen their particular arguments. The legislation may be enacted to deal with a perceived deficiency in the law. Judicial lawmaking depends on the vagaries of litigation. Legislation may be, and usually is, enacted prospectively. Litigation, at least



where the parties are concerned, is a retrospective form of lawmaking.

- (b) **Disadvantages.** The major criticism of statutory law is the difficulty experienced in having statutes enacted. The legislative agenda is very crowded, and becomes more crowded each year, and most law reform proposals are not given a high priority. This is to be contrasted with the relatively free access that disputants have to the courts. The second major criticism is the fact that legislation is often broad brush in its approach and, even when it is not, often requires judicial clarification. This is to be contrasted with the judicial decision which is directed to the particular issue brought before a court.

So far, we have looked at sources of law in a broad sense, directing our attention to the authority which is responsible for particular laws. Another way to look at sources of law is from a narrower viewpoint and to look to the records of where the law is to be found. These records are the law reports and the statutes and regulations.

### **3.2.4 Law Reports**

The most important Nigerian law reports are the authorized Law Reports which are cited by reference to the court in which the decision is made etc. In addition there are the All Nigerian Law Reports cited by the abbreviation "All NLR". In Nigeria the most important reports from our viewpoint are the Nigerian Law Report, Nigerian Weekly Law Reports, Law Breeds, Weekly Report of Nigeria etc.

### **3.2.5 Statutes**

The most important statutes are the Federal statutes and the state laws for each state and the received English Laws. Naturally, enough we focus on the statutes in this course but it should be realized that in many cases the states have equivalent statutory laws. There are for example more or less uniform laws in each state with little variation between the 19 Northern and 17 Southern States. Many of these statutes are based on an English model and have retained their common features for many years, though in declining proportions.

## **3.3 Historical Sources**

### **3.3.1 The Reception of Law into Nigeria**

You may have been wondering why in the earlier discussion constant reference was made to the English legal system and its historical

development and you might have questioned the relevance for Nigeria. The relevance is clear when you realize that English Law and its system were directly implemented in Nigeria when it was British colony. A famous lawyer of the 18<sup>th</sup> century, Blackstone, expounded a principle as follows:

*If an uninhabited country be discovered and planted by English subjects, all of the English laws then in being, which are the birthright of every subject, are immediately there in force.*

*Their invisible and inescapable cargo of English law fell from their shoulders and attached itself to the soil on which they stood. Their personal law became the territorial law of the colony.*

### **3.3.2 Native/Customary Law**

As noted above, the presence of indigenous people and their laws were ignored when Lagos was first ceded. In fact, that more or less remained the position until nearly 100 or so years of our colonial history. However, the question of the proper place of native/customary law is topical. In this course we will study certain aspects of the customary law in some detail, partly because it raises these fundamental issues, which touch upon our modern legal system and also because it provides useful guide as to what law ought to be observed or enforced.

*The incidents of a particular native title relating to inheritance, the transmission or acquisition of rights and interests on death or marriage, the transfer of rights and interests in land and the groupings of persons to possess rights and interests in land are matters to be determined by the laws and customs of the indigenous inhabitants, provided those laws are not repugnant to natural justice, equity and good conscience that judicial sanctions under the new regime must be withheld...*

In the area of criminal law, one author observed that some customary laws and customs may exist as part of the law of the nation, clearly not of general application, but as much entitled to recognition within their sphere of operation as, for example, the by-laws or regulations of statutory authorities or Local Government Councils are recognized within the area and scope of their powers.

### **3.4 What Law Applies?**

The summary that came from the last activity refers more particularly to statute law but at all times English common law was (and still is) being received into Nigeria. It is not binding on our courts but it is often most

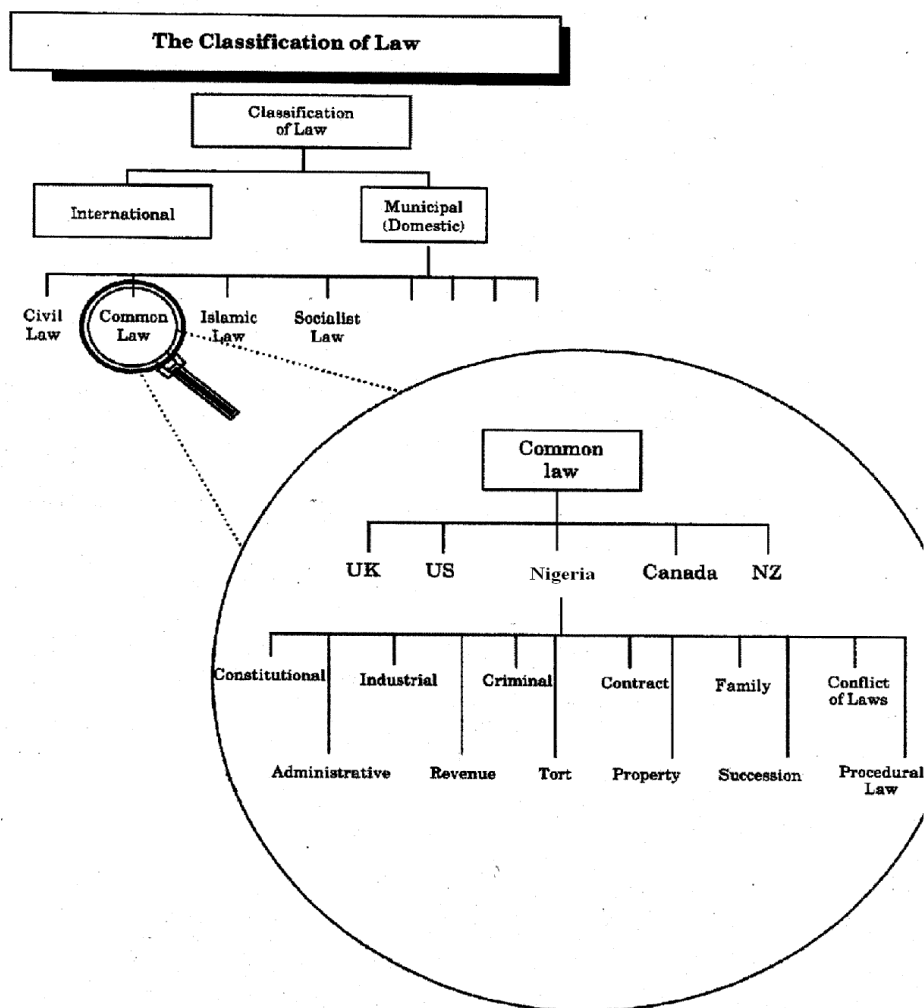
persuasive particularly if there is no relevant Nigerian case on the subject in question.

In general terms if we were to look to the sources of law for an answer to a legal problem the priority would be:

- any relevant Statute of the National Assembly
- any relevant State law
- English Statutes of general applicability to the colonies before 1900
- any Nigerian common law pronouncement;
- the English common law.

While the above order of priority is strictly correct; for practical purposes it is so unusual to find an English Statute still applying in a State that lawyers tend to go immediately to the common law after considering any relevant State Statute.

### 3.5 The Classification of Law



### 3.5.1 International Law

#### (a) Contrast with Municipal Law

As the term suggests, international law is concerned with the rules of law, which govern the relations between countries. On the other hand municipal law relates to the body of law, which governs the internal affairs of a country.

#### (b) Notes:

- The above branches are not to be seen as exhaustive but merely Indicative

Chisholm and Netheim describe the basic differences between international law and municipal law as:

*It is easy to think of international law as relating to war and peace, control of international aggression, and the peace-keeping efforts of the United Nations. These are certainly matters which may involve international law, and are perhaps the most important areas of that law, but they are also areas where international law has most difficulty being effective. For the international legal system, dealing in general with legal relations between countries, does not ordinarily have the same extent of control over those countries as systems of national law usually have over people in the particular country. The problem can be helpfully explained by saying that international law does not have three things that national legal systems have: a legislature (to make laws), a police force (to enforce them), and courts (to apply the law to disputes). This is, of course, an over-simplification, but it is worth considering each aspect.*

*International Law has no legislature: there is no body which possesses recognized and effective authority to pass legislation which bind countries. The United Nations General Assembly has considerable influence and does pass resolutions about the rights and duties of countries, but its powers in relation to countries are very much weaker than the powers of a national parliament over its citizens. Only the Security Council has power to pass binding resolutions, and only in furtherance of its powers to deal with threats to the peace, breaches of the peace, and aggression. Countries incur obligations in international law only if they choose to, usually by becoming party to a treaty with one or more other countries.*

*Again, there is nothing in the international legal system really similar to a police force or an army. It is true that the United Nations has some peace-keeping forces, but these are very small in comparison with the*