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QUESTION: DISCUSS THE SECONDARY SOURCES OF LAW IN NIGERIA.

**SOURCES OF LAW IN NIGERIA**

Sources of law are the origins of law, the binding rules that enables any state to govern its territory. Each country’s legal system has its own sources of law, with greater weight placed on some sources than others

Majorly, there are eight sources of Nigerian law which are as follows;

Customary and Islamic Law, Received English Law, Nigerian Local Legislation including Delegated Legislation, Judicial Precedents, Law Reports and Textbooks. These sources are then further classified into two Primary and Secondary Sources of Law. Laws made by The Nigerian Legislature form Primary Sources.

**THE PRIMARY SOURCES OF LAW**

Primary sources are the actual law in the form of constitutions, court cases, statutes, and administrative rules and regulations. The following are classified under this;

**CUSTOMARY AND ISLAMIC LAW**Customary and Islamic Source of Law is classified as a Primary source of law under the Nigerian Constitution. Customary and Islamic law are rules and regulations recognized by the indigenous people to whom they relate as regulating their conducts in specific areas. Such areas may include marriage, divorce, succession and inheritance, land and chieftaincy matters. For any customary or Islamic rule to have the force of law, it must not be repugnant to natural justice, equity and good conscience. Secondly such rule must not be incompatible either directly or by implication with any law for the time being in force. Finally, it must be the existing native law or custom and not the native law and custom of ancient time. For confirmation, See the following cases:
Lewis v. Bankole (1908) 1 NLR & 81 at p. 83.
Dawodu v. Danmole (1962) 1 WLR 1053.)

Customary law must be proven of existence in any Nigerian society before non- customary courts either through the testimony of witnesses who are considered versed in that area or through the use of books and manuscripts. Proof of a particular custom by evidence can be dispensed with if judicial notice has been taken of it in such circumstances stated in the Evidence Act.

**RECEIVED ENGLISH LAW**Received English law is classified as a Primary Source of Law. They are laws which are adopted by virtue of being a British colony, English Law became a source of Nigerian law and thus applicable in the country through the mechanism of local legislation called Domestication. The English laws so received in Nigeria consist of:

* The Common Law of England
* The doctrines of Equity
* The Statute of General Application in force in England on the 1st of January 1900
* Statute and Subsidiary Legislation on specified matters.

Osborne C. J in A. G v. John Holt (1910, 2 NLR 1 at p 21) laid down two criteria for determining Statute of General Application. These are:
( a ) By what court is the statute applied in England,
(b) To what classes of the community in England does it apply. There are instances where statues do not meet the above tests but are still accepted as Statute of General Application.
See the case of IGP v. Kamara (1943) 2 WACA 185.

Again a statute may be of general application and yet courts may not apply it in Nigeria if convinced that local circumstances would not permit such to be in force. This could be so if its application would produce manifestly unreasonable results contrary to the intent of the statute.

**NIGERIAN LEGISLATION**
The Nigerian Legislation consists of the Senate which is the upper legislative chamber comprising a total of 109 members and The House of Representatives which is the lower legislative chamber comprising of 360 members. Nigerian legislation refers to the laws made by any legislative authority in Nigeria.

Under a military regime, these laws are known as Decrees and Edicts (for federal and states respectively). On the other hand, under a civilian regime, federal laws are known as Acts of National Assembly or Acts of Parliament (depending on whether the system referred to is Presidential or Parliamentary system). State laws are simply called law while laws made at the Local Government level are called bye-Laws. In the colonial period they are known as Ordinances.

**JUDICIAL PRECEDENT**Judicial precedent is the idea that the principle of law on which a court based its decision in relation to the material fact before it must be followed by a court below it in the judicial hierarchy. But a lower court can only follow a judgment of a higher court if that judgment has not been overruled by a court higher in the hierarchy of courts or by the court that gave the judgment. It follows therefore that the decision of the highest court will bind all other courts and until changed by statute, it remained the law in respect of the matter covered.

Specifically what constitute a precedent for later judgment is the ratio decidendi, that is, the reason for the decision. Such statement made by the judge in passing or by the way in the course of delivering his judgment and which is not strictly relevant to the issue before him is an obiter dictum. This has no binding effect but may be of persuasive authority. And where a decision or judgment of a court of law is arrived at by mistake or oversight of the law, such decision or judgment is said to be given per incuriam.

**THE SECONDARY SOURCES OF LAW**

Secondary sources are used to help locate primary sources of law, define legal words and phrases, or help in legal research.  In short, anything that is more than the actual law is considered a secondary source. The following are classified under this;

**PERIODICALS, JOURNALS AND LEGAL DIGEST**

These are produced in various forms and colors in Nigeria. Some are professional while some are academic, and yet some are a mixture of both. For instance, in Nigeria, there exist learned journals published by different law faculties as well as private law publishers. Digests are equally available for example, the Digest of Supreme Court Cases. Digests are abridgments of cases, that is, they are useful summaries of the facts, issues, arguments and decisions in judicial proceedings. Some foreign legal dictionaries are also available in Nigeria. Some of these are Jowitt’s Dictionary of English Law, Stroud’s Judicial Dictionary, etc. All the above provide helpful guidance in interpreting Nigerian law.

Law reports also fall under the category of periodicals because they are published on periodical basis, for instance on a weekly, monthly or yearly basis. It is a compilation of judgements of other courts, such judgements cover a broad area like Constitutional law, Company law, Administrative law, issues bothering on bail etc. Law reporting is essential for the growth of case law system. There have been private and governments imitative in this direction which includes the following;

* The Nigerian Weekly Law Reports (NWLR) by Chief Gani Fawehinmi,
* The All Nigerian Law Reports by the Federal Ministry of Justice, Federation Weekly Law Report (FWLR),
* Supreme Court of Nigeria Law Report (SCNLR),
* Law Reports of Nigeria (LRN), Nigerian Commercial Law Reports (NCLR), amongst others are some of the well compiled and edited series.

**TEXTBOOKS OR TREATISES
T**extbook or treatise written by learned scholars and jurists, constitute a very important source of Nigerian law. It is the same experience in virtually all legal systems. Classical authors of outstanding textbooks on the English law include Braxton; Coke and Blackstone. Others like Dicey; Cheshire; Hood Phillips; Wade have continued to emerge over the years. In Nigeria, legal textbooks of reputable standards have been written by Obilade; Nwogwugwu; Okonkwo; Kodilinye; Aguda among many others. Professor Sagay has written extensively on international law.

All these present a potent source of Nigerian law and can be authority where there is scanty or absence of judicial decisions, in which situation they could be of persuasive authorities. Where such works are cited, the weight to be attached to them will depend on the personality of the author and the Significance of the subject Covered.

Finally on points of law, especially where such points have not been previously decided in the court or where the position of the law on the point is not clear, courts may turn to textbooks by notable authors for assistance and guidance hence making it classified as a secondary source of law because unlike the primary Sources it is not the actual law in form of case laws, the legislature etc, making the books merely persuasive. The Evidence Act specifically provides as regards customary laws that any book or manuscript recognized by natives as a legal authority is relevant. Especially books written Seasoned legal Icons.

**DICTIONARIES AND ENCYCLOPEDIAS**

Legal encyclopedias contain brief, broad summaries of legal topics, providing introductions to legal topics and explaining relevant terms of art. They also provide citations to relevant primary law and sometimes give citations to relevant major law review articles. Dictionaries are indispensable sources of law.

To this end, the law library keeps some Standard English Language Dictionaries and lexicons. These include, the Oxford English Dictionary, Chambers English Dictionary and Webster’s International English Dictionary among others . Such dictionaries help not only in verifying the meanings of words and phrase, they also assist in the use of appropriate style, construction and framing of legal sentences to elucidate some precision, conciseness, simplicity, and unity all of which are salient hallmarks of any source of law.

Legal dictionaries may either be exclusively in English or bi-lingual. Examples of Standard English language legal dictionaries include Black’s Law dictionary and Stroud’s judicial Dictionary. There also exists some specialized dictionaries concerning specific subject areas as well as other topical issues –Bi- lingual legal dictionaries are most helpful for deciphering certain words or phrases especially Latin or French, which have been unavoidably used in a passage. Most of such words have Roman and Anglo – Saxon origins and have become part of today’s legal writing to drive home certain principles and legal maxims. Examples of bi- lingual dictionaries may include English-French, English – Italian, English- Latin and English – Arabic Dictionaries.

**NEWSPAPERS**

Law libraries subscribe to newspapers and magazines not for the mere purpose of general reading. A deliberate effort is usually made by the law librarian to cut feature articles and notable news items and clip them neatly for storage. Such materials are thus arranged under broad subject headings in alphabetical sequence for easy retrieval. Newspaper and magazine clippings provide the most accessible current sources of research materials and therefore form secondary source of law. Articles in newspapers often cover wide areas of subject matters spanning every conceivable field of human endeavor. The only major snag about newspaper clippings as source of law is that the facts contained in a particular report or write-up may need to be further clarified or verified possibly from the writer or the maker for authenticity. This is not saying that newspaper articles and reports are not dependable as sources of law. This fact notwithstanding, newspapers are veritable sources of quick information on topical issues, which would take some time to be covered by authoritative textbooks.