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**COURSE CODE: LAW 102 ( LEGAL METHOD 2)**

**COLLEGE: LAW**

**QUESTION:** Discuss the secondary sources of law in Nigeria, justify your work.

**INTRODUCTION**

The distinction between primary and secondary sources of law is very useful in determining authorities to follow in the law courts. If a case is brought before a court and one party uses a primary source of law as his authority while the other makes use of secondary sources, the scale of justice would tilt in favour of the person who presents primary sources of law. Secondary sources of law are only made use of whenever there are no primary sources of law to fall back on.

In general law, secondary sources are not binding but of mere persuasive authorities and it is so in the case of Nigeria too. Secondary sources of law in Nigeria include;

1. International law
2. Customary law
3. Books
4. Periodicals, Journal and Legal digest
5. Newspapers
6. **International law**

Sources of law are regarded as primary sources only if they are laws in the constitution of a nation and binding upon citizens of that particular country. However, Nigeria as a member of different international organizations such as African Union (AU), United Nations (UN) among others are bound by the international conventions, treaties and resolutions of these organizations. Section 12(1) of the 1999 constitution of the Federal Republic of Nigeria as amended states that ‘no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly’. Since these laws have not been incorporated into a domestic statute, they are regarded as secondary sources of law.

1. **Customary law**

Before the advent of colonial masters in Nigeria, communities had their customary law to enforce law and order in the society. Customary law are rules of conduct accepted by members of a community as binding among them. Nigerian customary law can be classified into ethnic customary law and Islamic law. Ethnic customary law is indigenous, unwritten and diverse from one ethnic group to another. Islamic law is largely written in the Qur’an and part of it is from the Sunnah (practice) of the Prophet Muhammad. Our focus is the ethnic customary law. It must be noted that before this law is applied by the court, it must have passed the three tests of validity is subject to three tests of validity. These tests states that customary law rule must not be;

1. repugnant to natural justice, equity and good conscience
2. contrary to public policy
3. Incompatible directly or by implication to any law

1. **Books**

A textbook 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.

Books and treatises are generally of persuasive authority. A treatise is a written composition in which a subject is treated systematically or a formal opinion is offered on the scope. Some of the writings of early jurists like Bracton, Blackstone, Dicey and Coke among others may have more of authoritative imports in common law jurisdiction. However contemporary writers and their writings no doubt are of mere persuasive import. Thus books like Phipson Evidence, Okonkwo and Naish on Criminal Law, Kodilinye on Torts are helpful treaties but may be only cited as persuasive authorities. This is because they often contain the personal opinions of the author as opposed to the raw statement of the law.

1. **Periodicals, Journals and Legal Digest**

These are produced in various forms and colours 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 abridgements 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.

The distinction between primary and secondary sources of law is very useful in determining authorities to follow in the law courts. If a case is brought before a court and one party uses a primary source of law as his authority while the other makes use of secondary sources, the scale of justice would tilt in favour of the person who presents primary sources of law.

1. **Newspapers**:

(particularly the law report column) may generally not be cited as authorities in the law court except where there is scanty or absence of binding authorities on the subject in which case they can be of some persuasive effect. Even where they are cited, the weight to be attached to them will depend on the legal substance of the writer or the person being interviewed.