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ASSIGNMENT: DISCUSSIONS ON THE SECONDARY SOURCES OF LAW

The concept of the legal system in general terms involves a holistic legal manner, pattern and philosophy of a particular society. This includes the set of principles, rules, doctrines, concepts, procedures, standards and theories of law adopted and practiced by the society. The Nigerian legal system is carved out of the English common law legal tradition by the reason of colonisation and the attendant incidence of reception of English law through the process of legal transplant (Dina, Akintayo and Ekundayo, 2005).

According to Beredugo (2009), Nigerian legal system connotes the totality of the law or legal rules and the legal machinery, which cover the constitution, political structure, government, legislature, the judiciary and the justice delivery system, the administrative agencies and even the legal profession that are extant in the country. Nigerian legal system also covers the historic perspective of the transformational legal form that evolved from pre-legal society to a plural legal system which have undertone of various distinct systems of law including the indigenous customary law, the received English law and local or municipal legislation.

To understand Nigeria's legal system, it is imperative to view through pre-colonial, colonial and post-colonial legal transitions. However, in the pre-colonial era, the ethnic nationalities that formed Nigeria practiced native or customary laws which were used to regulate the conduct of the society and to govern the affairs of the people. By the time Nigeria was under the colonisation of Britain, English legal system was introduced the colonial powers, comprises colonial statutes, the common law and the principles of equity into the country. With this and the pre-existing customary law system, the Nigerian legal system doubled. Furthermore, at Independence from Britain in 1960, Nigeria (inherited) adopted the English legal system as part of law. Meanwhile, Beredugo (2009) stated that 'the has from municipal legislative enactments and case law created and developed a national legal system that is anchored on Nigerian precepts of law and justice.

Sources of Nigerian Law

Legal research is concerned with finding information contained in authoritative sources of law. The sources are where the original fact, information and the rule of law could be derived. The law library has depository of numerous legal sources. The legal sources of literally refer where, how and by what authority a particular rule is made and becomes legally effective to regulate human conduct. The entire source of Nigerian law is classified into two which include primary and secondary sources. But emphasise will be placed more on the secondary sources of law.

#### Primary Sources of Nigerian Law

Primary sources of Nigerian law could be referred to the fundamental sources of law that have ground and binding significance. That is to say, primary sources of law constitute ground norms, precedents and binding authorities that determine the decision or judgement of the court. There are five primary sources of law identified by Beredugo(2009) and Dina, Akintayo and Ekundayo(2005) which includes:

- The constitution
- Nigerian legislation
- Nigerian case law or judicial precedent
- Received English Law
- Nigerian customary Law, and Islamic Law

#### The Constitution

The current constitution is the 1999 Nigerian Constitution which came into operation on may 29, 1999, the constitution has undergone through several amendments.

#### Nigerian Legislation

The Nigerian legislation constitutes the Act of parliament of the national Assembly, which has power to make laws for the Federation, and the state 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. Most of the pre-1990 Decrees were incorporated into the LFN and those patently incompatible with the new constitution order were repealed on the eve of the inauguration of a new democratic government in may 1999 (Dina, Akintayo and Ekundayo, 2005.)

## Nigerian Case Law or 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 is found in 17 Judicial Divisions across the states of the Federation with Headquarters in Abuja, the Federal Capital Territory but still functions as one indivisible court (Court of Appeal Nigeria, 2015). The Court of Appeal and all lower courts (Customary, Magistrate and High 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 in 17 Judicial Divisions across the states of the Federation with Headquarters in Abuja, the Federal Capital Territory but still functions as one indivisible court (Court of Appeal Nigeria, 2015). The Court of Appeal and all lower courts (Customary, Magistrate and High Courts) are bound by the decisions of this Supreme Court.

## Received English Law

When heard of “Received English law”, what erroneously comes to mind is the law converted in English. But the truth is that received English law has nothing to do with the language composition. In a nutshell, “Received English law” refers to the rules of law and legal principles that have their roots or origin in England but were adopted into Nigerian legal system to form part of Nigerian laws. The influence of colonialism resulted to adoption of received English law into Nigerian legal system upon Independence in 1960.

## Nigerian Customary Law

Nigerian Customary law refers to a system of law that evolved from the tradition, culture or customs of the indigenous communities of Nigeria used to regulate the conduct of the people. Customary law is the body of legal rules at the grassroots. According to Black Law Dictionary (2009) Customary law refers to law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of social and economic system that they are treated as if they were laws. In Nigeria, there are two main categories of customary law. This includes,

- Ethnic Customary Law
- Islamic / Sharia Customary Law

## Secondary Sources of Nigerian Law

Secondary sources of law are the sources of law that do not carry a dominant legal weight and binding effect. The legal authorities contain in these kind of sources are diluted and persuasive which are not binding on any court of law. According to Beredugo (2009), secondary sources of law are less significance sources of law that carry barely persuasive legal authority or effect and are therefore , not binding on any court of law. Secondary sources can be useful in court of law or resorted to where the court finds the opinion or fact underlying the authority contained therein. Secondary sources can also be referred to in court if it supports the authorities of the primary sources. Examples of secondary sources of Nigerian law according to Beredugo include:

- (a) Decisions of courts of foreign countries
- (b) International conventions, treaties, and resolutions of international bodies;
- (c) Statements or opinions of jurists and learned authors contained in law textbooks, journal, Periodicals, dictionaries, letters, speeches, and interviews;
- (d) Legal opinions contained in nullified judgements.

Secondary sources of law also include all sources that provide helpful introductions to legal subjects, synopses of decisions, statutes, and regulations in a given field, analyses of trends and historical background of law, explanation of new or difficult concepts, descriptions and analysis of the law and its developments and citations to primary sources through footnotes and annotations.