**English Law**

**Course Title: Nigerian Legal System**

**Course Code: LPI 203**

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English Law has been a major source of Nigerian Law due to

Nigeria’s link with Great Britain.

* When the English or British people came to colonise Nigeria, they brought and left behind the English language and their way of life, including the English law.
* Reasons that could be adduced for the introduction of English law into Nigeria are stated as follows;
  1. The introduction of English law is a relic or by product of colonialism. Nigeria as a colony had little or no choice in the matter.
  2. Trade and business was complex and required a better suited legal regime as customary law was considered inadequate in the circumstance.
  3. The conviction of the colonial masters that English law is the fountain of justice. They regarded the English common law as a way of life as well as a system of law. Also, the colonial masters could not be subjected to the application of customary law since their way of life was opposed to that law
  4. Most of the jurists especially during the formative years of the legal system were trained in the English law

operative English laws according to their sources of validity

include;

1. Those that apply by their own force or by imperial extension consisting mainly of statutes and subsidiary legislation
2. Those that have been received into Nigeria by local statutes and comprising the common Law, the doctrines of equity and Statutes of General Application.

**Extended English Law**

* They are English legislation which were passed between January 1, 1900 and October 1, 1960 and directly extended to Nigeria. Examples include; Copyright Act, 1911; Administration of Justice Act 1920; Fugitive Offenders Act etc
* Nigeria eventually became independent on October 1, 1960 and henceforth, the Queen ceased to hold her sovereignty over Nigeria and British ministers could no longer advise her with respect to Nigeria.
* The 1960 Independence Act also abolished the Colonial Laws validity Act and made English Statutes passed on or after October 1, 1960 inapplicable to Nigeria.

local legislature was further empowered to repeal any English statute as it deemed fit.

* All existing statutes were to remain in force until so repealed notwithstanding that such statutes might have been repealed in England.
* However, from October 1 1960 when Nigeria became independent, the British parliament stopped making laws which directly extended to Nigeria.

**Received English Law**

* Park in his book ‘Sources of Nigerian law’ defined reception generally as the introduction into one territory of the legal rules of another.
* Aside from the general influence of external values, Nigeria has had a body of English laws imposed on it by its former colonial masters. This is usually referred to as the Received English Law.
* Although the reception is by local legislation, it should not be seen as a voluntary election of the people but rather, a state of being that has its roots in d soul of colonialism.

first reception clause was contained in Ordinance No 3 of 1863. The reference date was hereafter shifted to January 1, 1900 and has remained the operative date ever since for the reception of English statutes .

* The latest versions of the reception clause abound in various statutes. They are all identical except for the old western Region comprising Delta, Edo, Ekiti, Ogun, Ondo, Osun, Oyo States which have inherited a legacy abolishing the application of imperial statutes.
* See Section 32 Interpretation Act Cap 123 Laws of the

Federation of Nigeria

**Common Law**

* The English common Law is that part of the Law of England that was formulated and administered by the old common law courts and originally based on the common custom of the people.
* The common law of England originated from the basic and general custom of England. It grew from the practices and customs which were common to the people of England
* It seems that the word ‘law’ acquired the appellation ‘common’ because its application cuts across the entire population.
* Common law is known and called by this name, because it is the Law which is common to the people of England and Wales.
* It is largely an unwritten law as opposed to statutory law which is codified.
* The first common law judge was the king himself. He held court and sat as judge. The people sought justice at his hands.
* When the king became too busy to hear all the cases coming before him, he appointed members of his court or council to sit in judgment and minister justice on his behalf throughout the realm.

Though, the king was not physically present in the courtroom, he was assumed to be there, guiding the hand of justice. Thus, any disrespect of the judge was considered to be disrespect of the presence of the king.

* The growth of common law of England increased when kings started sending out royal judges, on itinerary to dispense justice on his behalf and in his name.
* The royal judges were usually noble personalities such as bishops, barons, earls, viscounts, knights etc and were appointed from the king’s council.

These judges were mainly untrained in Law and when they came to a country, they first of all had to ascertain the custom of the county or community before they apply them.

* On completing their regular circuits, the judges returned to the royal courts at Westminster, London and discussed the customs ascertained from the countries and the decisions they gave in those cases.
* As a result of sifting those customs, discarding those which are unreasonable and retaining those which were fair and using good sense and right judgment, the judges over time arrived at a uniform body of common law.

Common law continued to grow with the application of stare decisis, whereby any legal rule or law rightly stated or formed in any new case was applied and followed by other judges in subsequent matters.

* The formation of common law was completed around 1250 A.D when Henry de Bracton wrote his famous book known as Treatise on the laws and customs of England.
* By this time, common law, through the application of judicial precedent had become more certain and predictable

**Inadequacies of Common Law and the Rise of Equity**

* The main inadequacies of the common law that led to the rise of equity include;

1. Too much concern with procedure and technicalities
2. High cost of common law actions
3. Delays in doing Justice
4. Inadequacies of common law writs
5. Inadequacies of Common Law remedies

**The Doctrines of Equity**

* The common law had an inadequate writ system and technicalities which was not satisfactory and most litigants went away disappointed without obtaining redress.
* Apart from the unavailability of remedies or suitable writs, litigants also had difficulties enforcing judgments against powerful and influential defendants.
* Many people who were unable to get help at the common law courts began to take their complaints directly to the king.

They petitioned the king, as the fountain of justice to grant relief to them.

* Due to pressing state business, these petitions were considered by the king’s council including the chancellor who was a key member of the council.
* Later, the council began to refer the petitions to the Lord Chancellor alone who thus became known as the ‘keeper of the king’s conscience’.

The chancellor later received such petitions directly from the complainants and resolved them in his own court; the court of chancery.

* The court was headed by the Lord Chancellor and many vice chancellors were appointed under him to do justice.
* The chancellor had a more flexible approach to the concept of justice than the common law courts. The petitions usually came in the form of bills.

Upon receipt of a bill, the chancellor’s office sent a copy thereof to the defendant, setting out in summary form, the petitioner’s complaints against him.

* This was accompanied with a subpoena commanding him to appear before the court in order to answer the allegations contained in the petitioner’s bill.
* A subpoena is an order addressed to the defendant directing him to appear before the chancellor.

The chancellor, who was usually a clergy, probed into the truth of the petitioner’s complaint and implored the defendant to make good his wrong and thereby clear his conscience.

* Hence, the court came to be known as the court of conscience and this flexible form of justice was called equity. The judgments of the Lord Chancellor were not founded on precedents but on his individual sense of right and wrong.
* The lord high chancellor acting on behalf of the king to dispense justice in the court of chancery was not bound by the rigidity and technicalities of the common law.

The Lord Chancellor considered and dispensed justice on the basis of conscience, good or rightness and granted equitable remedies which were specially formulated by the court of chancery to enforce its judgments.

* The law of trusts, the equity of redemption in mortgages and remedies of specific performance and injunction are some of the legacies of the chancery.

Common law and Equity were operating side by side with mutual tolerance until conflict came up.

* This was due to the practice of the court of Chancery issuing injunction against persons who had obtained a common law judgment restraining them from enforcing judgment.
* However, since disobeying the court of chancery were most times punished with imprisonment for contempt, the common law courts waited for the chancellor to imprison the successful litigant and retaliated by issuing a writ of habeas corpus to release the person from imprisonment.

This rivalry came to a head in the Earl of Oxford’s case in 1615, where Lord Edward Coke CJ of the court of Common Pleas representing the common law courts gave a direct challenge to the jurisdiction of the Court of Chancery, which challenge was taken up by Lord Ellesmere, head of Chancery.

* Acting on the advice of Sir Francis Bacon, the Attorney General, King James I ruled in favour of equity.
* It was henceforth decreed that in the event of conflict between a doctrine of equity and a rule of common law, equity should prevail.
* Like other countries, this decision has been codified as state Law in Nigeria.

The Judicature Act abolished the existence of two separate courts and merged the courts together and since then, both common Law and equity have since been administered concurrently in the same courts. The Act further gave preference to the principles of equity where there is a conflict between the rules of common law and principles of equity.

* Equity never says common law is wrong but only provided alternative remedies to legal problems by filling the gaps left by the common law and which were causing hardships to litigants.
* With the merger of equity and common law, the court of Chancery is now a division of the High Court of Justice of

England.

In England today, the Lord Chancellor serves in many capacities. The lord Chancellor is the head of the British judiciary and the chief judge of the country. He controls the administration of the courts. He is the president of the Supreme Court and the Chancery division of the High Court, among other things.

* The following maxims reflect the general juridical philosophy of the court of equity; among others

-Equity does not suffer a wrong to be without a remedy

-Equity follows the Law

-Equity looks to the intent rather than the form

-Equity looks on that as done which ought to be done

**Statutes of General Application in Force in England on January 1, 1990**

* Statutes of general application that were in force on the 1st day of January, 1900 form the third group of laws received under the relevant reception clauses.
* The courts have not found it easy to determine what a statute of general application is.
* It has however been held in the case of AG V John Holt & Co [1910] 2 NLR 1 at p 21 that a statute was of general application in England on January 1, 1990, if at that date the statute was either;
* Applied by all civil or criminal courts in England; or
* Applied to all classes of persons in England. See

Where a statute applied to only certain classes of the society or was applied by only certain courts, it was usually held that it was not a statute of general application and therefore

inapplicable generally in other countries

* These tests are however only seen as rough guides. For example, as regards the first test, many statutes which regulate procedure have been received.
* Also, concerning the second test, the Infant Relief Act, 1874 has been held to be a statute of general application despite its application to infants only. See Labinjoh v Abake [1924] 5 N.L.R.

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The foregoing test aims at identifying those enactments which may pass as statutes of general application in England and therefore qualify to be applied in Nigeria.

* These statutes upon their qualification would have to satisfy two further requirements stipulated in the reception clauses.
* Firstly, the received statute applies only so far as local jurisdiction and circumstances permit.
* Secondly, the courts in applying the statute are enjoined to make necessary verbal alterations as the circumstances may demand.

The courts in Nigeria have displayed their willingness to fulfil this task especially when the statute is capable of producing results which are manifestly unreasonable or contrary to the intention of the statute or where changing local circumstances have altered its suitability in the course of time.

* However, the mere existence of difficulty or inconvenience in the application of a statute will not justify modification.
* In Balogun v Balogun [1935] 2 W.A.C.A. 290 an intention to authorize payment of entertainment allowance out of a trust fund was read into the testator’s will instead of adopting a strict application of the English rules on the powers of trustees.

It was held in Lawal v Ejidike [1997] 2 N.W.L.R. 245 that it would be ridiculous for Nigerian courts to apply statutes of general application which have been abrogated in England, as there will be no legal basis for its continued application in Nigeria.

* Since independence, the English statutes of general application which applied in Nigeria have either been repealed or reformed by re-enacting them as local laws. Very few still exist in their original form.
* However, in the western region of Nigeria, the legislature by passing a statute, the Law of England (application) Law Cap 60 Laws of western Region, made English statutes of general application inapplicable to the region.

Principles of common law and equity in England should apply in Nigeria provided that;

* Such principle of common law is not in conflict with any Nigerian statute or case law on the subject matter
* The jurisdiction of the relevant court permits it to apply English law, subject to the overriding power of the court in question to ascertain the current state of such law in England.

Since the British Parliament no longer makes law for Nigeria, the legislative arm of the Federal and State Governments now have the full duty of enacting legislations to meet the needs of the Nigerian society and to maintain parity with legal developments in other countries.

• Thus, many statutes, many of which are mainly reproductions of the relevant English legislations after which they are modified, have been enacted locally. Examples include all Acts in the revised edition of the laws of the Federation of Nigeria 1990 like the Evidence Act, Criminal Code Act etc.