NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: 112

COURSE TITLE: LEGAL METHODS II

COURSE GUIDE

LAW 112
LEGAL METHODS II

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1.0 INTRODUCTION

Legal Methods I and II is a two-semester course. You would have taken the first part, Legal Methods 101 in the first semester. The second part, Legal Methods II is a foundation level course. It will be available to all students towards fulfilling core requirements for the degree in Law.

The course will discuss basic law principles. The material has been developed to suit students in Nigeria by adapting practical examples from within our jurisdictions.

This course guide tells you briefly what the course is about, what course materials you will be using and how you can work your way through these materials. It suggests some general guidelines for the amount of time you are likely to spend on each unit of the course in order to complete it successfully. It also gives you some guidance on your tutor-marked assignments (TMAs). Detailed information on TMAs is found in the separate assignment file, which will be available to you in due course. There are regular tutorial and surgery classes that are linked to the course. You are advised to attend these sessions.

What you will learn in this course

The overall aim of LAW 102 is to introduce the fundamental principles and applications of sources of law. During this course you will learn about primary sources of law, secondary sources, letters, speeches, interviews, periodicals and newspaper and foreign materials as sources of law. You will also learn how these materials serve as sources of law.

2.0 COURSE AIMS

The aim of the course can be summarized as follows: this course aims to give you an understanding of general principles of law and how they can be used in relation to other branches of law.

This will be achieved by aiming to:

(i) Introduce you to the basic sources of law;
(ii) Use of source materials;
(iii) Cite cases;
(iv) Take brief and write legal letters

3.0 COURSE OBJECTIVES

To achieve the aims set out above, the course sets overall objectives. In addition, each unit also has specific objectives. The unit objectives are always included at the beginning of a unit; you should read them before you start working through the unit. You may want to refer to them during your study of the unit to check on your progress. You should always look at the unit objectives after completing a unit. In this way you can be sure that you have done what was required of you by the unit.

Set out below is the wider objectives of the course as a whole. By meeting these objectives you should have achieved the aims of the course as a whole.

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

i. Explain the various sources of law;
ii. Differentiate the difference between statutory and judicial materials;
iii. Use of source materials;
iv. Report and cite cases;
v. Write legal letters;
vi. Explain different styles of essay writing;
vii. Divide topics into chapter in project writing;
viii. Apply legal rules to social matters;
ix. Explain the structure of courts in the contemporary English legal system; and
x. List hierarchy of the judiciary in the legal system.

4.0 WORKING THROUGH THIS COURSE

To complete this course you are required to read the study units, read set books and other materials. Each unit contains self-assessment exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course is a final examination. The course should take you about 12 weeks or more in total to complete. Below you will find listed all the components of the course, what you have to do and how you should allocate your time to each unit in order to complete the course successfully on time.

5.0 COURSE MATERIALS

Major components of the course are:

1. Course guide;
2. Study units;

3. Textbooks;
4. Assignment file; and
5. Presentation schedule.

In addition, you must obtain the set book; these are not provided by NOUN, obtaining them is your own responsibility. You may purchase your own copies. You may contact your tutor if you have problems in obtaining these textbooks.

6.0 STUDY UNITS

These are 12 study units in this course, as follows:

Module 1
Unit 1 Sources of Law
Unit 2 Secondary sources of Law
Unit 3 Uses of source materials

Module 2
Unit 1 Legal research
Unit 2 Indexing and identification of library materials
Unit 3 Cases, citation of cases and reports
Unit 4 Methods and approaches in essay writing

Module 3
Unit 1 Analysis and note taking in legal matters
Unit 2 Authoritative elements in books and judicial opinion
Unit 3 Application of legal rules in social matters
Unit 4 The structure of courts in the contemporary English legal system
Unit 5 The hierarchy of the judiciary in the English legal system

Each unit contains a number of self-tests. In general, these self-tests question you on the materials you have just covered or require you to apply it in some way and, thereby, help you to gauge your progress and to reinforce your understanding of material. Together with TMAS, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

7.0 REFERENCES

There are some books you should purchase for yourself:

Imiera, P. P. (2005). *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria

Dada, T. O. (1998). *General Principles of Law,* T.O. Dada & Co. Lagos, Nigeria
Obilade, A.O. (1994). *The Nigerian Legal System,* Sweet & Maxwell, London.

7.0 ASSIGNMENT FILE

In this file you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment file itself and later in this course guide in the section on assessment. You are to submit five assignments, out of which the best four will be selected and recorded for you.

Presentation schedule

The presentation schedule included in your course materials gives you the important dates for this year for the completion of TMAS and attending tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

Assessment

There are two aspects to the assessments of the course. First are the TMAs, second, there is a written examination.
In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work you submit to your tutor for assessment will count for 30% of your total course mark.
At the end of the course you will need to sit for a final written examination for three hours duration. This examination will also count for 70% of your total course mark.

9.0 TUTOR-MARKED ASSIGNMENTS (TMAS)

There are five tutor-marked assignments in this course. You only need to submit four of five assignments. You are encouraged, however, to submit all five assignments, in which case the highest four assignments count for 30% towards your total course mark.
Assignment questions for the units in this course are contained in the Assignment file. You will be able to complete your assignments from the information and materials contained in your set books, reading, and study

units. However, it is desirable in all degree level education to demonstrate that you have read and researched more widely than the required minimum. Using other references will give you a broader viewpoint and may provide a deeper understanding of the subject.
When you have completed each assignment send it together with a TMA form to your tutor. Make sure that each assignment reaches your tutor on or before the deadline given in the presentation schedule and Assignment file. If, for any reason, you cannot complete your work on time, contact your tutor before the assignment is due to discus the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances.

Final examination and grading

The final examination for LAW 102 will be of two hours duration and have a value of 70% of the total course grade. The examination will consist of questions that reflect the types of self-testing, and tutor-marked problems you have previously encountered. All areas of the course will be assessed.

Use the time between finishing the last unit and sitting the examination to revise the entire course. You might find it useful to review your self-assessment exercises, TMAs and comments by your tutorial facilitator before the examination. The final examination covers information from all parts of the course.

Course marking scheme
The following table lays out how the actual course mark allocation is broken down:

Assessment	**Marks**
Assignments 1- 4	Four assignments, best three marks of the four count at 30% of course marks.
Final examination	70% of overall course marks
Total	100% of course marks

Table 1 course-marking scheme

Course overview
This table brings together the units, the number of weeks you should take to complete them and the assignments that follow them.

Unit	**Title of work**	**Weeks activity**	**Assessment (end of unit)**
	Course Guide	Week 1	
1.	Sources of Law	Week 1	
2.	Secondary sources of Law	Week 2	Assignment 1
3.	Uses of source materials	Week 3	

4.	Legal research	Week 4	
5.	Indexing and identification of library materials	Week 5	Assignment 2
6.	Cases, citation of cases and reports	Week 6	
7.	Methods and approaches in essay writing	Week 7	Assignment 3
8.	Analysis and note taking in legal matters	Week 8	
9.	Authoritative elements in books and judicial opinion	Week 9	
10.	Application of legal rules in social matters	Week 10	Assignment 4
11.	The structure of courts in the contemporary English legal system	Week 11	
12.	The hierarchy of the judiciary in the English legal system	Week 12	Assignment 5
	Revision	Week 13	
	Examination	Week 14	

Table 2-Course organizer

How to Get the Most From this Course

In distance learning the study units replace the university lecturer. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suit you best. Think of it as reading the lecture instead of listening to a lecturer. In the same way that a lecturer might recommend some reading, the study units tell you when to read recommended books or other material, and when to undertake practical work. Just as a lecturer might give you an in-class exercise, your study units provides exercises for you to do at appropriate times.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit you must go back and check whether you have achieved the objectives. If you make a habit of doing this you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your recommended books or from a readings section. Self-assessment exercises are interspersed

throughout the units, and answers are given at the end of units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each self-assessment exercise as you come to it in the study unit. There will also be numerous examples given in the study units; work through these when you come to them, too.
The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutorial facilitator or visit your study centre. Remember that your tutor's job is to help you. When you need help, don't hesitate the call and ask your tutor.

1. Read this course guide thoroughly
2. Organize a study schedule. Refer to the 'Course overview' for more details. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g details of your tutorials, and the date of the first day of the semester is available. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.
3. Once you have created your own study schedule, do everything you can to stick to it. The major reason that students do not perform well is that they get behind with their course work. If you get into difficulties with your schedule, please let your tutor know before it is too late for help.

Tutors and tutorials

There are 10 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone numbers of your tutor, as soon as you are allocated a tutorial group.
Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and assistance will be available at the study centre. You must submit your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or during tutorial sessions if you need to. The following might be circumstances in which you would find help necessary. Contact your tutor if:

You do not understand any part of the study units or the assigned readings
You have difficulty with the self-assessment exercises

You have a question or problem with an assignment or with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussions actively.

Some of the questions you may be able answer are not limited to the following:

1. What there are differences between primary and secondary sources of law?
2. What are the major points of departure between the English and Nigerian hierarchy of courts?
3. Why legal research is important to academic and legal development?
4. What is the major reason why legal practitioners take notes when interviewing clients?
5. Why are citations of cases important during court proceedings?
6. Why are legal textbooks having authoritative elements not binding on the court?
7. How do courts apply legal rules in social matters?

10.0 Summary

Of course the list of questions that you can answer is not limited to the above list. To gain the most from this course you should try to apply the principles that you encounter in every day life. You are also equipped to take part in the debate about legal methods.

We wish you success with the course and hope that you will find it both interesting and useful.

MAIN COURSE

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Table of Content

MODULE 1

UNIT 1 SOURCES OF LAW

CONTENTS

1.0. INTRODUCTION

The term "source of law" is used in various senses. In the first place, it means the ultimate origin of the whole body of a legal system, the origin from which the system derives its validity: the electorate or voters, a special body the general will or the will of a dictator. Secondly, the term source of law is used to name the historical origin of a rule of law. For instance, the common law is a historical source of English law, for the origin of many rules of English law is traceable to the common law.

2.0. OBJECTIVE

At the end of this unit, you should be able to:

(i) Define the term" source of law".
(ii) Identify various sources of law;
(iii) Distinguish between statutory source of law and judicial source of law.

3.0 MAIN BODY

3.1 Primary source

The primary source of law is the Nigerian Legislation and Statutes. This consists of other statutes and subsidiary legislations. Statutes are laws made by the legislator or a body so duly constituted and authorized to enact laws; while subsidiary legislations are also known as delegated

legislations or statutory instruments and are usually entrusted to Ministers or Commissioners.

The primary source of law consists of Ordinances, Acts, Laws, Decrees and Edicts, depending on the status of the issuing authority or the circumstances of the prevailing political situation.

Ordinances were laws passed by the Legislative body during the colonial era. In most cases, such enactments were usually in the form of orders from the mother- country's parliament and were deemed to be applicable to the colonies concerned.

Self Assessment Exercise (SAE)1

Discuss briefly on legislation and statutes as the primary source of law.

3.2 Statutory Materials

Statutory materials as source of laws include statutes like Sale of Goods Act 1893,

Infants Relief Act 1874, Partnership Act 1890, Fatal Ancient Act 1846, Wills Act 1873, Statutes of Fraud 1877, Criminal Code Cap 77, The Constitution 1999 etc.

3.3 Judicial Material

Judicial precedent is a source of law. Judicial precedent or case law consists of laws found in judicial decisions. A judicial precedent is the principle of law on which a judicial decision is based. It is the ratio decidendi or the reason for the decision. Other judicial material includes the Nigerian Law Reports. Nigerian law reports are reports of cases, wherever published or edited, decided by Nigerian courts. They include English law reports containing decisions of the Judicial Committee of the Privy Council given on appeal from Nigeria, a number of Local and foreign periodicals containing case reports and various reports including loose-sheet (unbound) series.

Self Assessment Exercise (SAE) 2

Apart from the statutory materials listed above, name other statutory materials known to you.

Self Assessment Exercise (SAE) 3

Discuss briefly what you understand by judicial material as a source of law.

3.4 Reasons For Studying Sources of Law

1. It affords an understanding of the various means by which the law governing the society is made or through which it comes into existence, e.g. through formal Legislative processes in parliament or through judicial precedents

2. It affords the means by which authoritative written materials are derived. This constitutes the literary source such as are represented by the statute books and the various compilations of the annual laws and the statutes in force including textbooks and monographs, with which a lawyer should be thoroughly familiar.

3. The study of the sources of law facilitates an understanding of the process by which law derives its validity. This refers to formal sources of law such as reflected in the constitution of a country and the activities of enacting bodies like the National Assembly.

4. A mastery of the sources of law of a given society also enhances an understanding of the historical factors that have influenced the evolution of the laws to such a direction as it had taken. By delving into such historical sources, it may be possible to trace the nature and content of the law with a view to arriving at the stuff of which the law was made. For instance:

(i) The historical fact that it is difficult, if not really impracticable to divest customary law and Islamic law from the culture, religion and traditions of the people.

(ii) Similarly, by mere fact of history that Nigeria, for example, evolved from a unitary state to a federal state under a colonial domination, which spanned over a hundred years.

(iii) The consequence of the great impact of English law on The Nigeria Legal System.

(iv) The fact of the multi-ethnic structure and political heterogeneity resulting in the plurality of laws and the concomitant complex legal system;

(v) The resultant proliferation of court to cater for the various dimensions exhibited in the ensuing polity.

4.0 CONCLUSION

The source of law means the origin from which the system derives its validity, be it the electorate, a special body, the general will or the will of a dictator. It also means the historical origin of a rule of law. Statutes books, law reports and textbooks are sources of law in any legal system. Examples of legal sources of law are legislation and judicial precedents.

5.0 SUMMARY

In this unit, you have learnt about the:

(i) Primary source of law;
(ii) Statutory materials as a source of law,
(iii) Judicial materials as a source of law
(iv) Reasons for studying the sources of law.

6.0 TUTOR-MARKED ASSIGNMENT (TMA)

Discus in detail why you think it is important or necessary to study the source of law of a given society.

7.0 . REFERENCES

Imiera, P. P. (2005). *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria

Dada, T. O. (1998). *General Principles of Law*, T.O. Dada & Co. Lagos, Nigeria

Obilade, A.O. (1994). *The Nigerian Legal System*, Sweet & Maxwell, London.

UNIT 2 SECONDARY SOURCES OF LAW

CONTENTS

1.0 INTRODUCTION

Under the second unit, you learnt about the primary source of law. In this unit , you will learn about the secondary source of law. Secondary materials as source of law include the legal textbooks, monographs, reference works, commentaries and treaties in law. An understanding of the content of these materials facilitates an effective research into the various aspects of law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

(i) Identify the secondary source of law;
(ii) Know the various materials falling or classified as secondary source of law; and
(iii) Conduct a research on secondary source of law.

3.0 MAIN BODY

3.1 Secondary Sources of Law

Legal journals are the most current sources of law because of their frequency of publications, some being monthly, quarterly, half-yearly or bi-annual. They contain scholarly articles, commentaries, notes and comments on current legal problems.

In most cases, some of the contents of legal textbooks might have been published or serialized in journals earlier on. Legal journals that are of

general nature may contain articles reflecting various subject background and topical issues in law.

Like the law reports, legal periodicals may be broadly categorized into foreign and local titles. Periodicals oftentimes contain book reviews, seminars, and roundtable and conference announcements. Some of the standard foreign law journals as secondary source of law include, the Cambridge law journal; (C.L.J.), Harvard Law Journal (H.L.J.), Yale Law Journal (Y.L.J), Harvard law review (H.L.R).

Remarkable advancement has been recorded in the area of local periodicals publishing. Some typical examples of academic and professional local journals as secondary source of law include the Nigerian Law Journal (N.L.J), The Nigerian Journal of Contemporary Law (N.Y.C.L).

Self Assessment Exercise (SAE)1

Discuss briefly the secondary materials as source of law mentioned under 1.3.

3.2 Interviews, Periodicals and Newspaper

Interviews granted by legal writers and jurists can also serve as a secondary source of law. This is because these legal luminaries are regarded as "authorities" and therefore their speeches or legal letters written by them are persuasive and form secondary source of law.
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 endeavour. 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.

Self Assessment Exercise (SAE)2

Why do you think Newspaper writing on legal issues is veritable source of law?

3.3 **Foreign Materials**

Foreign materials as secondary source of law are those materials published outside the jurisdiction of Nigeria. They include treaties and conventions. These treaties and conventions consist of the various international agreements and understandings concluded by countries amongst themselves. Where the law-making bodies of the subscribing nations have ratified such treaties and conventions, they become binding. They serve as useful source of law especially in the areas of international law. Typical examples of treaties include Nigeria's treaties in force, 1971; consolidated treaty series, 1920 – 1946 and the United Nations Treaty Series 1946. These are all vital sources of international laws.

Other foreign materials include the following: Law Quarterly Review, (L.Q.R), Current Legal Problems (C.L.P), International and Comparative Law Quarterly (I.C.L.Q); Modern Law Review, (M.L.R), Criminal Law Review (C.L.R), The Journal of African Law (J.A.L) and the African Journal of International Law (A.J.I.L.).

Digests also serve as foreign source of law. Digests are summaries of cases judicially considered. They differ from law reports in that they are mere paraphrasing of cases in very concise and understandable forms. Encyclopedias and precedent books are also foreign sources of law. The Encyclopedia Britannica and Encyclopedia America cover wide subject areas of law, jurisprudence and legal theory, legal Biography etc. They therefore provide valuable secondary sources of law.

Precedent books contain samples of works done by legal authors for others to follow. Precedent books include the Butter worth's Encyclopedia of forms and precedents (5^{th} Edition) which covers extensive areas of solicitor's work and the Atkin's court forms which deals with the forms, contents and procedure in civil matters. Other basic foreign materials include the famous Halsbury's laws of England and the Halsbury's statute of England. There are also standard compendia, which are of immense source of law. An example is the American Juris Secundum, which is an encyclopedic digest of American cases and statutes.

Self Assessment Exercise (SAE) 3

Write short notes on Encyclopedia and precedent books as secondary sources of law.

Self Assessment Exercise (SAE) 4

The most potent sources of law is the primary sources. Do you agree?

3.4 Other Secondary Sources of Law

(1) Dictionaries

Dictionaries are indispensable sources of law. To this end, the law library keeps some Standard English Language Dictionaries and lexicons. These include, among others, the Oxford English Dictionary, chambers English Dictionary and Webster's International English Dictionary. 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.

(2) Words and phrase Defined

Another secondary source of law is the multi- volume work titled "Words and Phrases Defined". This covers wide areas of definition and interpretation of legal expressions. An example of such is the work of Onomade (1988) in guide to words phrases and doctrines in Nigeria law.

(3) Bibliographies and general references

Bibliographies serve as most useful source of law. A bibliography is a publication that lists the topic or titles of materials available in a given subject. The general arrangement is usually in alphabetical order by subject.

Compilation of legal bibliography is the preserve of the professional law librarian. Typical examples of legal bibliographies, general or specific include Jegede's " Nigeria legal Bibliography" (1993), which is a detailed listing of invaluable source materials on the various aspects of the Nigeria law. General references usually at the end of a chapter in a book or at the end of an articles or paper assist in legal research by offering directives as to further sources of information. Such general references have become universally acknowledged sources of law and legal writing.

(4) Theses, Dissertations and Technical Reports

These are written research reports and authoritative pontifications in the area of law. They essentially have the characteristics of originality being the outcome of spirited research endeavours. These are listings and implications of such materials in aid of legal research. The lists are helpful in the preliminary aspects of legal research especially in literature searches and reviews, thereby forming secondary sources of law.

(5) Legal textbooks and Monographs

These constitute the bulk of the stock of a law library and can therefore be regarded as the most authoritative secondary sources of law. Legal textbooks consist of scholarly views, opinions, commentaries and authoritative expositions in certain subject area. Some legal series have become household names in academic and professional legal parlance. An example is the common law library series made up of standard and quite authoritative legal textbooks. Other notable modern legal text writers include Lord Denning in the general aspects of law and practice. Schwazenberger in the field of International Law, Street and Jolowicz on torts, Cheshire and Fifefoot on contracts, Roscoe pound, Hart and Fuller on Jurisprudence and legal theory, Margery and Wade on property.
Apart from citations in various academic papers, the opinions and views of some of the legal textbooks writers have been referred to with approval in the court proceedings, for instance, authoritative texts like Johnson's history of the Yoruba's, Coker's family property among the Yoruba's, obi's Ibo land law and Ajayi's History of west Africa have had to be cited in order to get to the root of certain prevailing customary practices in some societies.

(6) Government Publications

Government documents have assumed great importance as source of law owing to the fact that they emanate directly from government sources, they are always considered to be very authoritative. For instance, any

information contain in the Gazette are deemed to have been issued by authority and as such deemed to be authentic. This also applies, for example, to all documents and official publications emanating from and bearing the stamp of Her Majesty's is Stationary Office (HMSO) in the United Kingdom.

Official publications include books, pamphlets, posters and pictorial items issued by the government printer. Such materials also consist of laws, regulations, directives, notices, decrees, edicts, bye – laws and important announcement relating to the state as contained in the gazette or an extra ordinary publication.

These Government publications are usually in various forms like gazette, reports of commissions of inquiries, white papers, reports of special tribunals, as constitutional bodies, as the Constituent Assembly, parliamentary publications including the "Hansard" and some other personalities in government.

4.0 CONCLUSION

You learnt that primary materials as source of law include such items as laws, or Acts collectively called statutes as well as law reports, law journals, digest and indexes, while secondary materials include the legal textbooks and monographs, reference works, commentaries and treatises on law.

5.0 SUMMARY

In this unit, you have learnt about other sources of law, falling under the secondary sources. These include the following:

(i) Books, pamphlets;
(ii) Letters and speeches;
(iii) Interviews, periodicals and newspapers;
(iv) Foreign materials; and
(v) Other sources.

6.0 TUTOR – MARKED ASSIGNMENT (TMA)

Attempt an appropriate classification of materials falling under primary and secondary sources of law and explain them briefly.

7.0 REFERENCES

Imiera, P. P. (2005), *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria

Dada, T. O. (1998), *General Principles of Law,* T.O. Dada & Co. Lagos, Nigeria

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UNIT 3 USE OF SOURCE MATERIALS

CONTENTS

1.0 INTRODUCTION

Source materials are those major items or institutions used in carrying out legal research. These source institutions include the law libraries, the Nigerian Institute of Advanced Legal Studies and the Nigerian Institute of International Affairs. You shall learn about the library as a source material in legal research or about libraries as a major aspect of an educational organization.

2.0 OBJECTIVE

At the end of the unit, you should be able to use:

(i) The library;
(ii) The library catalogue;
(iii) Organization of the library ; and
(iv) Reference services.

3.0 MAIN BODY

3.1 Law library

Law libraries are very essential to the proper study of law. You should be familiar with the cataloguing and shelving systems used in the library to which you have access. Usually, university law libraries classify books by subject and shelve them in accordance with that classification. In order to enable you find easily books required by you, a law library usually has at least one general card catalogue. A general card catalogue lists all the books in the library. There is at least one card in the catalogue

for each book. If only one card catalogue is available it may be arranged by author or by author and title or by subject. In an author – title catalogue, there are at least two cards for each book – one for the author and the other for the title of the book. There may be two general card catalogues – one on author – title catalogue and the other a subject catalogue. In addition to general card catalogue there are, usually, special catalogue which list books of a special class. For instance, there may be a separate special catalogue for each of the following classes of materials: law reports, periodicals, legislation and microfilms.
In general, books other than textbooks may be classified for shelving purpose as follows:

1. **Legal periodicals**

(a) Nigerian Legal Periodicals
(b) English Legal Periodicals
(c) Other Legal Periodicals arranged by country

2. **Statute books**

(a) Nigerian Statute Books
(b) English Statute Books
(c) Other Statute Books arrange by country

3. **Law reports**

(a) Nigerian law reports
(b) English law reports
(c) Other law reports arranged by country

4. **Digests**

(a) Nigerian law digests
(b) English law digests
(c) Other law digests arranged by country

1. Encyclopedia

2. Reference books

Generally, textbooks may be similarly divided into three classes, namely:

(1) Nigerian law textbooks;
(2) English law textbooks; and
(3) Other textbooks.

The textbooks within each group is usually arranged by subject. For e.g. textbooks on the law of contract are separated from textbooks on criminal law. There may be in a law a reserve section containing rare books in very high demand. Normally, books in a reserve section are not to be borrowed. Some reserve sections are open to only a restricted class of readers. A good study of the cataloguing, and shelving systems used in a law library is only a starting point in legal research.

Self- Assessment Exercise (SAE) 1

Briefly discuss the shelving of legal textbooks in the law library.

3.2 The Library Catalogue

Libraries are of various sizes ranging from those with very few books and other materials to the very large ones with several thousands of materials. The former are very easy to cope with. The contents of such libraries could be known by heart. But in the larger libraries, a formal organization of their contents is imperative to make their use beneficial and less frustrating.

The catalogue is therefore a record of materials held by the library ranging from books, magazine / journals, documents, theses, and dissertations to non-print media sources. The catalogues, therefore, is the key to the library holding since it contains entries, representing each material in the library. It is a vital tool to the use of the library because of the functions it performs.

Functions of the Catalogue

(1) The catalogue allows access to the collection and provides service to its users.

(2) It enables you to find a book or other library material if you know any of the following:

(a) Author's name;
(b) Title of the work;
(c) The subject;
(3) It enables you to know the following:
(a) All the works of a given author held in the library
(b) The editions of any work

Self Assessment Exercise (SAE) 2

Discuss the library catalogue and the functions if performs.

3.3 O**rganization of Library**

(1) Acquisition Department

In the Acquisitions department books and other materials are acquired and processed. Books, pamphlet, government publications and audio-visual materials are received in the Acquisition Department. These materials may be acquired by purchase, gift and by legal deposit especially if the library has been made a depository by the government. The National Library of Nigeria as you know receives three copies of all publications in the country because it is the legal depository for the whole country. The university of Lagos Library by the Edict of Lagos State 1973 is a depository library for the state. All publishers in the state must deposit three copies of their publications to the library. Some libraries in Nigeria are legal depository libraries for state and for some international organizations like WHO, UNESCO and ILO. Libraries receive gifts from the friends of the library and the gifts are processed in the Acquisitions Department.

Self Assessment Exercise (SAE) 3

Why do you think that the Acquisitions Department of a library cannot be dispensed with?

3.4 **Reference Services**

The Reference Department of the library is very important in the library. It is in this section that the library staff answers reference questions and also provides bibliographic services to the library patrons. Books in this part of the library cannot be borrowed like books in the open shelves; they can only be used or consulted in the library. Books that are housed in this part of the library have the inscription "*REFERENCE ONLY, NOT TO BE TAKEN OUT OF THE LIBRARY".*

The major characteristics of reference materials are:

(1) The materials are meant to be consulted in the library only;
(2) The library usually buys one copy or in rare cases two copies;
(3) They are not meant to be read from cover to cover. Users usually look for specific information. They contain factual information;
(4) They are housed in a separate section within the library;
(5) The arrangement of each material may be made to suit the peculiarity of that material. The arrangement in the dictionary is alphabetical chronological, for works on history, it could be chronological; and

(6) They are revised from time to time so as to keep abreast of recent developments.

Reference services in the library may involve the provision of personal assistance to you. The type of service required may be simple information in where to find books on a particular subject. They may be questions on directions within the library. At other times, the services may involve assistance on how to find the information on a subject which may not be well known to you.

Self Assessment Exercise (SAE) 4

Certain books cannot be taken away from the library. Name some of these books and the reason they are not taken away from the library.

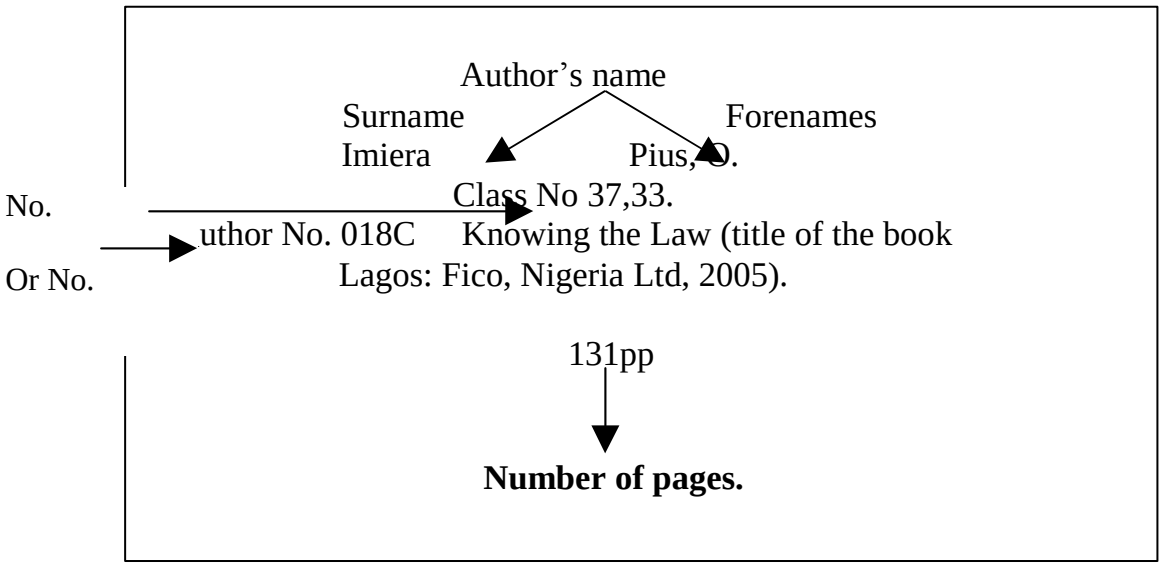
3.5 Why do you use the Library?

The use of the library can be divided into three broad headings, namely: go to a library to borrow books. You also go to a library to consult reference materials, and for general study.

Let us assume that you have been given the author and title of a certain book, which has been assigned to you to read. You would like to borrow it from the library, because it makes you sometime to read it. The first thing you do when you go to a library is to check whether or not the book is in stock and be sure it is available for lending. The next thing is to locate the book where it is in the library. To locate a book in the library, you need to take the following steps:

Consult the right card catalogues. For example, if you know the name of the author of the book, you should consult author or name catalogue. Author or name catalogue consists of the name of the author on cards arranged in alphabetical order according to the author's surname, institution or editor, by which the book is best known.

SAMPLE CARD



4.0 CONCLUSION

The library is very important. You should make constant use of it. A lot of information stored in the library can be of great benefit to you.

5.0 SUMMARY

At the end of this unit, you have learnt about:

(i) The use of source materials; the library;
(ii) The library catalogue;
(iii) Organization of the library;
(iv) Reference service in the library;
(v) That libraries are for lending out useful and relevant books, for consulting reference works and for getting recent information; and
(vi) For effective study, you must use the library.

6.0 TUTOR-MARKED ASSIGNMENT (TMA)

Relate the importance of the law library to a law student.

7.0 REFERENCES

Imiera, P. P. (2005). *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria

Dada, T. O. (1998). *General Principles of Law*, T.O. Dada & Co. Lagos, Nigeria

Obilade, A.O. (1994). *The Nigerian Legal System*, Sweet & Maxwell, London.

Olanlokun, S.O. and Salisu, T.M. (1993), *Understanding the Library*, Published by University of Lagos, Lagos, Nigeria.

MODULE 2

UNIT 1 LEGAL RESEARCH

Contents

1.0 INTRODUCTION

Many people encounter the legal system in a variety of ways on a variety of occasions. Whether they are seeking redress or are being accused of something, the legal system appears like the system to use. Others think it is the preserve of professionals. These professionals are assumed to have particular skills and knowledge that the non-professionals are prepared to pay a fee for. There is, however, some debate as to what these skills are and what the nature of this knowledge is. This is the question this unit intends to answer.

As a law student, you may encounter the legal system predominantly through texts, or words. How to work with those words, how to approach the way they are collected is an essential skill you should learn. Learning the law is, in this respect at least, like learning a new language. Training to be a lawyer is accordingly, partly akin to learning the location of meanings, the grammar and structure of the language.

This unit refers you to a minimal amount of reading and contains a number of exercises. It introduces you to basic principles or the process of legal research as it impacts on the professional task of finding and arguing the law.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) State the principles of Legal research;
(ii) Explain methods of Legal research; and
(iii) Identify tools of Legal research; and

3.0 MAIN BODY

3.1 Principles of Legal Research

Legal research is at the centre of professional legal skills, but the question is what we mean by legal research.

In simple terms legal research is the search for material necessary to support legal argument and decision-making. In a broader sense, legal research is a process that begins with:

(i) Analyzing the facts of a problem that is brought to a lawyer;
(ii) Identifying the relevant legal issues to be addressed;
(iii) Separating the factual and legal problems to be resolved;
(iv) Finding the law that is relevant to the legal problems; and
(v) Concluding, applying and communicating the results of the search and analysis.

Legal research should not be seen as merely preparatory. Law is an argumentative process and research is directed to an argument. The results of the research need to be communicated effectively and put into an argumentative structure.

For example, persons who have suffered loss as a result of an injury want to know if they can claim damages. They outline a chain of events to you as the lawyer; the lawyer seeks to identity if there are indeed grounds to launch a claim and whom it would be against. The lawyer is looking out identify a "cause of action" and this might be due to a breach of contract, negligence or some other claims. In the broad area of tort (i.e. obligations between parties independent of contracts) a common claim is that the loss was occasioned by the negligence of a third party.

As the lawyer, you will have a working set of assumptions as to the state of the law of negligence and where to find the precise articulations of the law that will serve as your working knowledge as you listen to your client. Importantly, you will understand that the third party must owe some form of a "duty of care" towards your client.

You will know that the basic principles of the law of negligence are such that where an injury has been caused by the negligent behaviour of another person; the injured person may bring an action for damages against that third party. You will be primarily interested in the law, as it has worked out for other lawyers. Tort actions have moral and economic purposes behind them, namely that it is just and fair to compel the negligent third party to reimburse the injured party for any loses that the client suffered as the result of his injury and to compensate him for the pain he has suffered.

For the action to succeed, you as the lawyer must establish a set of claims as to:

(i) The law accepted as valid;
(ii) The facts accepted as true;
(iii) How the events were interconnected, this must be proved according to the degree of proof required, which in civil cases is on the balance of probability.

Specifically for negligence, you as the lawyer must show that:

(i) The other person owned a duty of care recognized by the law to the plaintiff;
(ii) The third party was in breach of that duty; and
(iii) The injured suffered by the plaintiff was caused by the breach of duty.

But the question is how will all of the above be achieved?
This will be achieved by the process of legal research, which is usually laid out in a series of steps. These involve separating facts from law. You will need to:

(i) Identify and analyze the significant facts;
(ii) Frame the legal issues to be researched; and
(iii) Research the issues.

In the course of your studies, preparing for problem questions will presuppose the steps of legal research.

Self Assessment Exercise (SAE) 1

What do you understand by the term legal research and what are the processes that legal research must begin with?

3.2 Methods of Legal research

Various approaches are used in retrieving necessary information for the purpose of solving a given problem that has occasioned the conduct of legal research. These include the approach by means of Author, Title, Subject, the case method, by statute, by words and phrases as the case may be.

Where the author or title of a book is known, you need only to consult the Author/Title catalogue for guidance as to the location of the particular material on the shelf.

There are many classification schemes used in law Libraries but the most commonly used scheme is the Moy's classification scheme, which was in use for major libraries. The subject structure of the Moy's scheme upon which the call Mark is based is as follows:

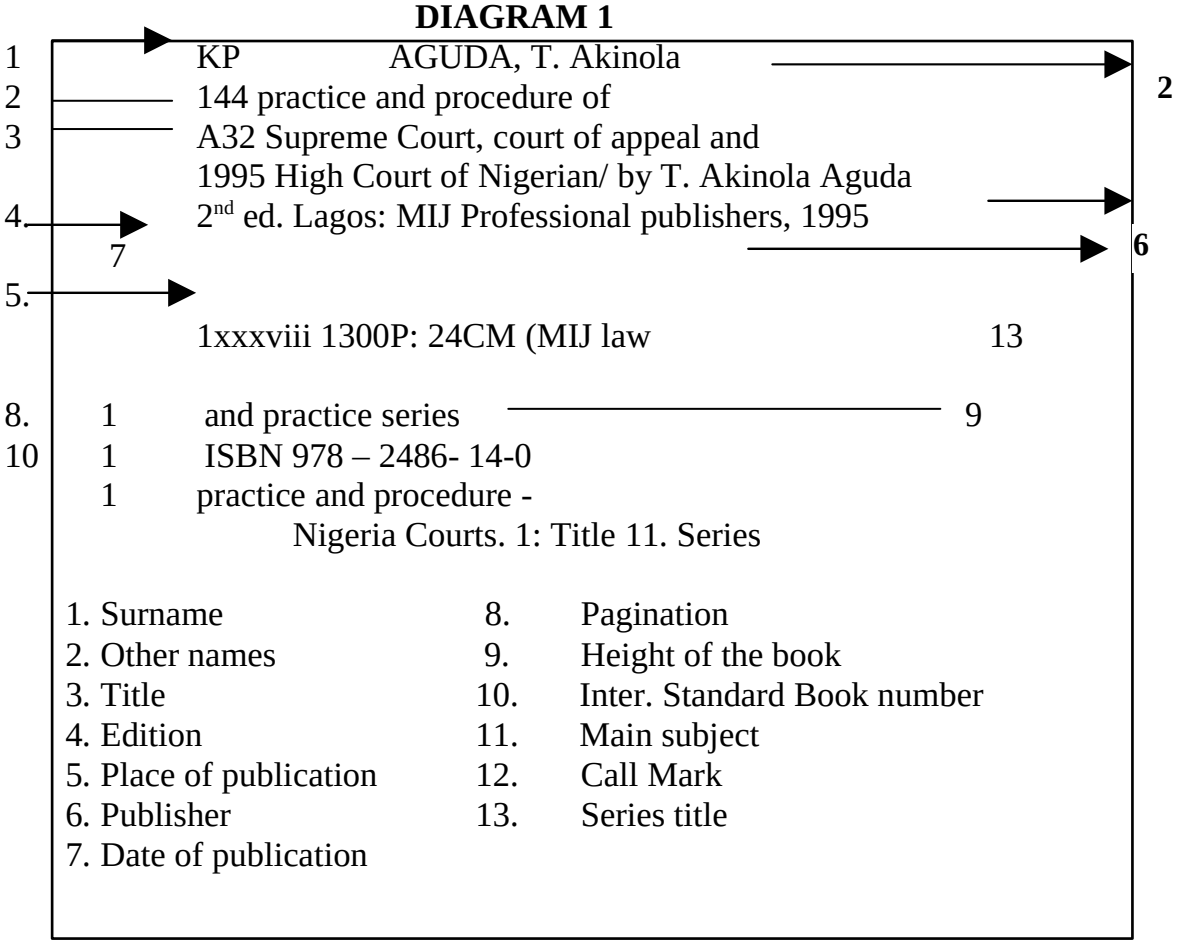
K - Journals and Reference Books
KA - Jurisprudence
KB - General and comparative law
KC - International law
KD - Religious Legal systems
KE - Ancient and Medieval law
KF - Primary Materials – British Isles
KG - Primary Materials- Canada, U.S West Indies
KH - Primary Materials- Australia, New Zealand
KL - General
KM - Public Law
- Constitutional and Administrative Law
- Criminal Law and Procedure

KN - Private Law
KP - Own Country (Optional e.g. NIGERIAN LAW)
KR - Africa
KS - Latin America
KT - Asia and Pacific
KV - Europe
KW - European Communities
KZ - Non- Legal Subjects.

The following are samples of the Author, Title and Subject Methods.

AUTHOR CARD

DIAGRAM 1



1. Surname	8. Pagination
2. Other names	9. Height of the book
3. Title	10. Inter. Standard Book number
4. Edition	11. Main subject
5. Place of publication	12. Call Mark
6. Publisher	13. Series title
7. Date of publication	

TITLE CARD
DIAGRAM 11

KP practice and procedure of the supreme
1 144 practice and procedure of
3 A32 Supreme Court, court of appeal and
4 1995 High Court of Nigerian/ by T. Akinola Aguda
5. 2nd ed. Lagos: MIJ Professional publishers, 1995 -
7
8. 1xxxviii 1300P: 24CM (MIJ law
13
9 and practice series
9
10 ISBN 978 – 2486- 14-0
practice and procedure -
Nigeria Court. 1: Title 11. Series

1.	Surname	8.	Pagination
2.	Other names	9.	Height of the book
3.	Title	10.	Inter. Standard Book number
4.	Edition	11.	Main subject
5.	Place of publication	12.	Call Mark
6.	Publisher	13.	Series title
7.	Date of publication		

2

6

SUBJECT TITLE
DIAGRAM III

KP practice and procedure of the supreme
1 144 practice and procedure of
3 A32 Supreme Court, court of appeal and
4 1995 High Court of Nigerian/ by T. Akinola Aguda
5. 2nd ed. Lagos: MIJ Professional publishers, 1995 -

8. 1xxxviii 1300P: 24CM (MIJ law
13 and practice series
9
11 ISBN 978 – 2486- 14-0
practice and procedure -
Nigeria Court. 1: Title 11. Series

1.	Surname	8.	Pagination
2.	Other names	9.	Height of the book
3.	Title	10.	Inter. Standard Book number
4.	Edition	11.	Main subject
5.	Place of publication	12.	Call Mark
6.	Publisher	13.	Series title
7.	Date of publication		

2

6

Cards are arranged alphabetically in the library's catalogue cabinet. Author and Title are usually filed together in a long alphabetical sequence. It is important for you to know that these manual ways of operations are gradually being replaced by modern and retrieval techniques.

Self Assessment Exercise (SAE) 2
Conduct a research work on the subject; take note of cases, words, phrases, approaches, and methods in legal research (Note: diagram, not required).

3.3 Tools of Legal Research

The conduct of legal research entails the identification of and the ability to use the various finding aids to discover the vital research materials scattered all over the legal collection. These basic tools of legal research consist of a mixture of primary and secondary source materials. Primary materials include such items of laws, or acts collectively called statutes, as well as law reports, law Journals, digests and indexes, secondary materials include works, commentaries and treaties on law. An understanding of the content of these materials facilitates an effective research into the various aspects of law.

Self Assessment Exercise (SAE)3

Using a well-labelled diagram, show samples of the Author, Title and subject card in conducting Legal Research

3.4 Legal Textbooks and Monographs

These constitute the bulk of the stock of a law library and can therefore be regarded as the most important single entity available for the conduct of legal research. Legal textbooks consist of scholarly views, opinions, commentaries and authoritative expositions in certain subject areas. The audience or the status of people to which they are directed like undergraduate, postgraduates, academic researchers, practitioners and other topical issues that are foreign or local, have virtually become synonymous and identifiable with certain subject areas of law, categorizes such textbooks.

Examples include, Williams on Wills, Phipson on Evidence; Chitty on contracts, Benjamin's Sale of Goods and Palmer's Company Law. Similarly, some legal series have become household names in academic and professional legal parlance. An example is the common law Library series made up of standard and quite authoritative legal textbooks. Other

notable modern legal text writers include Lord Denning M.R. on the general aspects of law and practice, Schwazenberger in the field of International Law, Street and Jolowicz on torts; Cheshire and FiteFoot on contracts, Roscoe Pound, Hart and Fuller on Jurisprudence and legal theory, Megarry and Wade on property.

The Nigerian local scene can also boast of an impressive array of distinguished legal text writers whose publications are as authoritative in every material respect and who have attained international recognition. Late Honourable Justice T.O Elias formerly of the World Court at the Hague, Netherlands, was a Pace-setter. For many years he bestrode the entire legal publishing scene in Nigeria and abroad covering such fields as Constitutional Law, International Law, Customary Law and virtually all recognized fields of legal endeavours. Other notable legal writers include Professor Ben Nwabueze, Dr. T. Akinola Aguda, Dr. Olakunkle Orojo, Justice Karibi- Whyte, Professor Nwogugu, Professor Okonkwo, Professor Peter Oluyede, Justice C. Oputa, Professor Itse Sagay, Professor Akintunde Obilade, Justice Kayode Eso, and most recently Dr. G.I. Oyakhirome and Pius Imiera. Legal publishing is still however, yearning to come of age in Nigeria.

The main snag about legal textbooks as tools of research is that they might not always be current with the conditions of the prevailing times. In some cases, the facts contained in a monograph might have been overtaken by events, which were not anticipated by the author when he began to gather his thoughts together to write. Such examples include a sudden change from civilian to military regime and vice versa or an unanticipated repeal or re- enactment of certain laws in the land.

Self- Assessment Exercise (SAE) 3

Conduct a research work on any well-known law textbook stating the date or year of publication, place of publication, name of publisher, number of pages, the ISBN, and a summary of chapter four of the book.

Self- Assessment Exercise (SAE) 4

What do you consider as the main snag about legal textbooks as tools of legal research? What solutions would you suggest?

4.0 CONCLUSION

In this unit, you have been exposed to the rudimentary aspects of legal research. The effort here is to show you that legal research is important in the study of law and in being a successful legal practitioner.

5.0 SUMMARY

Finding the law on a particular topic or issue is said to be a key skill of the lawyer. The common saying that "a lawyer does not know the law but he knows where to find it" expresses the importance of this reference or research ability.

The process of legal research is one of the human elements that provide glue for the legal system. A legal system is in constant danger of being anything but a 'system'! Like many judges, the legal theorist Ronald Dworkin argues that it is the task of legal personnel, including legislators, to uphold and develop the systematic aspect of law in order to achieve consistency, due process and deal with people in ways that achieve substantive fairness. How is this achieved? In some part by legal research, by developing techniques of interpretation and relating to the texts that is called case reports, statutes or legal arguments.

6.0 TUTOR-MARKED ASSIGNMENT (TMA)

Pick any legal textbook of your choice by a Nigerian author and summarize in not more than two pages typed written chapter one of the book.

7.0 REFERENCES

Morrison, W.J. and A. George, K. Malisons, (2004). *Common Law Reasoning and Institutions*. University of London Press: UK.

Dada, T.O. (1998). *General Principles of Law*, T.O Dada & Co.: Lagos, Nigeria.

Imiera P.P, (2005). *Knowing the Law*, Fico Nigeria Ltd, (FMH): Lagos, Nigeria

UNIT 2 INDEXING AND IDENTIFICATION OF LIBRARY MATERIALS

CONTENTS

1.0 INTRODUCTION

Indexes serve as keys for the effective use of any given publications and they are in various forms. They may precede the main chapter as in the case of table of contents, table of cases and table of statutes or may be at the end of the book in the form of subject indexes.

2.0 OBJECTIVES

By the end of this unit, you should be able to identify various types of indexes such as:

(i) Education index
(ii) Science citation index, 1961
(iii) British humanities index
(iv) Social science index

3.0 MAIN BODY

3.1 Indexing and Identification of Library Materials

An index has been described as a table, which enables information to be retrieved quickly. There are periodical indexes and subject indexes. The card catalogue can also be regarded as an index. Most books have indexes at the end. Periodical indexes help one to trace materials that have been published on a particular subject. It is possible to trace an author by using an index to locate the name of the author and his published works. All this depends on the condition that what he published is indexed by any of the commercial indexing publishers. Some of the periodical indexes are published at times monthly or

quarterly. They are then cumulated yearly for easy use. Some newspapers also have indexes. There is the New York Times Index and the Times Index. Some publishing Firms publish indexes on several subjects. H.W. Wilson publishes the Applied Science Technology Index, Education Index and Art Index. The following are some types of indexes:

(a) Education Index

This is published monthly; it contains a subject entry to over 200 periodicals in the field of education.

(b) Applied Science and Technology Index

This is published by H.W. Wilson, New York. It is a cumulative index to English Language periodicals. It contains subject entries to periodicals articles arranged alphabetically. Subjects covered in the index include mathematics, metallurgy, aeronautics, space science, computer science and engineering. It is devoted to periodicals in science and technology.

(c) Science citation index, 1961

, Pa. Institute for Scientific information, 1963- three quarterly issues plus annual cumulative volumes.
This index provides information on what has been published, who and in what publication in the field of science. Olaitan, M.O: Cases on Nigerian Law index 1880-1970- Lagos: Lagos University Library, 1978. This index contains information on cases decided in Nigerian courts during this period.

(d) British Humanities index

This is published by the Library Association of Great Britain. The index is arranged alphabetically by subject heading. It has author index in the annual cumulative volume. It has an international coverage in scope.

(e) Social Science index

This is published by H.W. Wilson, New York. It supersedes the social science and Humanities index. The index consists of author and author and subject entries to periodicals in economics, anthropology, medial sciences, political sciences, public administration and other related subjects.

Self Assessment Exercise (SAE) 1

In brief discuss the various types of indexes available

3.2 Types of Library Materials

The library stocks host legal and non-legal reference materials for the use of researchers. Such materials are standard works to which reference could always be made. These include the following:

a. Dictionaries

Dictionaries are indispensable aids to legal research. To this end, the law library keeps some Standard English Language Dictionaries and lexicons. These include, among other, the Oxford English Dictionaries, Chamber's English Dictionary and Webster's International English Dictionary. Such Dictionaries help not only in verifying the meanings of words and phrases; they also assist in the use of appropriate study, construction and training legal sentences to elucidate some precision conciseness, simplicity and clarity all of which are salient hallmarks of any research report or findings.

Legal Dictionaries may either be exclusively in English Language or bilingual. Examples of Standard English Language legal Dictionaries include Black's Law Dictionary; and Stroud's Judicial Dictionary. There also exist some specialized Dictionaries covering 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 writings to drive home certain principles and legal maxims. Examples of Bi-lingual Dictionaries may include English – Latin and English- Arabic Dictionaries.

b. Words and Phrases defined

Another unique and invaluable materials for legal research are the multi-volume works titled, "Words and Phrases Defined". This covers wide areas of definition and interpretation of legal expressions. Onamade's *Guide to Words Phrases and Doctrine in Nigerian Law* (1988) is also a most useful local effort.

c. Encyclopedias and Precedent books

General encyclopedias, which the legal research library stocks, are different from legal encyclopedias. General works such as Encyclopedia Britannica and Encyclopedia Americana cover wide subject area of law; History, Jurisprudence and Legal Theory, Legal Biography and political

theory. They therefore provide valuable reference materials for the effective conduct of legal research.

There is no doubt that no successful research work or practice of law can be embarked upon without the use of some legal encyclopedic works and precedents. Among these are the Butter-worth's Encyclopedia of Forms and Precedents (5^{th} edition) which covers extensive areas of solicitors work and the Atkin's Courts forms which deals with the forms, contents and procedure in civil matters. Other basic reference materials include the famous Halsbury's *Law of England* and the Halsbury's *Statutes of England*. There are also standard compendia, which are of immense research value. An example is American *Juris Secundum*, which is an encyclopaedic digest of American cases and Statutes.

d. Directories and Guides

These can be aptly described as pathfinders. They are most useful sources of names, addresses and other relevant details about individuals, constitution or groups. Legal directories cover only matters of professional interest to the legal profession. Typical examples include the *Nigerian Lawyer's Diary* published annually. It consists of the normal day-to- day spaces for recording events as well as other useful details as the Roll Call of all the Lawyers in Nigeria and their dates of enrolment and the list of statutes in force. An example is Gani Fawehinmi's *Bench and Bar in Nigeria* (1988). Other directories include the *Directory of Incorporated Companies in Nigeria*. The Vanguards' Yellow Pages, the *NIALS Directory of Law Teachers in Nigeria* (1995) and Vanguards' *Directory of Lawyers in Lagos State* (1995).

e. Handbooks

These are publications provided specially for the purpose of giving general information about the scope, purpose and happening at a place or institution or a group of establishments. A very good example is the *Nigerian Company Handbook*, an annual publication, which consists of basic information data about listed companies operating in various locations in Nigeria.

f. Yearbooks and Annuals

These categories of publications also contain basic research information about a country, state, institutions or bodies. They are produced each year to reflect certain changes and remarkable Landmarks that have occurred in the preceding year. Typical examples are the *Nigerian Yearbook* and the *West African Annual*.

g. Bibliographies and General references

Any research work in law should commence with a detailed bibliographic search, that is, a look into related works; Bibliographies serve as the most useful aid in this respect. A bibliography is a publication that lists the topics or titles of materials available in a given subject. A development from ordinary bibliography is the use of Bibliography of Bibliographies, a special publication that lists specific or some subject matters.

Bibliographies are mere listing of available materials and nothing more. However, in certain cases such materials may be briefly described as to the nature, scope and content of the publication. This is then called an "Annotated Biblography". Such a development helps legal researchers to decide immediately on the benefit of the materials to their work.

Compilation of legal bibliography is the preserve of the Professional Law Librarian. It may be solicited in which case it comes in the form of completion of a reading list on given subject. On the other hand, it may be unsolicited and takes the form of professional routine compilation to which the attention of interested researchers may be directed through the process of selective dissemination of information to the effective Consultation of the Laws of the Federal Republic of Nigeria (1990), and the annual cumulative volumes.

Typical examples of legal bibliographies, general or specific include Jegede's *Nigerian Legal Bibliography* (1995), which is a detailed listing of invaluable research materials on the various aspects of the Nigerian law. Arrangement is by broad subject groupings and it lists laws, statutes, articles, conference papers, treaties and textbooks. Another is Jegede's *Bibliography on the Constitutions of Nigeria* (1993), which is an invaluable source book for any research into the Nigerian constitutional law. General references usually at the end of chapter in a book or at the end of an article or paper assist in legal research by offering directives as to further sources of information. Such general references have become universally acknowledged standards for legal writings and are highly valuable.

Self Assessment Exercise (SAE) 2

1. Discuss briefly the various types of library materials you have studied under this unit.

2. What are the uses of an Encyclopedia and precedent books?

3. What are Bibliographies? Why are they important in legal research?

4.0 CONCLUSIONS

This unit prepares you on how to identify materials through indexing during your legal research. This unit helps you to identify education index, science citation index, British Humanities index and social sciences index as types of indexes available

5.0 SUMMARY

In this unit, you have been exposed to indexing and identification of library materials and types of library materials. You also learnt about some books, which serve as legal materials, such as dictionaries, Encyclopedias, and precedent books and bibliographies.

6.0 TUTOR – MARKED ASSIGNMENT (TMA)

1. What are indexes?
2. Discuss in brief the different types of indexes you have learnt under this unit.

7.0 REFERENCES

Dada, T.O. (1998). *General Principles of Law*, T.O Dada & Co.: Lagos, Nigeria.

Imiera P.P, (2005). *Knowing the Law*, Fico Nigeria Ltd, (FMH): Lagos, Nigeria

UNIT 3 CASES, CITATION OF CASES AND REPORTS

CONTENTS

1.0 INTRODUCTION

An efficient system of law reporting is essential to the proper operation of the doctrine of judicial precedent. A case report published or edited in Nigeria usually begins with the title of the case. This is followed by the name of the court and the names of the judges constituting the court.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) Cite relevant cases;
(ii) Report cases; and
(iii) Make reference to Nigerian law reports

3.0 MAIN BODY

3.1 Cases and Citation of Cases

After the name of the court, the next thing is the catchwords. Catchwords indicate the subject matter of the case and, sometimes, the issues to be determined. The head note appears immediately after the catchwords. It is a summary report of the case. In includes what the reporter considers to be the ratio decidendi of the case. It list case**s** referred to in the case and states how they are dealt with. For example, it states whether a case was distinguished, followed, not followed or overruled. Where a case in on appeal, the head note states, as appropriate, that the judgment of the lower court was affirmed or reversed or that it was set aside and a retrial ordered.

The head note, also states whether an appeal was allowed or dismissed. The head note, is usually followed immediately by a statement of the nature of the proceedings, an account of how the case reached the court including the essential facts and the names of counsel who appeared for the parties. Then follows the actual judgment usually reported verbatim. Where three or more judges constitute a court and there is a dissenting judgment, the dissenting judgments, the dissenting judgment is reported after the major judgments. The actual judgment is followed by a brief statement of the court's decision in the case, e.g. judgment for the defendant. Regular law reporting started in Nigeria in 1916 with the established of the Nigeria Law Reports series by the judicial department.

Self- Assessment Exercise (SAE) 1

Briefly discuss the reporting of cases on Nigeria. When did law reporting start in Nigeria?

3.2 Nigerian Law Report

Nigerian law reports are reports of cases, whenever published or edited, decide by Nigerian courts. They include "English Law Reports" a number of local and foreign periodicals containing case reports, and various cyclostyled reports including loose-sheet (unbound) series.

The only cases reported in the law reports are selections from cases decided by the superior courts, for example the Supreme Court of Nigeria, and High Courts. On the other hand, cases decided by inferior courts, for example magistrate courts, are not reported.

Self Assessment Exercise (SAE) 2

Why do you think that cases decided by magistrate courts are not reported?

3.3 Identification of issues, principles and application of rules in legal problems

Issues are the problems to be resolved in legal matters or problems. Principles are merely reasons whose cogency has been acknowledged in a given legal system and which must be taken into account when they are relevant to a case. Courts are not bound to apply a principle in the same way as a rule. So, even if it is a principle that no man should be allowed to profit from his wrong doing, there are many cases in which a court will allow a man to do just that; not because it thinks that the principle is not applicable, but because other principles or rules may be given preference in the relevant case.

The following are examples of principles, some of which are given a traditional formulation "courts will not permit themselves to be used as instruments of injustice, caveat emptor, violenti non fit injuria, the "neighbour principle" "there should not be liability without fault" the principle of freedom of contract, in probate law whenever possible effect should be given to the wishes of the deceased.

It has been said that "we decide under rules but in the light of principles". This illustates the point that a rule either applies a case or it does not, and if it applies then case has to be decided as the rule prescribes. Principles, on the other hand, can be compared to proverbs. Several apparently contradictory proverbs can apply to the same situation. A person considering how many people should work on "given project could be told two things that "many hands" make light work" and that "too many cooks spoil the broth". He is not expected to apply any of these proverbs blindly; their function is rather to alert him to different relevant considerations whose effect on the specific situations confronting him he should carefully consider.

Ronald Dworkin has explained that:

> All that is meant, when we say that a particular principle is a principle of our law is that the principle is one which officials must take into account, if it is relevant, as a consideration inclining in one direction or another.

R. Cotterell, in *The Politics of Jurisprudence*, has offered the example of the equitable maxims such as "equity regards as done that which ought to be done" "equity will not perfect an imperfect gift", and "equity will not allow a statute to be used as an instrument of fraud". Each of these maxims may suggest a different result when applied to the same case; the judge's task will be to assess their relative weight in the particular circumstances and decide which should prevail.

How do we identify the principles of Nigerian law? According to Dworkin , if we were challenged to back up our claim that some principle is a principle of law, we would mention any prior cases in which that principle was cited; or figured in the argument. We would also mention any statute that seemed to exemplify that principle… Unless we could find some such institutional support, we would probably fail to make out our case, and the more support we found, the more weight we would claim for the principle.

An example of how the court will base its decision on a principle in the absence of a rule clearly covering the case is provided by the **case of Home Office vs. Dorset Yatch Ltd (1970) A.C. 1004.** The facts of the

case were that some boys living in a borstal home escaped during one night, and did extensive damaged in the respondent's club. The question was whether the Home Office owed any duty of care to members of the public to prevent the escape of boys from borstal homes. There was no previous authority for the existence of such a duty, but a majority of the House of Lords took the "neighbour principle" as being enough supporting ground for a decision in the respondent's favour, even though the statement of the "neighbour principle" in **Donoghue vs. Stevenson (1935) A.C 562,** is not part of the reasons of the case and therefore is not a rule of law in a strict sense.

At the same time, because the "neighbour principle" is only a principle and not a rule, a court may decide not to apply it particulary when it thinks that other competing principles should be given preference in a given situation. An example of this is provided by the decision of the House of Lords in **Rondel vs. Worsley (1969) A.C. 191**. The question that had to be decided in that case was whether a barrister owed a duty of care to his client in respect of this presentation of the client's case in the court. In spite of the existence of the "neighbour principle", the court decided that there were other important principles and reasons which should be given priority in the circumstances of that type of case, like the need to have finality in litigation and the need to protect the position of the barrister as an officer of the court.

When the courts have to decide a case for which there is no clear pre-existing rule of law, they may sometimes reason by analogy from the decision reached in a similar case or line of prevention of cases, without invoking explicitly any principle. Thus, for instance, in **D. vs. National Society for the cruelty of children (1978) A.C 17,** the House of Lords had to decide whether the society was entitled to refuse to disclose the identity of one of its informers despite the fact that this information was needed for the plaintiff to institute an action for negligence against the society. The law at the time was believed to be that a person in the position of the plaintiff was entitled to obtain the information he required and there was no rule of law authorizing a society to refuse to disclose that information. However the House of Lords upheld the society's claim to withhold its source of information. In reaching this decision the court reasoned by analogy from the rule of law which allows government departments to withhold relevant evidence when its disclosure will harm public interest in the proper and efficient functioning of government. Even though the society was not a government department the court reasoned that the functions it carried out justified extending to its sources of information similar special protection as that enjoyed by, for instance police informers.

Self Assessment Exercise (SAE) 3

1. What will the courts do in situations where there are no pre-existing rules to decide a case before the court?
2. Differentiate between a principle of law and a rule
3. Discuss three maxims of equity known to you.

4.0 CONCLUSION

Indeed, this is a very important unit. Many lawyers have lost cases because relevant cases where not cited in court during the court proceedings. Our suggestion in this unit is that as you proceed in your study, you should read cases and learn how to cite them.

5.0 SUMMARY

At the end of this unit, you have learned how to

(i) Cite of cases;
(ii) Use the Nigerian law reports
(iii) The history of case reporting in Nigeria
(iv) Apply rules and principles in cases, and
(v) How courts decide in cases when there are no pre-existing rules.

6.0 TUTOR- MARKED ASSIGNMENT (TMA)

Write a report on the case between **Gani Fawehinmi vs. Abacha.** Name the Justices that heard the case, the court in which it was heard, the counsel representing each party and what were the issues in contention in that case.

7.0 REFERENCES

Imiera, P. P. (2005). Knowing the Law FICO Nig. Ltd, (FMH) Lagos, Nigeria

Obilade, A.O. (1994). The Nigerian Legal System, Sweet & Maxwell, London.

Elegido, J.M. (1994). Jurisprudence, Spectrum Law Publishing: Ibadan, Nigeria.

UNIT 4 METHODS AND APPROACHES IN ESSAY WRITING

CONTENTS

1.0 INTRODUCTION

The essence of essay or letter writing is to communicate message to the recipient and this involves, the style or methods. The most effective words should be used in the most appropriate order so that the choice of words can create effect. There are no strict rules about style in essay writing, the idea is that the style to be adopted depends on whether the letter/essay meant to simply convey information, or persuade the addressee to act or retain from an act.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

(i) Identify and write informative letters/essays
(ii) Identify and write persuasive letter/essays
(iii) Describe letter/essays' layout and style
(iv) Correctly use punctuation marks

3.0 MAIN BODY

3.1 Methods and Approaches in Essay writing

There are no strict rules concerning the style/ method adopted in essay writing, or the layout of a letter. The choice is a matter of style. The style or layout of letters/essays has continued to improve with technological aids.

Method/ Style

1. Blocked and semi-blocked method / style

The difference is that the blocked styled paragraph starts from the same left hand margin of the essay /letter head paper, while the semi-blocked style has the recipient's address and the main body of the letter set to the left-hand margin with indented paragraph openings.

2. Open and Close Punctuation

Open punctuated letters omit virtually all punctuation marks (but not apostrophes) in the address sections of the letter. Close punctuated letters are generous with punctuations; for example, a comma is inserted at the end of each line of the address. Modern letters / essays combine the blocked and open punctuation style to achieve elegance and economy of words.

Self- Assessment Exercise (SAE) 1

1. Is there any hard and fast rule in the style adopted in essay/ letter writing? If not, why?
2. Write two essays, using the methods or style discussed above for each.

3.2 Checklists on the Form of a Letter

(a) **Letter references**, for example" our ref" or " my ref" and "your ref". They are usually pre-printed on letter headed paper, and inserted mainly for filing purposes and cross- referencing.

(b) **Date:** For example, 4th April 2001 not 4/4/2001.
The North American style is April 4, 2001. The convention in Nigeria is to use the British style, but whichever style is adopted; it is important that you are consistent.

(c) **Name and address of the recipient:** Official letters should use the official title of the recipient, for example, "The Managing Director". But depending on the familiarity, you may address the recipient by his name before writing the postal address e.g. Mr. Dele Ayo. Better still, you may combine both the name and the title e.g. Mr. Dele Ayo, Chairman/Chief Executive Officer. There are no strict rules and the style adopted depends on your level of contact with the recipient. You may choose to adopt the open or closed punctuation style, provided you are consistent.

(d) **Salutation:** This should depend on the gender and the relationship between you and the recipient. The convention is to use opening salutation formulae such as "Dear Sir" Dear Madam: Dear Dr. John, Messrs John & James, Gentlemen". The choice of salutation depends on how you perceive the recipient, and whether the letter /essay is formal or personal. Modern essays/ letters are not restricted to the formal and traditional "Dear Sir", they are more informal and personal. It is important to note that the salutation will eventually determine the closing salutation, "Yours sincerely, Yours faithfully" and so on.

(e) **Body of the letter:** This is the most important part of a letter/ essay. This is where the message is communicated to the recipient; the idea is to put the message in a concise and straightforward language, one main idea per paragraph. In line with the modern drafting technique, a letter/ essay should be short, precise and intelligible. The interest of the recipient is paramount, even where the letter is to threaten the recipient to do or retain from doing an act. Unless the message is understood clearly by the recipient, the letter/ essay will not achieve the desired result. Sometimes one paragraph will be sufficient to communicate the message, yet it may well require several paragraphs, hence the length of a letter is determined by the message.

(f) **Signature space:** The letter /essay must be signed by the writer.

There should be space to append a hand written signature. It is good practice to ensure that no letter /essay is signed without first reading it to correct common errors.

(g) **Writer's name and firm's name:** You should append your signature above your name typed in full.

If you are a sole practitioner, you should adopt it this simple

style:_____
Haruna, Ibrahim

If you are writing on behalf of a firm, that is you have consistently used "we" you may sign either as:

Signed: _____
Haruna, Ibrahim
OR
Haruna, Ibrahim & Co

Signed: _____
Haruna, Ibrahim

Self Assessment Exercise (SAE) 1

Discuss brief five of the checklists when writing letter/ essay.

3.3 **Punctuation**

This is a useful tool by which accuracy and clarity in legal writing is achieved. The way you punctuate a sentence can determine how well you communicate with the reader. Punctuations like words are symbols that by convention are used to stand for certain things. There is no inextricable connection between these symbols and what they stand for. But unlike words, which consist of alphabets, punctuations are symbols; they include the comma, colon, semi colon, question mark, exclamation mark, bracket and full stop. The grammarian (and broadcasters) use punctuations to indicate the length of pause, but the concern of legal writers / lawyers about punctuations is how they can be used to aid clarity and understanding. There was a time when it was thought that punctuations were unnecessary in legal documents because they may mislead, it was expected that the reader should supply them to suit his needs. This view is supported by **Sanford Vs. Raikes (1918) A.C. 337,** where the Master of the Rolls said:

"It is from the words and the context not from the punctuation that the sense must be collected.

It is true that traditional formal legal documents were without punctuations but modern legal document departs from this dry style of writing. It is desirable to use punctuations to achieve elegance, they have been described as " traffic signals to your readers". It will be absurd to find a long sentence that is not punctuated.

In Nigeria, the relevance of punctuations in legal documents is settled. Section 3 (1) of the Interpretation Act provides:

"Punctuations forms part of an enactment and regard shall be had to it accordingly in construing the enactment".

In **Shell- BP Vs. Federal Board of Inland Revenue,** a tax case, the Federal Revenue Court upheld the contention of the appellant that the commas in the definition are meaningful and must be given their meanings in accordance with the provision of section 3 (1) of the Interpretation Act, 1964.

The use of comma (,) colon (:) question mark (?), exclamation mark (!) and full stop (.) are fairly understood by most writers, but the semi- colon (;) and ellipsis (…) are largely abused. While colon is generally used to introduce a list, a semi colon is used to separate two complete but related sentences and it is not (subject to limited exceptions) followed by a capital letter as in the case of a full stop. Ellipsis is used to stand for one or more omitted words, when the omission occurs at the end of a sentence, the ellipsis appears together with a full stop. Under no circumstance should ellipsis be used in a legal document or drafting, in other words there should be no omission. Another punctuation that is commonly abused is the hyphen (-), it should be used when it is intended that two or more words should be read together as a compound word, for examples, "Barrister –at- Law" should be "Barrister- at- Law"

It is not possible in a course guide of this nature to discuss all the punctuations and the rules governing their usage. What is expected of you is that you should be careful in the use of punctuations because punctuations form part of legal document and they are relevant for the purpose of interpretation.

Self |Assessment Exercise (SAE) 2

Why are the uses of punctuation important in legal document? Support your answer with case law and statutory provision.

3.3 Uses of Certain Punctuation Marks

1. **Comma (,):** It may be used in any of the following situations:-

    a. To mark off items in a list. For e.g. "remove the tables, chair, and bed".
    b. To mark off a group of short clauses. For e.g. "I went to court, filed the appeal, and bought a law report".
    c. To mark off enclosing words. For e.g. "every lawyer, in or outside the court, must be well behaved".
    d. Used in direct quotation. For e.g. "the Judge said, every lawyer must be present".

2. **Semi colon (;):** It may used in any of the following situations:-

    a. To mark off independent parts of sentence. For e.g. "I was called to Bar in 2003; and I have since then paid for my practicing fees".
    b. To compare two sentences. For e.g. “It is better to buy now than later; though it may cost more".

3. **Colon (:)** It may be used in any of the following situations:-

    a. To introduce a list. For e.g. "every lawyer must buy: a wig, gown, collar, and tie.
    b. It is used instead of a full stop between two sentences, where the second sentence gives more explanation to the first. For e.g. "The lawyer is a good advocate: he masters the facts of his cases and present them in a logical order".

4. **Full stop (.):** It may be used in any of the following situation:-

    a. To end a complete sentence; except where the sentence is a question or exclamation.
    b. To mark abbreviations. For e.g. LL.B or Mr.

Self Assessment Exercise (SAE) 3

Briefly discuss in what situations will the following punctuations mark be used: Colon, Full Stop, Semi Colon, Exclamation and Questions.

4.0 CONCLUSION

Legal writing is part of your work as a student of law in NOUN. It is also very important in law practice; you are therefore advised to take your writing skill very seriously. Familiarize yourself with the various types of punctuation marks and practice how to use them.

5.0 SUMMARY

At the end of this unit, you have learnt:

(i) About types of essays / letters;
(ii) The layout/style in letter/essay writing;
(iii) Punctuations marks; and
(iv) Uses of certain punctuations mark.

6.0 TUTOR-MARK ASSIGNMENT (TMA)

Write a well-punctuated essay of about a page, using where possible all the punctuations marks you have studied under this unit.

7.0 REFERENCES

S.O. Imhanobe, (2002). *Understanding Legal Drafting and Conveyance*. Academy Press PLC: Lagos, Nigeria

Imiera, P. P. (2005). *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria.

MODULE 3

UNIT 1 ANALYSIS AND NOTE TAKING IN LEGAL MATTERS

CONTENTS

1.0 INTRODUCTION

Analysis and note taking is a kind of instructions given by a client to his lawyer. The lawyer will have to ask the client questions that will enable him understand the client's instructions. The lawyer takes down notes as the client responds to question, after which the lawyer analyses those instructions to enable him do his legal work properly. You have to learn about this at the early stage of your studies.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

(i) Analyze legal instruction;
(ii) Take notes as a law students; and
(iii) Scrutinize, edit and check the note you have taken.

3.0 MAIN BODY

3.1 Analysis and Note Taking

Analysis involves the classification of the notes or instructions you have taken into the proper legal category. It may even involve consulting another colleague. Ordinarily, the analysis of note taking should be a

simple process. But in practice or reality, it is not as easy and straightforward as it appears. Even where the analysis is straight forward, your note should be properly taken.

A legal practitioner who wants to persuade the court over his case should be able to cite authorities to buttress his case. An authority in legal argument simply refers to citing of cases and statutory provisions. Cases are cited in courts during legal tussle. The judge refers to those cases cited in his chambers or office in order to determine and write his judgment. The most convincing cases cited and that are relevant to the case at hand is most likely to obtain judgment in his favour.

Authorities are also cited in legal writing. Legal writing includes legal textbooks, legal letters, periodicals, law journals, etc. Case law and Statutory provisions are used in legal writing in order to support a rule or a principle of law. This makes it more authoritative and convincing.

For example, the case of **Carlill Vs. Carbolic Smoke Ball Co. (1893)** can be used to back up argument on what amounts to offer and acceptance.

The facts of the case:

Mrs. Carlill made a retail purchase of one of the defendant's medicinal products: the '"Carbolic smoke Ball". It was supposed to prevent people who used it in a specified way (three times a day for at least two weeks) from catching influenza. The company was very confident about its product and placed an advertisement in a paper, the Paul Mall Gazette, which praised the effectiveness of the smoke ball and promised to pay £100 (a huge sum of money at that time) to:

> **… any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, having used the ball three times daily for two weeks according to the printed directions supplied with each ball.**

The advertisement went on to explain that the company had deposited £100 with the Alliance Bank, Regent Street, London as a sign of its sincerity in the matter. Any proper plaintiffs could get their payment from that sum. On the faith of the advertisement, Mrs. Carlill bought one of the balls at the chemists and used it as directed, but still caught the flu. She claimed £100 from company, but was refused it, so she sued for breach of contract. The company argued and said there was no contract for several reasons, but mainly because:

(i) The advert was too vague to amount to the basis of a contract- there was no time limit and no way of checking the way the customer used the ball;

(ii) The plaintiff did not give any legally recognized value of the company;

(iii) One cannot legally make an offer to the whole world, so the advert was not a proper offer;

(iv) Even, if the advert could be seen as an offer, Mrs. Carlill had not given a legal acceptance of that offer because she had not notified the company that she was accepting, and

(iv) The advert was a mere puff, that is, a piece of insincere sales talk not meant to be taken seriously

The Court of appeal found that there was a legal enforceable agreement, a contract, between Mrs. Carlill and the company. The company would have to pay damages to the plaintiff.

Also statutory provisions, apart from case law can be used to support legal argument. For instance, sections 33-40 of the 1999 Constitution of the Federal Republic of Nigeria may be used to support argument on fundamental human rights depending of course on the right being enforced.

Self Assessment Exercise (SAE) 1

Analysis and note taking in legal matters are as important as the use of authorities in legal argument and writing. Discuss.

3.2 Legal writing

You can be engaged in legal writing on a daily basis. This could be in form of letter writing, drafting of Wills, deed of assignment, quit notice and negotiation or settlement letters. Writing good legal documents is an art that cannot be taken for granted? A common erroneous believe is to assume that legal writing does not require preparation. This is not true. What is committed to a letter is a permanent record and sometimes cannot be restated or recalled. A letter reveals a lot about the writer and the course of a legal transaction may depend on the letter exchanged by the parties. Apart from letter or legal writing, there are other aspects of general communication you may wish to know:

(i) Memorandum
(ii) Reports, and

(iii) Opinions

The difference between a letter and other forms of communication is that a letter is ‘out of house’ communication while the other forms of communication are 'in house' communication. Before writing a letter, you must first consider whether it is absolutely necessary to do so, this is because a meeting or a phone call may serve you better. Once you have decided to write, you must ensure that you communicate the message. The legal writing or letter writing tells a lot about the relationship between you and the addressee. You should therefore consider three basic things before writing any type of letter:

(i) The opinion of the law on the issue to be communicated;
(ii) The psychology of the recipient; and
(iii) Recent correspondence with the recipient (if any) to bring yourself up-to- date.

The class of prospective recipients vary, they often include:

a. Your client
b. A vendor or purchaser;
c. Other colleagues or lawyers;
d. Opponents, and
e. The bench i.e. judges of courts of law, including the magistrates.

As the classes of recipients vary, so do their psychology. There are some issues that may assist you in fashioning your approach to the recipient and choosing your language:

(i) Recipient's age;
(ii) Recipient's educational background;
(iii) Recipient's professional interest;
(iv) Recipient's taste and preference; and
(v) Recipient's prejudices.

The essence of legal writing is to communicate a message to the recipient and this involves the various styles. The most effective words should be used in the most appropriate order so that the choice of words can create effect. There are no strict rules about styles, the idea is that the style to be adopted depends on whether the letter is meant to simply convey information, or persuade the recipient to act or retain from an act.

Self Assessment Exercise (SAE) 2

Legal writing by a lawyer is different from any form of writing by a linguist. Why is this so?

3.3 Letter Headed Papers

This is the printed part of the letter sheet, usually A4 or A5 paper. The design is important hence you may use a skilled graphic designer and quality paper, preferably the conqueror paper. This portrays a good image of the person or firm to the recipient of your letters.

Neither the Legal Practitioner Act nor the Rules of Professional conduct provides for the contents of a legal / letter headed paper, however, inference may be drawn, from sections 278 (1) and 631 (1) (C) of the Companies and Allied Matters Act. (CAMA)
Section 278 (1) provides that:

“Every company to which this section applies shall, in all business letters in which the company’s name appears… state in legible character in respect to each director, the following particulars.

a. His present forename;
b. Any former names and surname; and
c. His nationality, if not a Nigerian;

Section 631 (1) provides that:

"Every company, after incorporation shall:

Section 631 (1) (c) provides that:

“Have its name and registration number mentioned in legible character in business letter of the company"

Though the above provisions deal with companies, the standard letter headed paper provides for certain basic information. Generally, it should contain the firm's name, address, and telephone numbers, Fax, E-mail and Names of the partners or associates.

Self Assessment Exercise (SAE)4

Is there any legal requirement for letter headed paper?

Self Assessment Exercise (SAE) 5

What was the bone of contention in the case between **Gani Fawehinmi Vs. Legal Practitioners Disciplinary Committee (LPDC) (1985), 2, W.N.L.R. pt 7. P. 300.**

Self Assessment Exercise (SAE) 5

Write a letter to a colleague asking for settlement out of court.

4.0 CONCLUSION

This is a very important unit. This is so because one way or the other, you are engaged in legal/letter writing. A good mastery of legal writing will assist you in you legal practice and as a student of the NOUN studying law.

5.0 SUMMARY

At the end of this unit, you have learnt:

(i) How to analyze note taking in interviewing a client;

(b) About legal writing; and
(c) About the legal requirements for letter headed paper.

6.0 TUTOR MARK ASSIGNMENT (TMA)

Write a letter on an improvised letter headed paper to your client informing him/her that you have concluded negotiations on the piece of land he instructed you to purchase.

7.0 REFERENCES

S.O. Imhanobe, (2002). *Understanding Legal Drafting and Conveyance*. Academy Press PLC: Lagos, Nigeria

Imiera, P. P. (2005). *Knowing the Law* FICO Nig. Ltd, (FMH) Lagos, Nigeria.

UNIT 2 AUTHORITATIVE ELEMENTS IN BOOKS AND JUDICIAL OPINION

CONTENTS

1.0 INTRODUCTION

Books constitute the stock of a law library and can be regarded as the most important single entity available for the conduct of legal research and thereby serve as authorities elements in legal works. Legal textbooks consists of scholarly views, opinions, commentaries and authoritative expositions in certain subject areas, such textbooks are categorized by the audience or the status of people to which they are directed like undergraduates, postgraduates, academic researchers, practitioners and other topic issues that are foreign or local.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) Identify some legal textbooks as authoritative and persuasive,
(ii) Explain what is meant by judicial opinions;
(iii) Describe how courts its opinion on a particular case before it.
(iv) List types of legal textbooks that are authoritative

3.0 MAIN BODY

3.1 Authoritative Elements in Books

When a court is unable to locate a precise or analogous precedent, it may refer to legal textbooks for guidance such books are subdivided depending on when they were written. In strict terms, only certain works are actually treated as authoritative. Amongst the most important of these works are those by Glanville from the 12th century, Bracton from the 13th century, Coke from the 17th century and Blackstone from the 18th

century. The courts look at the most eminent works by accepted experts in particular fields order to help determine what the law is or should be. For example, the citation of Sherbet's "Judges on Trial" and De Smith, Wolf and Jewell, Judicial Review of Administrative Action, in Lord Browne- Wilkinson's statutory Interpretation in Wilson vs. Secretary of state for Trade and Industry (2003).

The Nigerian local scene can also boast of an impressive array of distinguished legal text writer whose publications are as authoritative in every material respect and who have attained international recognition. Late Honorable Judge T.O. Elias formerly of the world court at The Hague, Netherlands, was a pace – setter. His works cover such areas as constitutional law, international law, customary law and virtually all recognized fields of legal devours. Other notable legal writer, whose works are authoritative are Professor Ben Nwabueze, Dr. A. Aguda, Dr. Olakunle Orojo, Justice Karibi-Whyte, Professor Nwogugu Professor Okonkwo, Professor Peter Oluyede, Justice C. Oputa, Professor Itse Sagay, Professor A.O. Obilade and Justice Kayode Eso.

Apart from citations in various academic papers, the opinions and view of some of the legal textbooks writers have been referred to with approval in court proceedings. For instance authoritative texts like Johnson's History of the Yourbas; Coker's family properly among the Yourbas, Obi's Ibo land law and Ajayi's history of West Africa have had of certain prevailing customary practices in some societies. The same applies to Elias' Nature of African customary law (1956).

Self Assessment Exercise (SAE) 1

Legal textbooks have authoritative elements in them. However, this does not make them binding. Discuss.

3.2 Judicial Opinion

If, within limits, courts have a choice to decide which way decisions are to go, what is it, if anything, that governs or controls that choice? Certainly not ordinary logical dedication or inference in the sense of syllogistic reasoning, for legal rules, ideas and concepts are expressed in words, whose uncertain sphere of operating precedes the statement of legal reasoning in the rigidly defined terms by which conclusions may be logically deduced from stated premises. Nor id this surprising, for not only do legal rules and concepts depend for their usefulness on their very indefiniteness's and flexibility, but as Oliver wended Holmes remarked, life of the law been not logic but experience.

Ordinarily language, in which law is necessarily expressed is not an instrument of mathematical precision but possesses what has been described as an open texture. Some part of the meaning of words is given by ordinary usage, but this does not carry one far in those peripheral problems, which law courts have to solve in applying words, and legal rules expressed in words. Rules of law are not linguistic or logical rules but to a great extent rules for deciding.

The essence of legal reasoning is in all essentials, save that the lawyer engages in a more searching inquiring for precise reasons for his decisions, comparable to the process of reasoning or practical problems. Thus, when a court decides that something is good or desirable, beautiful or ugly, this is judicial opinion or court expressing judgments. This opinion may be intended as a mere expression of a subjective emotion, but more after it involves implicitly or explicitly the idea that one can give reasons in support of that judgment.

Moreover courts, like ordinary people, may and generally do employ differing criteria, reflecting varying altitudes towards the solution of the problems with which they are called upon to deal. No analogy is compelling in a purely logical sense as leading to a necessary conclusion; but as a practical matter human beings do reason by analogy, and find this in many instances useful way of arriving of normative or practical decision. The basis of this approach is primarily human experience of the efficiency and utility of analogical reasoning. This is judicial opinion.

Self Assessment Exercise (SAE) 2

What do you understand by judicial opinion?

3.3 **Judicial Reasoning**

You may want to know to what extent judge's use logical reasoning in reaching their decisions in particular cases and to determine which forms, if any, they make use of.

Some statutory provisions and also some common law rules can be expressed in the form of a syllogism. For example, the offence of theft may be reduced into such a formulation.

If 'A' dishonestly appropriates B's property with the intention of permanently depriving B of it, then 'A' is guilty of theft.

'A' has done this,

Therefore, 'A' is guilty of theft.

This however, represents an over-simplification of the structure of statute, but more importantly, the effect of concentrating on the logical form of the offence tends to marginalize the key issues in relation to its actual application. Obviously, the great majority of cases are decided on the trust of the premises rather than the formal validity of the argument used. In other words, argument will concentrate primarily on whether 'A' actually did the act or not and, secondly, on whether 'A' appropriated the property either dishonestly or with the intention of permanently depriving B of it.

In looking for a precedent on which to base a decision, judges are faced with a large number of cases from which to select. It is extremely unlikely that judges will find an authority which corresponds precisely to the facts of the case before them. What they have to do is to find an analogous case and use its reasoning to decide the case before them. This use of analogy to decide cases is prone to some shortcomings. The major difficulty is the need to ensure the validity of the analogy made, if the conclusion drawn is to be valid.

Thus, the apparent deductive certainty of the use of precedence is revealed to be on the much less certain use of inductive reasoning and reasoning by analogy, with even the possibility of personal views of the judges playing some part in deciding. This latter factor introduces the possibility that judges do not in fact use any form of logical reasoning to decide cases, but simply deliver decisions on the basis of an intuitive response to the parties involved. The suggestion has been made that judges decide the outcome of the case first of all and only then seek some post hoc legal justification for their decision; and given the huge number of precedents from which they are able to choose, they have no great difficulty in finding such support as they require. The process of logical reasoning can be compared to the links in a chain, one following the other, but a more fitting metaphor for judicial reasoning would be to compare of with the legs of a chair; faced into place to support the weight of a conclusion reached a prior. Some critics have even gone so far as to deny the existence of legal reasoning altogether as a method of determining decisions, and have suggested that references to such are no more than a means of justifying the social and political decisions that judges are called upon to make.

In conclusion, however, it is not suggested that legal reasoning does not employ the use of logic, but neither can it be asserted that it is only a matter of logic. Perhaps the only conclusion that can be reached is that legal reasoning as exercised by the judiciary is an amalgam; part deductive, part inductive, part reasoning by analogy, with an added mixture of personal intuition, not to say personal prejudice.

Self Assessment Exercise (SAE) 3

1. What are the major differences between judicial reasoning and judicial opinions?
2. How do courts or judges arrive at a decision by deductive reasoning?
3. With good examples, differentiate between deductive, inductive and analogical types of reasoning.

4.0 CONCLUSION

Legal textbooks form the bulk of a law library and therefore, it can be said that books by authoritative legal writers are essential for any successful legal practice. Authoritative books are both foreign and local and the courts rely on them in situations where there are no pre-existing rules to decide a particular case before. Although, these authoritative legal textbook, are not binding on the courts, they are persuasive in nature.

5.0 SUMMARY

In this unit, you have been exposed to:

(i) authoritative elements in legal textbooks;
(ii) judicial opinion;
(iii) judicial reasoning; and
(iv) how courts arrive at decisions by amalgamation of the different types of logical reasoning.

6.0 TUTOR MARKED ASSIGNMENT.(TMA)

1. Why do courts have to rely on legal textbooks that are authoritative?
2. Authoritative legal textbooks are not binding on the courts. Why do you think this is so?

7.0 REFERENCES

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UNIT 3 APPLICATION OF LEGAL RULES IN SOCIAL MATTERS

CONTENTS

1.0 INTRODUCTION

One of the most characteristic features of 20th century jurisprudence has been the development of sociological approaches to law. The social sciences have an influence this century almost comparable to that of religions in earlier periods. Legal thought has tended to reflect the trends to be found in sociology. More recently conflict theories have tended to dominate the sociological stage and these have been reflected in legal thinking.

2.0 OBJECTIVE

By the end of this unit you should be able to know:

(i) Explain how legal rules are applied to social or societal problems;
(ii) Explain the Roscoe pond social engineering doctrine; and
(iii) Describe the role of law in reconciling conflicts in society.

3.0 MAIN BODY

3.1 Application of Legal Rules in Social Matters

For Roscoe Pound, jurisprudence or the theory of law is not so much a social science as a technology and the analogy of engineering is applied to social problems. Pound was concerned primarily with the effect of law upon society and only to a lesser extent with questions about the social determination flaw. Little attention is paid to conceptual thinking. The creative role of the judiciary is in the forefront, as is the need for a new

legal technique directed to social needs. The call is for a new functional approach to law.

Pound's view of the law is that law is a reconciler of conflicting interest in the application of legal rules to social matters. So for Roscoe Pound, the law is an ordering of conduct so as to make the goods of existence and the means of satisfying claims go round as is possible with the least friction and waste. Pound regards these claims as interests which existing for recognition and security. The law recognizes some of these interests, giving them effects within defined interests. Pound attempted to expound and classify the categories of interests, which are thus acknowledged in a modern democratic society. In this approach, Pound rather recalls the methods of Aristotle's distributive justice. This seems to ignore the extent to which existing law is based on giving effect to vested rights.

Pound's own approach to the application of legal rules to social matter was somewhat infertile. He looks to actual assertions of claims in a particular society, especially as manifested in legal proceeding and legislative proposals; whether accepted or rejected very much on the state of the law discourages litigation on doubtful new points. The failure of English law to develop more than a rudimentary corpus of social security case- law is an example. It must be stated therefore that there are interests not only in the sense of what people want but in the sense of what may be good for them regardless of their actual desires.

Pound sees law or legal rules as adjusting and reconciling conflicting interests. It is an instrument, which controls interest according to the requirements of the social order. It therefore follows that law represents the consciousness of the whole society. Ultimately, it only serves those interests that contribute to the good of the whole society. So Pound identifies the task of the good of the whole society. So Pound identifies the task of the lawyer as that of a "social engineer; (who) formulates a programme of action, attempts to gear individual and social needs to the valves of western democratic society. Law should be placed in its social context, of using these methods, of recognizing that many traditional jurisprudential questions are empirical in nature and not purely conceptual.

Roberto Unger in his law in modern society claims that each society reveals through its law the innermost secrets of the manner in which it holds men together. Unger's study of the legal order is directed towards showing why citizens of liberal society find it both necessary to subscribe to the rule of law and impossible to achieve it by applying it to social matters. The disintegration of traditional types of legality and legal thought reveals far- reaching changes in society and culture.

Self Assessment Exercise (SAE) 1

What do you understand by Roscoe Pound's "social Engineering"

3.2 Division of Topics into Chapters, Sections and Subsections

In Essay or project writing, a topic is chosen as the title of the project. The length of the project determines the number of chapters to be written. For example project topic title: "the law relating to job security in Nigeria" may consist of the following chapterisation:

Chapter one:	Introduction Chapter
two:	Literature review
Chapter three:	Job security in Nigeria
Chapter four:	Comparative studies of job security in Nigeria and other jurisdictions
Chapter five:	Conclusion/suggestion/ recommendation.

Each of the chapter above may also consist of sections and subsections e.g. chapter one above:

1.1 Introduction
1.2 Objective of study
(i) Background of job security
(ii) Unfair dismissal of employee

All other chapters can be subdivided into sections and subsection. The method and approach adopted is purely subjective. This entirely depends on the choice of the project writer.

Also, statutes can be divided into chapters and subsections. A good example is the Nigeria 1999 constitution. It contains chapters, sections, and subsections. For example, parts of a statute may consist of the following parts;

i. Short title
ii. Long title
iii. The preamble
iv. Commencement or extent clause
v. The Enacting clause
vi. The operative section
vii. Proviso
viii. Marginal notes
ix. Interpretation clause
x. Explanatory notes

xi. Consequential provisions
xii. Schedules or tables
xiii. Transitional provisions
xiv. Signature or assent

Topics are divided into chapters, sections and subsections for easy reading and understanding. When essays or projects are two lengthy in nature, it becomes boring and verbose. A reader may easily loose interest in studying or reading the work; to this end, it becomes necessary and in line with modern educational trends to divide topics into chapters, sections and subsections, with proper academic references or footnoting.

Self Assessment Exercise (SAE) 2

Why it necessary or important to divide projects into chapters?

3.3 **The Legal Profession**

The legal profession in Nigeria is over a hundred years old. The profession has also had a somewhat chequered development. Law is no doubt, one of the earliest professions in the world. Legal profession is made up of law officers as well as judicial officers. The law officers are the practicing lawyers who are at the bar and the judicial officers are those who presided over the courts as judges and magistrates. These are known as members of the Bench.

The Bench consists of judges of the High court appointed through special procedure laid down in the Constitution of the Federal Republic of Nigeria. Judges are appointed by the president on the recommendation if the Advisory Judicial Committee with the approval of the law- making body. The Chief Justice of Nigeria is appointed by the president in Consultation with the approval of the National Assembly. He must be a legal practitioner of not less than fifteen years experience and must be of good character.

Justices of the Court of Appeal are expected to possess minimum of twelve years experience while judges of High court shall have ten- year experience. Judges are expected to retire at the age of 70 years and earn their salaries for life. When judges retire, they cannot appear in any court as legal practitioners. They could also be removed only through specially laid down procedure, e.g. due to a serious misconduct unbecoming of a person of that status or due to ill health or unsound mind.

Unlike a judge however, magistrates are regarded as members of the lower Bench and they are appointed by the Public Service Commission on the advise of the Chief Judge of a state. Upon retirement or

resignation magistrates can still practice as legal practitioners, unlike a judge of the higher Bench.

All members of the Bench are given wide powers to enable them perform their duties without fear or favour e.g. the contempt powers which enable them to deal firmly with any act of indiscipline outside or inside their courts.

The Bar consists of the legal practitioners. The Attorney – General of the Federation is the official leader of Nigerian Bar. Any legal practitioner is entitled to practice as a barrister and as solicitor. This means that the profession is fused in Nigeria unlike England where one is either a qualified Barrister or a solicitor.

A Barrister goes to court to do advocacy or conduct litigation. A solicitor does not go to court; he merely renders advisory services and prepares legal documents. When a legal practitioner has acquired a wide range of experience, he could be appointed as a Senior Advocate of Nigeria (SAN) as a mark of honour and respect. This status entitles him to certain rights and privileges in the field of legal practice. For instance, there are minimum limits to the briefs he could take in terms of value. His cases shall be mentioned or called first before appearing in court and be must always be accompanied by a Junior.

The Licensing of lawyers is done by the council of legal education and the Body of Benchers both of which are established by law, while the Body of Benchers does the call and admits lawyers into the legal profession.

The council of legal Education was established by the Council of legal Education Act 1962. Its main function is to arrange for the education of persons seeking to become members of the legal profession. The council established the Nigerian law school for this purpose and essentially offers professional course for the award of B.L (Barrister at law). The council is also charged with the responsibility of continuing education for members of the legal profession in Nigeria.

The Nigerian law school offers courses in specialized areas of the Barrister's and Solicitor's functions. To be admitted into the school, the person must have obtained a pass degree in law from an approved university. The NLS has absolute right to admit and recommend to the Body of benchers persons whom it deems fit and proper to be member of the legal profession in Nigeria. The locus classicus is the case of **Dr. Okonjo vs. Council Of Legal Education (1979) Digest of Appeal Cases 28.**

The council also accredits institutions or facilities of law preparing students wishing to become lawyers with regards to their facilities like lecture rooms, staffing, library and other vital educational materials.

The Body of Benchers consists of:

1. The Chief Justice of Nigeria and all the Justices of Supreme Court;
2. The Attorney- General of the Federation;
3. The President of the Court of Appeal;
4. The President of the Federal High Court;
5. Chairman of Council of Legal Education;
6. The Attorneys – General of all the states;
7. The President of the NBA;
8. Members of the NBA of not less than fifteen years post – call experiences.

The Chief Registrar of the Supreme Court of Nigeria keeps and maintains a registrar-containing roll of legal practitioners. Only those called to the Bar and produce certificate of all to the Registrar are enrolled on the same day when the seniority ranks start to run.

The legal profession is regulated by strict rules of consult and attitude contained in the legal practitioners Act 1975 (as amended). It is important that a legal practitioner should pay his practicing fees before he can appear in any law court. Law also regulates the fees charged by lawyers on their clients.

Legal practitioners are also entitled to certain privileges like being appointed notaries public and SAN. The signature of a notary public is recognized allover the world. A senior Advocate Nigeria is to have taken "the silk" upon appointment. It is the equivalent of the 'Queen's counsel (Q.C) " in England. He leads the court. He must appear with a junior always. His matters are accorded priority attention on the court's cause list.

Self Assessment Exercise (SAE) 3

1. What is the difference between the Bench and the Bar?
2. What are the major functions of the council of legal education and the body of Benchers?
3. Read the case of Dr. Okonjo vs. council of legal education, state the fact of the case, the issues and the decision of the court.

4.0 CONCLUSION

Indeed, this is a very important unit. The unit enables you to know how legal rules are applied to social matters and the doctrine of social engineering as propounded by Roscoe Pound. A brief study of the legal profession in Nigeria was also discussed. Our suggestion is that you study more on this unit on your own in the recommended texts below.

5.0 SUMMARY

In this unit, you have learnt about the following:

(i) the application of legal rules in social matters;
(ii) division of topics, into chapters, sections and subsections;
(iii) the legal profession;
(iv) the council of legal education;
(v) the Bench; and
(vi) the Bar and constitution of the Body of Benchers.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

List in the order of hierarchy the constitution of the Body of Benchers.

7.0 REFERENCES

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UNIT 4 THE STRUCTURE OF COURTS IN THE CONTEMPORARY ENGLISH LEGAL SYSTEM.

CONTENTS

1.0 INTRODUCTION

A working knowledge of the English court structure in required for the understanding of the location of adjudication, the types of dispute handled and the interaction of culture and personnel. This is important because Nigeria inherited her legal system from the English system. You should learn the jurisdiction of each type of the English court just like Nigerian courts, how it fits into the hierarchy of courts, how it compares with other courts in terms of workload and how it is organized. The relevant English courts are, beginning with the lowest:

1. Magistrates Courts;
2. County courts;
3. the High courts;
4. the Court of Appeal;
5. the House of Lord;
6. the Judicial Committee of the Privy Council; and
7. T he European Court of Justice

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Explain the essential nature of an English court and the particular kind of decision-making;
2. Identify the main types of court currently used in the English legal system and outline the nature of their jurisdiction; and
3. Highlight the distinguishing feature in the operation of a court from arbitration and mediation.

3.0 MAIN BODY

Structure of English Court

1. Magistrates' Courts

Magistrates' courts in the English system have a wide and varied jurisdiction. They are involved in some way in virtually all criminal prosecutions, magistrates hear cases concerning young persons when constituted as a youth courts, family or domestic proceedings, as well as enforcement of income tax or local tax.

Magistrates' courts are therefore of enormous importance in the English system in the criminal justice decision-making process. They also grant or refuse licenses for the sale of alcoholic liquor, betting, etc. Aside from their breadth of jurisdiction, the most important feature of the English magistrate courts is the extensive involvement of lay people (non - professionals) as judges.

There are approximately 26,000 magistrates who sit as unpaid, part-time lay judges, in Inner London, by contrast, there are Professional Stipendiary Magistrates', who are also called judges and Magistrates Court, who are advised by a professionally qualified clerk.

2. The County Courts

There are almost 250 County Courts in England and Wales. As a result most medium sized and large towns contain this court of first instance in the civil justice process. The bulk of cases heard before them are routine attempts at debt collection. The modern county courts date from 1846. Their jurisdiction has always been subject to both financial and geographical limits, but within those limits, jurisdiction has generally been concurrent with that of the High Court.

As of January 1999, while actions for certain sums may begin in the county court and more on the High court, the county court will normally hear cases in contract and torts to a limit of £25,000, and certain property and other matters to a limit of £30,000. Claims in contract or tort between £25,000 and £50,000 can either be heard in the county court or High Court, while claims over £50,000 will be heard in the High Court. Most of the work in the county courts is conducted by District Judges of whom there are around 370 in England and Wales.

Self Assessment Exercise (SAE) 1

Discuss briefly the jurisdiction of the Magistrates and county courts under the English Legal System.

3. The Crown Court

Although predominantly a court of first instance, for the trial of the more serious criminal offences, the Crown Court also has significant appellate and civil business. The most controversial aspect of the crown courts jurisdiction concerns the extent to which an accused person should have the right to insist upon trial by jury.

4 . The High Court

The High Court is based in London, with various provincial branches. The High Court has three branches:

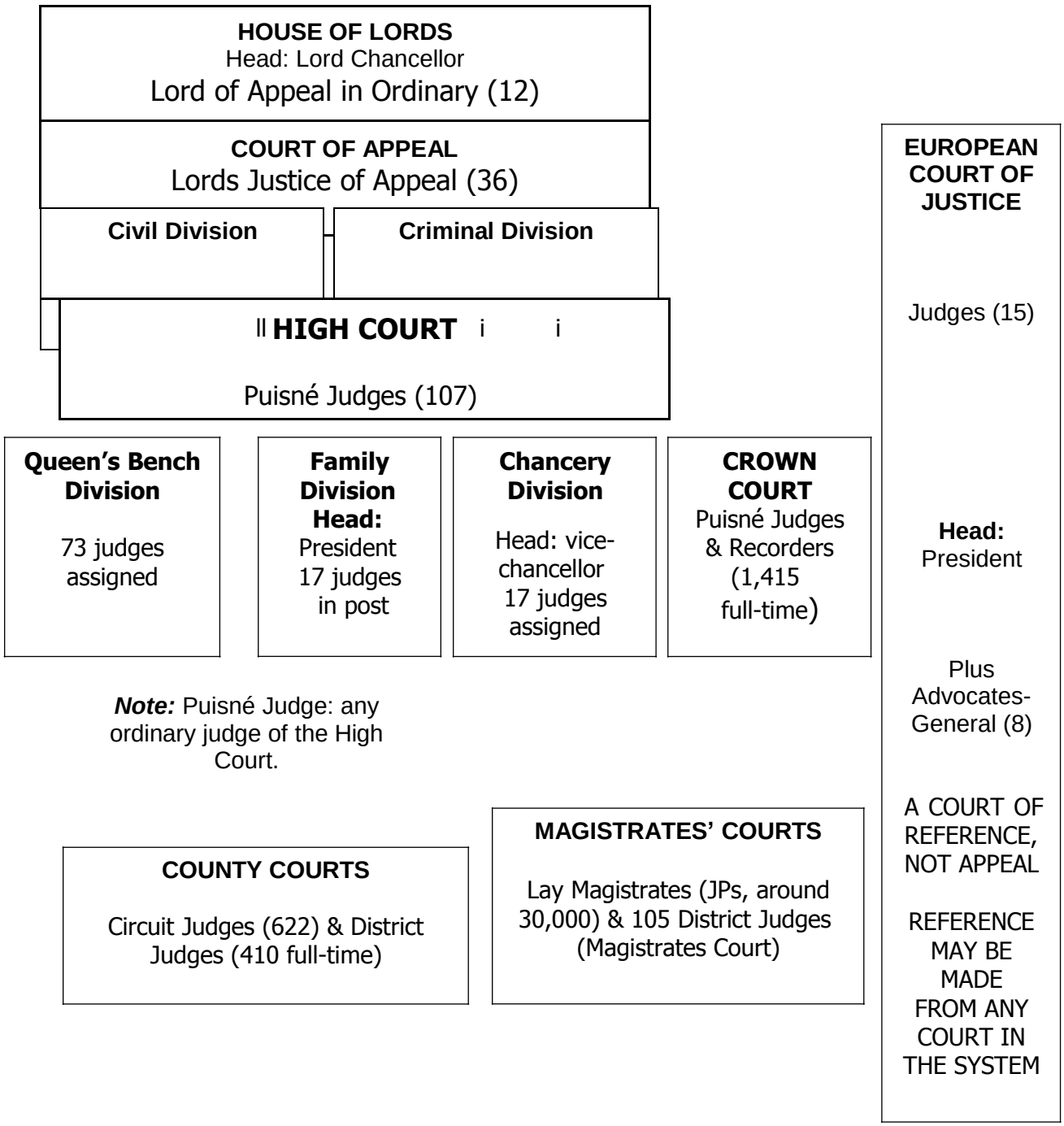
1. The Chancery

The court of chancery mainly deals with trust matters, conveyances, mortgages, contested probate, intellectual property other than that covered by the Patent Court, bankruptcy and appeals from decisions of commissioners of Inland Revenue.

2. The Queen's Bench
   This court deals mainly with personal injury, contract and tort claims.
3. The family Division
   This court hears divorce cases and ancillary matters, and children Act cases.

Self Assessment Exercise (SAE) 2

What do you think is the basic difference between the English High Court and the Nigerian High Court?



The contemporary court structure (adapted from Holland and Webb (2003), P. 13

5. The Court of Appeal

The court of Appeal was established by the Judicature Act (JDA) 1873. Together with the High Court of Justice, the court of Appeal forms the Supreme Court of Justice.

Senior judges, serve the court of Appeal currently 35, termed Lords Justices of Appeal. Additionally, the Lord Chancellor, the President of the family Division of the High Court, the Vice Chancellor of the chancery Division and High Court Judges can sit. The court hears appeals from the three divisions of the High Court, the Divisional Courts, the county courts, the Employment Appeal Tribunal, the Lands Tribunal and the transport Tribunal. The most senior judge is the Master of the Rolls. Usually, three judges will sit to hear an appeal, although for every important case five may sit. In the interests of business efficiency, two judges can hear some matters. These include:

1. Applications for leave to appeal;
2. An appeal where all parties have consented to the matter being heard by just two judges; and
3. Any appeal against an interim order or judgment.

6. The House of Lords

Acting in its judicial capacity, as opposed to its legislative one, the House of Lords is the final court of appeal in civil as well as criminal law. Its judgments govern the courts in England, Wales and Northern Ireland. They can also govern civil law in Scotland. Most appeals reaching the House of Lords come from English civil cases.

The appeals are heard by Lords of Appeal in ordinary, of which there are currently 12. Two of these must be from Scotland and one from Northern Ireland. Other senior judges like the Lord Chancellor sometimes sit to hear appeals. It is customary only for peers with distinguished legal and judicial careers to become Law Lords. For most cases, five Law Lords will sit to hear the appeal, but seven are sometimes convened to hear very important cases.

7. The European Court of Justice

The European Court of Justice (ECJ) sits in Luxembourg. Its function is to ensure that in the interpretation and application of this treaty (The EEC Treaty 1957) the law is observed. The ECJ is the ultimate authority on European law. As the Treaty is widely composed in general terms, the court is often called upon to provide the necessary detail for European law to operate. By virtue of the European Communities Act 1972,

European law has been enacted into English law, so the decisions of the court have direct authority in the English jurisdiction.

The ECJ hear disputes between nation and between nations and European institutions like the European Commission. An individual, however, can only bring an action if he is challenging a decision that affects him.

The treaty states in Article 234 that any to the ECJ if it considers that a decision in that question is necessary to enable t any judicial or quasi-judicial body however low ranking, may refer a question it to give judgment and that such a reference must be made where any such question is raised in a case before a national court from which there is no further appeal.

Lord Denning MR formulated guidelines in **Bulmer Vs**. **Bollinger (1974**) as to when an inferior court should refer a case to the ECJ for a preliminary ruling. He offered four guidelines to determine whether the reference was necessary within the meaning of Article 234:

1. The decision on the point of European law must be conclusive of the case;
2. The national court may choose to follow a previous ruling of the ECJ on the same point of community law, but it may, choose to refer the same point of law to the court again in the hope that it will give a different ruling;
3. The national court may not make a reference in the grounds of acte clair where the point is reasonably clear and free from doubt; and
4. In general, it is best to decide the facts first before determining whether it is necessary to refer the point to community law.

   The ECJ is a court of reference, the ruling the court makes is preliminary, in the sense that the case is then remitted to the national court for it to apply the law to the facts. The court only addresses itself to points from actual cases; it will not consider hypothetical problems.

Lord Diplock in **R Vs Henn (1981)** has characterized the ECJ's work in the following way:

"The Courts, applies teleological European court, in contrast to English rather than historical methods to the interpretation of the Treaties and other community legislation. It seeks to give effect to what it conceives to be the spirit rather than the letter of the Treaties, sometimes, indeed, to English judge, it may seem to the exclusion of the letter. It views the communities as living and

expanding organisms and the interpretation of the provisions of the Treaties as changing to match their growth".

The ECJ is made up from senior judges from each member state (15) and a President of The Court assisted by nine Advocates General. The Advocates General are persons whose independence is beyond doubt and their task is to give to the court a detailed analysis of all the relevant legal and factual issues along with recommendation. The court does not necessarily follow the recommendations, but they can be used on later occasions as persuasive precedent. The court attempts to ensure consistency in its decisions, but is not bound by precedent to the same extent as a court in England.

8. The European Court of Human Rights

The European Court of Human Rights (ECHR) does not arise from the EU, but arises from the 1950 European Convention on Human Rights, signed by 21 European States including, the U.K. It deals with matters relating to human and political rights. The ECHR sit in Strasbourg and consists of judges from each member state. The signatory states undertook to guarantee a range of human and political rights to the citizens within their jurisdictions.

9. Judicial Committee of the Privy Council

Judicial Committee of the Privy Council was created by the Judicial Committee Act 1833. Under the Act, a special committee of the privy council was set up to hear appeals from the Dominions. The cases are heard by the judges (without wigs or robes) in a committee room in London. The committee's decision is not a judgment but an advice to the monarch, who is counseled that the appeal be allowed or dismissed.

The committee is the final court of appeal for certain common wealth countries that have retained this option, and from some independent members and associate members of the common wealth. The committee comprises privy counselors who hold or have held high judicial office. In most cases, which come from places such as the Cayman Islands and Damaica, the committee comprises five Lords of Appeal in ordinary, sometimes assisted by a judge from the country concerned. The decisions of the privy council are very influential in English courts because they concern points of law that are applicable in this jurisdiction and they are pronounced upon by Lords of Appeal in ordinary in a way which is thus tantamount to a House of Lords' ruling. These decisions however, are technically of persuasive precedent only, although English courts normally follow them.

Self Assessment Exercise (SAE) 3

1. Using a well-labeled diagram, show the hierarchy of court in the English legal system.
2. Discuss the role of the European court of Justice and the European court of Human Right on the administration of Justice.
3. Is there any similarity between the English court system and Nigeria court system?

4.0 CONCLUSION

Court can only decide questions of law, and its decision in each case is based on the Generally, the appellate record made during the trial. Appellate courts do not receive new testimony or decide questions of fact, and in a lot of jurisdictions the appellate courts only issues written opinions. All jurisdictions in the English legal system have a final court of appeal.

5.0 SUMMARY

In this unit, you have learnt that the different courts are arranged in a hierarchical framework on the basis of seniority. The higher the level of seniority, the greater the court's authority. This is essential for the nature of precedent. In general there is trial courts and appellate courts. The former are the courts where the trial is heard sometimes referred to as courts of first instance. Where the parties appear, witnesses testify, and the evidence is presented. The trial court usually determines any questions of fact in dispute and then applies the relevant point of law. Usually, once the trial court reaches a decision, the losing part has a right to appeal to an appellate court.

6.0 TUTOR-MARKED ASSIGNMENT (TMA)

What are the differences if any, in the system of adjudication between the Supreme Court of Nigeria and the House of Lords in England?

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UNIT 5 THE HIERARCHY OF THE JUDICIARY IN THE ENGLISH LEGAL SYSTEM

CONTENTS

1.0 INTRODUCTION

The role and function of the judiciary in England and Wales has changed considerably in recent years. It has become larger, more professional and better trained, while its increasing role in interpreting and applying human rights law and scrutinizing official decision-making has drawn it into more politically sensitive areas.

One impact that these changes have had on the English judiciary is that the judicial appointment process has attracted more public attention. In particular, the continuing lack of diversity in the composition of the judiciary, the risks of politicization and the lack of accountability in the selection process have become more pressing issues in the light of the expanding role of the judges. For instance, in 2004, these concerns led to the introduction of fundaments changes to the judicial appointments process.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) List the main functions performed by the judges;
(ii) Explain the way the system of precedent works;
(iii) Describe the process by which English judges are appointed; and
(iv) List the possible means by which the English judicial independence and
judicial accountability are protected and promoted.

3.0 MAIN BODY

3.1 The hierarchy of the English Judiciary

In the 1970s, there were around 300 judges in England and Wales, by 2002 this figure had grown to over 3,500 of which approximately one -third are practicing lawyers who sit as part-time judges. Almost all full-time judges are appointed after a period of part-time service, which is seen as a way of testing out the competence of those who seek judicial office. There is a wide range of judicial officers in England and Wales and most judges hear both criminal and civil cases at trial and appeal level.

Before 2004 the England judiciary was headed by the Lord Chancellor. He was also the speaker of the House of Lords (legislative) and a member of the cabinet (government). These overlapping constitutional roles became increasingly controversial as they breached the principle that there should be a separation of powers between the judiciary, the legislative and the executive. In 2003, the English Government announced that the office of the Lord Chancellor was to be abolished. This change was included in the Constitutional Reform Bill introduced in 2004, which established the Lord Chief Justice as the Head of the Judiciary. The proposed abolition of the office of Lord Chancellor has attracted some strong opposition and it is likely possible that there will be amendments to the Bill, which will result in the office of Lord Chancellor being retained in some more limited form. One outcome which seems clear, however, is that the Lord Chief Justice will have a much more extensive role than in the past.

In addition to being the most senior sitting judge, the Lord Chief Justice is also the Head of the Court of Appeal (criminal Division). Under the provisions of the Constitutional Reform Bill, he is also now formally the Head of criminal justice. The other most senior judges are the Master of the Rolls (MR) Head of the civil Division of the Court of Appeal and Head of Civil Justice, the President of the Family Division (Head of the family Division of the High Court and from 2004 Head of family Justice), and the chancellor (Head of the chancery Division of the High Court). Until 2004, the Chancellor was known as the Vice Chancellor but has been re-titled in anticipation of the abolition of the office of Lord Chancellor.

Self Assessment Exercise (SAE) 1

Highlight and discuss the main characteristics and features of the English judiciary between 1970 to 2004.

3.2 OVERVIEW OF THE DIFFERENT RANKS OF JUDGES SUPREME COURT JUDGES

At the time of writing this course guide, the highest court in the U.K is the Appellate Committee of the House of Lords. Its members are known as the Law Lords (the upper chambers of parliament). They are full-time judges. Under the provision of the Constitutional Reform Bill 2004, the Laws Lords will be removed from the House of Lords and reformed into an independent Supreme Court so as to ensure a clear separation between the judiciary and the legislature. It is not clear exactly when this change will be implemented. Once the new system is up and running, it is envisaged that the current and future judges in the Supreme Court will fulfill essentially the role and functions as the Law Lords have done. The judges will continue to be appointed from the Court of Appeal, though they may occasionally be appointed directly from practice or from amongst leading academics. The court's role will continue to be hearing both civil and criminal appeals of general public importance.

(a) Lords and Ladies Justice of Appeal

Judges in the court of Appeal are usually appointed from the High court. They hear both civil and criminal appeals. The civil division sits in panels of twos or threes while the criminal division sits in threes, usually made up of one Lord Justice with two High Court judges or with one High court judge and one circuit judge.

(b) High Court Judges

High Court Judges (or puisne judges) are usually appointed from the ranks of Recorders or Deputy High Court Judges, or occasionally from the circuit Bench. They are appointed to one of the three Divisions of the High Court (Queen's Bench family and chancery) and regularly travel around England hearing the most important civil and criminal cases.

(C) Deputy High Court Judges

These judges are also senior practising lawyers who sit as part-time High Court Judges. They do not have security of tenure and are appointed when the workload of the court requires more temporary judges. Some, however, still go on to be appointed to be full-time High Court Bench.

(d) Circuit Judges

Usually appointed from among Recorders or district judges, circuit judges hear middle-ranking and more serious criminal cases in the Crown Court and civil cases in the County Court.

(e) District Judges

The District Judges are appointed from Deputy District judges. Most district judges are former solicitors. They handle the bulk of less serious judicial work in the County Court. They carry out a wide range of different work such as family cases, breaches of contract and negligence claims.

(f) District Judges (Magistrates' Courts)

These are professional magistrates who are lawyers (unlike the majority of about 30,000 magistrates, who are lay people). They sit in the Magistrates' Courts hearing mostly the more serious criminal cases. They also hear some civil work such as family cases.

(g) Recorders

These are part-time judges. They are practicing lawyers (barristers or solicitors) who sit as judges for approximately 20 days per year. They hear both criminal and civil cases sitting in the Crown Court and County Court.

Self Assessment Exercise (SAE) 2

Identify and explain the major difference and similarities between the English Judiciary and Nigerian Judiciary in the category of persons appointed as judges.

3.3 Judges' Function

Dispute Settlement

Most judges spend most of their time in work relating to dispute settlement in the civil and criminal courts. In civil courts, this involves determining procedure, deciding which facts are proved, applying settled law to those facts, reaching a decision, writing a judgment setting out the reasons for that decision and deciding on costs. In criminal cases, fact-finding is carried out by lay magistrates and juries. Professional judges sit in the Crown Court with a jury and decide questions of law and procedure, costs and sentencing. Since most defendants either plead guilty or are found guilty, sentencing is a major function of a criminal judge. The sentencing system in England and Wales, in contrast to that of other jurisdictions such as many U.S. States, offers a wider measure of judicial discretion.

(a) Case Management

Since 1999, when the major reforms were introduced to the civil justice system in English legal system following the Wolf report, judges have spent much more of their time actively managing cases before and during trial. Previously, judges usually came to court knowing very little about a case and were expected to fulfill a limited 'reference' role, leaving much of the management of the case to the lawyers. Presently, they must read the papers before the trial and participate in decisions about matters such as which expert witnesses are to be called.

(b) Training

Changes such as the growth of case management, the introduction of the Human Right Act 1998 and the expansion in the range of sentencing options available to judges, have all increased the need for the English judiciary to receive appropriate training. Traditionally, however, judges did not consider that training was necessary and indeed, regarded it as a potential threat to their independence. The establishment in 1979 of the Judicial Studies Board, which provides training to judges, was only considered acceptable because judges ran it and the training provided was largely voluntary. Since then, however, the range and amount of training have increased and judges now generally welcome all the training they can get although this still amount to only a few days a year in average.

(c) Extra-judicial Activities

In addition to the diverse range of judicial work, which judges carry out, many also fulfill a number of different responsibilities not directly related to their caseload. Many senior judges are involved in decisions about staffing resources and deciding which cases will be heard by which judges and when. Almost all judges are involved in the consultation process for the appointment to judicial office. Some judge spend time dealing with the media advising on the use of information technology in the courts, consulting with court users' groups, receiving and giving judicial training, delivering lectures and public speeches, writing personal articles, and giving evidence to or heading government inquires.

(d) Judicial Review

Senior judges also play an important role in placing a check on official action. Over the last 40 years in the English legal system judges have developed the law of judicial review which gives them the power to quash decisions that are illegal because they go beyond the decision-

maker's powers or have been arrived at through an unfair or irregular procedure.

(e) Interpreting Statutes

Legislation has increased in quantity and scope in the English jurisdiction. As a result, many cases decided in the courts now involve the consideration of statutory provisions. Three rules have traditionally been used to assist judges in deciding how to interpret legislation that is unclear or has more than one possible meaning. The traditional approach to statutory interpretation is to respect the authority of the words in the statutes drafted and to seek to apply their plain and obvious meaning, whether or not this reading leads to a sensible outcome (the 'literal approach'). A modification of this approach is the golden rule which states that where the application of the literal rule lead to a manifest absurdity, the judges are required to interpret and if necessary adapt the language of the statute in order to produce a sensible outcome. More recently, judges have increasingly preferred a third approach – the 'mischief rule – which seeks to identify accurately, the need to understand why parliament wished to pass the law in the first place. This is sometimes called a 'purposive or purposeful approach'.

Self Assessment Exercise (SAE) 3

1. Discuss briefly any three traditional functions of the judges.
2. Describe the ways judges approach the task of interpreting statutes.
3. What is judicial review? Why do you think judicial review is necessary in any legal system?

4.0 CONCLUSION

The literal rule, golden rule and mischief rule are guidelines developed by the courts to help the judges approach the task of statutory interpretation. Increasingly, judges apply a purposive approach, which requires them to look for the underlying intention of parliament in passing the statute

5.0 SUMMARY

In this unit, you have learnt that the judiciary in England and Wales is organized in a clear hierarchy of ranks with relatively low levels of specialization. Most judges hear both civil and criminal cases at first instance and at appeal. Throughout the system there is a heavy reliance or the use of part-time judges, many of whom go on to be appointed to full-time post.

6.0 TUTOR-MARKET ASSIGNMENT (TMA)

Describe two advantages and two disadvantages of the traditional reliance on the use of part-time judges in the English legal system.

7.0 REFERENCES

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