EDO UNIVERSITY, IYAMHO

FACULTY OF LAW

DEPARTMENT OF PRIVATE AND PROPERTY LAW

CUSTOMARY LAW (PPL 213)

Instructor: Dr S.E. Imoisi, email: imoisi.simon@edouniversity.edu.ng

Lectures: Wednesday, 9am-10 am, Thursday, 8am-10am, LT12, phone: (+234) 8056460834

Office hours: Wednesday, 10 am -11am, Office: Rm 5, Faculty of Law.

General Overview of lecture: The course introduces the concept of customary law which is one of the sources of law in Nigeria. The various definitions of customary law and the basic characteristics would be considered. The concept of Islamic law would also be considered with a view to distinguishing whether or not Islamic law is customary law. The course will deal with customary law legislation in traditional African societies, the judicial process and the various methods of proof of customary law. Practical examples would be employed to drive home the points discussed. The course shall also deal with the law of wrongs and validity of customary law.

Prerequisites: The students are expected to have a strong background of the basic principles of the Nigerian Legal methods.

Learning Outcomes: At the completion of this course, students are expected to:

i. Have a better understanding of the concept, principles and characteristics of customary law
ii. Have a better understanding of the principles and characteristics of Islamic law
iii. Differentiate between customary law and Islamic law
iv. Trace and understand the sources of customary legislation
v. Understand the judicial process and indigenous systems of adjudication of customary law
vi. Determine the methods of proof of customary law
vii. Determine the validity of customary law

viii. Distinguish between criminal, civil wrongs and English law

Assignments: We expect to have 3 home assignments throughout the course in addition to a Term paper, Mid- Term Test and final exam. Term papers are given at the beginning of the class and submission will be on the due date. Home works in the form of individual assignments, and group assignments are organized and structured as preparation for the mid-term and final exam and are meant to be a studying material for both exams.

Grading: The following is the grading system for this course.

Grading System

- Continuous Assessment 30%
- Examination 70%
- Total 100%

Any Students who submits assignment late, fail to do it or miss any test without cogent reason shall be scored zero. Seventy-five percent class attendants is a precondition to write the exam at the end of the semester.

Note: Names of students who meet the required attendance percentage shall be published not later than two weeks to the end of the semester.

Recommended Texts: The following are the recommended textbooks for this course:

1. Nature of African Customary Law by Dr. T.O. Elias

2. Family Property among the Yorubas by G.B.A. Coker

3. Emiola's African Customary Law by Prof. Akintunde Emiola

4. Criminal Policy, Traditional and Modern Trends by Hon. Justice Karibi Whyte

5. Customary Law in Nigeria through the cases by A.A. Kolajo

6. A Handbook on Some Benin Customs and Usages issued by the Benin Traditional Council on the authority of the Oba of Benin

Courseware: PPL 213- Customary Law

The following documents outlines the courseware for the course PPL 213- Customary law. Much of this material is taken from recommended text books.

1. INTRODUCTION

The study of Customary law is very important for law particularly those studying in traditional African societies like Nigeria due to the peculiarities of the study to home grown legal studies, adaptation and practice.

2. DEFINITION OF CUSTOMARY LAW

The first authoritative pronouncement on the nature and status of customary law was made by the Nigeria Supreme Court in the case of Kharie Zaidan v. Fatima Khalil Mohssen (1973) All NLR p. 740 at 753 where, customary law was defined as follows; "customary law is a system of law not being the common law of England and not being a law enacted by a competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway''.

From the various definitions therefore, the basic criteria or test of customary law are three:

i. It must be the accepted custom that regulates the conduct of the people

ii. The custom must be enforceable if violated. This is because, not all custom are enforceable.

iii. It must be the custom of ancient usage from time immemorial which derives its source from the prescribed authority.

3. CHARACTERISTICS OF CUSTOMARY LAW

Traditional African customary law has some basic characteristics that distinguish it from the Received English Law. The basic characteristics of African customary law are as follows:

1. It is unwritten

2. It has un-organized sanction

3. Flexibility

4. Acceptability

5. Must be in existence

6. Must pass the validity test

THE VALIDITY TEST

The applicability test is a test that enhances one's knowledge on the validity or otherwise of a particular custom. Three distinct tests are implied or used to determine this. The tests are;

a. The repugnant test,

b. The public policy test, and

c. The incompatible test.

4. WHAT IS ISLAMIC LAW?

5. SOURCES OF ISLAMIC LAW

a. The Holy Qur'an

b. Sunnah

c. The Ijma

d. The Qiyas

6. LEGISLATION IN TRADITIONAL AFRICAN SOCIETIES

There were two types of society, viz; the cephalous and the acephalous society.

7. SOURCES OF CUSTOMARY LAW LEGISLATION

The methods by which the legislations become under the customary law system are as follows:

1. The personal decree of a reigning king or chief

2. Joint resolution of the king's advisers arrived at during deliberations in executive councils.

3. Ad hoc proclamation by spokesmen of some secret society in existence in the community.

4. Authoritative declaration of specific rules and regulations arrived at after the debates at public assembly summoned for the purpose.

5. Opinions of writers of books and judicial modifications of old rules in the course of settling disputes.

8. THE JUDICIAL PROCESSS: INDIGENOUS SYSTEMS OF ADJUDICATION

9. CUSTOMARY ARBITRATION

10. CONDITIONS PRECEDENT FOR BINDING CUSTOMARY ARBITRATION

For a customary arbitration award to be binding or complied with by the parties concerned, the following four conditions must be met or satisfied;

1. The parties must have voluntarily submitted themselves for customary arbitration

2. The award must be in accordance with the custom of the people in the given community

3. Initial willingness of parties to be bound by the decision of the chiefs and elders of the community

4. The award must be final and must be published.

11. OATH TAKING IN CUSTOMARY ARBITRATION

12 METHODS OR MODES OF PROOF OF CUSTOMARY LAW

In Nigeria, customary law is a peculiar system of law in that under the Nigeria Legal System it is regarded as a matter of fact not a matter of law.

A rule of customary law has to be proved or established before the courts because it is regarded as fact.

13. METHODS OF ESTABLISHING CUSTOMARY LAW

Customary law can be established or proved in two major ways;

1. by calling witness (es)

2. by judicial notice

3. Judicial Notice

4. Use of Books or Manuscripts

14. PUNISHMENT AND REMEDIES UNDER CUSTOMARY LAW

The reason for punishment of criminal wrong under customary law is for the following;

1. Embarrassment or humiliation

2. The punishment for wrong under customary law could be banishment, especially for heinous crime like witchcraft, incest, etc.

3. Ostracism

4. Flogging.

5. Amputation.

6. Killing

Remedies for Civil Wrong

There are basically two types of remedies for civil wrong under customary law, namely;

1. Temporary remedy also known as physical remedy, and

2. Supernatural remedies like oath taking

Mode of enforcing judgment under customary law

There are equally two modes of enforcing judgment under customary law. These include;

1. Self – help.

2. Spiritual sanction like swearing to an oath or some kind of juju.

15. LAW OF WRONGS: Distinguishing between criminal wrong and civil wrong

The difference between civil wrong and criminal wrong is that while in civil wrong, the action affect only the party or the victim, in criminal wrong however, the action affects the generality of the masses.

16. CUSTOMARY LAW CONTRACT: OBLIGATIONS ARISING FROM CONTRACT AND STATUS

A contract is defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties.

Under the customary law system, there existed contract between the natives. Sales of land, chattel, and other things were carried out by trade by barter.

MAIN LECTURE

Course Outline

1.0 Introduction to Customary Law

1.1Definition of Customary Law

1.2 Characteristics of Customary Law

1.3 What is Islamic Law?

1.4 Sources of Islamic Law

1.5 Customary Law and Legislations in Traditional African Societies

1.6 Sources of Customary Law Legislation

2.0 The Judicial Process

2.1 Indigenous Systems of Adjudication

2.2 Conditions Precedent for Binding Customary Arbitration

2.3 Oath Taking In Customary Arbitration

2.4 Methods or Modes of Proof of Customary Law

3.0 The Law of Wrongs: Distinction between Criminal and Civil Wrongs and English Law

3.1 Validity of Customary Law

1.0 INTRODUCTION

The study of Customary law is very important for law students particularly those studying in traditional African societies like Nigeria due to the peculiarities of the study to home grown legal studies, adaptation and practice. This is so because every Nigerian is usually situated to a particular tribe or society.

The conventional approach to the study of any subject is to define its scope and features preparatory to the main study. Unfortunately, the study of African customary law is not one of those subjects that offer itself to this traditional method or approach. The study of customary law is tied to history.

Nigeria was a great colony of Great Britain likewise other African Countries. It is trite that when the colonial masters came to their African colonies, they met established structures of government in various forms and degrees irrespective of political and social development of the individual societies.

Egypt among the other African countries was adjudged to be the cradle of civilization. Aside Egypt, there existed other highly developed kingdoms and empires spreading across the East, Central and Western African sub regions. Some of these kingdoms include the Songhai, Bornu, Benin, Ashanti and Zulu empires or kingdoms. Due to the existence of established systems of government in some of these communities, it was easy for the European traders to transact business and conclude treaties with these African countries and societies.

In traditional African societies, two types of societies exist which are the Cephalous and the A cephalous societies. The Cephalous societies refer to traditional African societies that are ruled by central authorities like Kings. The King under this system is the head of the community and Commander in chief of the army under his domain. He resolves disputes between his subjects or between families and his decision is final. In most African societies Kingship is hereditary (i.e. from father to son). For example, in Benin kingdom, ascension to the throne of the Oba is hereditary. In other societies, kingship revolves around a ruling class of princes. For example, in Auchi community, the Yoruba's and the Ash antes of Ghana.

On the other hand, the acephalous societies refer to traditional African societies without a recognized head. They operate through what is regarded as 'collective leadership'. It refers to a small scale society organized into bands or tribes that make decisions through consensus decision making rather than appointing permanent Chiefs or Kings. For example in Igbo land the Amaala system is employed. It places reliance on the head of extended families or lineages and the 'village assembly of citizens.' The Igbo communities in the ancient days were made up of wards grouped around a large village market which operated every four-

eight days depending on the size of the community. Meetings were held inside the market or in an Elder's compound. According to Prof. Emiola, the administrative machinery of acephalous societies was diffuse as the territorial units are built upon the family rather than political ties.

The traditional African society is Patrilineal in nature. This means succession to a property is through the male line. However, the supreme court of Nigeria has changed this position. Under the current dispensation females are entitled to inherit properties of their late parents. In some other traditional African societies, they are Matrilineal in nature. For example societies like the Ashante of Ghana, some Ijaw clans in Nigeria and the Indian community. This means succession to kingship or property is through the female line.

DEFINITION OF CUSTOMARY LAW

Customary law can be defined as a rule or bodies of rules regulating rights and imposes correlating duties. Being a rule or bodies of rules un-enacted by the legislature, fortified by established usages and which are appropriate and applicable to any particular course, action, suit, matters or dispute.

Dr. T.O. Elias, in his book "Nature of African Customary Law" defined customary law as follows: "the law of a given community is the body of rules which are recognized as obligatory by its members". This recognition must be in accordance with the principles of their social imperative because operations in every community is a dynamic social conduct and accepted norm of behaviour which the vast majority of its members regard as absolutely necessary for the common weal (well-being).

The first authoritative pronouncement on the nature and status of customary law was made by the Nigeria Supreme Court in the case of Kharie Zaidan v. Fatima Khalil Mohssen (1973) All NLR p. 740 at 753 where, customary law was defined as follows; "customary law is a system of law not being the common law of England and not being a law enacted by a competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway''.

In Oyewumi v. Ogunesan (1990) 3 NWLR (Pt. 137) 182, per Obaseki JSC(as he then was) defined customary law as follow:

"Customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that the custom is a mirror of the culture of the people.''

In that case, the issue for the court to determine was whether by the customary law prevailing in Ogbomosho, all land in that area of Oyo State belong to the reigning Shoun of Ogbomosho so that anyone claiming to sell land can only validly do so by tracing his title directly or indirectly

to the Shoun, and whether the High Court and the Court of Appeal were correct in relying on evidence of acts of possession to establish the title or the right to possession of the plaintiff.

In the case of Bakare Alfa & Ors v. J. Arepo (1963) WNLR p. 95, Gruffus J. defined customary law as "ancient rules of law which are in existence in a particular community and which are binding on the inhabitant thereof and which rules do change with the time and rapid development of social and economic conditions.

Lloyd in his book titled "Yoruba Landlord" defines customary law as "the ancient law, the law which has always been observed; it's supposed antiquity is the basis of its authority. This means that no one can actually tell the source or origin of customary law, its origin is unknown even to the people among whom it is practice.

Customary Law was defined by the High Court in Saka Salau v. Alimi Aderibigbe (1963) WNLR 80-86 as "those rules of conduct which the persons living in a particular locality have come to recognise as governing them in their relationships between one another and between themselves and things.

In Owonyi v. Omotosho (1961) 2 SCNLR 57, the Supreme Court defined customary law as the "rules of conduct accepted by members of a particular community as binding among them. It is a mirror of accepted usage as pronounced by the superior court of record.

Section 16 of the Evidence Act, 2011 states that a custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence. Further, Section 17 of the Evidence Acts 2011 states that a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record.

It is apposite to state that customary law must be in current usage and not that of bygone days. This is why it has been described as "a mirror of accepted usage". By implication, ancient custom which the present generation cannot link cannot form part of the customary law of the people. This principle has found application in the case of Agbai v. Okogbue (1991) 7 NWLR (pt.204) 391 where the court held inter alia that the customary law which the courts are required to enforce must be existing and current customary law and not of bygone days.

From the foregoing definitions therefore, the basic criteria or test of customary law are three:

i. It must be the accepted custom that regulates the conduct of the people

ii. The custom must be enforceable if violated. This is because, not all custom are enforceable.

iii. It must be the custom of ancient usage from time immemorial which derives its source from the prescribed authority.

1.1 CHARACTERISTICS OF CUSTOMARY LAW

Traditional African customary law has some basic characteristics that distinguish it from the Received English Law. The basic characteristics of African customary law are as follows:

1. It is unwritten

2. It has un-organized sanction

3. Flexibility

4. Acceptability

5. Must be in existence

6. Must pass the validity test

Unwritten

African customary law is not compiled, codified, or legislated in the form of statute law; it is largely unwritten just like the English common law is unwritten. It cannot be found in any written book, but it is in existence, every member of the community knows it even though it is not written anywhere. Professor Antony Allot in his essay "African Law" appraised the unwritten nature of customary law thus; "First the law is unwritten... they exist only in the minds of those who administer and those who are subject to it. There is not pondering over legal principles, no juristic analysis, no criticism or refurbishing of old precedents, all of which depend on written texts which the justice may scrutinize at leisure". The principle that African Customary Law is usually unwritten but recognised as law by the members of the ethnic group is illustrated in the case of Lewis v. Bankole (1908) 1 NWLR 81 at 100. In the Bini culture for example, Odionwere is not hereditary but by age. By implication, upon the demise of Odionwere, the oldest man automatically becomes the new Odionwere by the Bini culture. Even though this rule is not written anywhere, it is known and recognised by all who are subject to it. It is the unwritten feature of customary law that distinguishes it from the Received English Law. This rule is illustrated in the case of Griffin v. Talabi, where the Court of Appeal at page 372 held that purchase receipt and conveyance clearly evidence a transaction, the nature of which is unknown to native law and custom. Similarly, in Cole v. Folami, it was held by the Supreme Court that the making and giving of receipt are unknown to native law and custom.

Customary law is therefore derived from and based on the customs and usages of a particular people.

Un-organized Sanction

Some actions are highly reprehensive and their punishment may vary from one community to another. Under the written law, sanction for a particular offence is uniform. Sanctions for a wrong under the customary law are un-organized unlike the sanctions provided for under the Received English Law or under modern day legislation. A wrong which attracts caning of the offender in one culture or community may attract banishment or cutting or arms in another community. There is usually no uniformity of punishment.

Customary law is therefore of local application. According to Prof. Emiola inspite of its common features throughout Africa, customary law varies in details from society to society

Flexibility

The African customary law is not a static system. It is flexible. It changes or adapts to changes in society. This rule was demonstrated in Bakare Alfa & Ors v. J. Arepo (1963) WNLR p. 95, where Gruffus J. stated that customary law rules do change with the time and rapid development of social and economic conditions. For example, in the old, when a woman lost her husband, she is required under the customary law of the land to rub charcoal on her body and sit on the floor. Presently however, due to development and civilization, a woman who resides in the city and she is by custom required to mourn her deceased husband by the rubbing of charcoal and sitting on the floor but cannot easily do so in the city, she can now clothe herself in black apparel instead of robbing of charcoal. This feature has been given credence by Osborn C.J. when he stated in Lewis v. Bankole, thus "indeed, one of the most striking features of the West African native custom, to my mind is its flexibility. It appears to have been always subject to motives of expediency and it shows its unquestionable adaptability to alter circumstances without entirely losing its individualistic character. In other words, it can modify itself to accord the changing social and economic conditions. Karibi Whyte JSC in Kimdey v. Military Governor of Gongola State (1988) 2 NWLR (Pt. 77) 455 at 461, explained that "one of the characteristics of native law and which provides for its resilience is its flexibility and capacity for adaptation. It modifies itself to accord with changing condition". In Agbai v. Okugbue [1991] 7 NWLR 391, it was stated that customary law were formulated from time immemorial and due to its flexibility, as our society advances, they meet situations which were inconceivable at the time they took root.

Existence

Customary law is a moral law founded on principles of the universal rules of justice and fair play. Customary law of Africa people must be in existence at the relevant time it is alleged or sought to be relied on, and have the force of law. It is different from customs that are no longer enforceable. For a custom to have the force of law, every member of the community must know of its existence. The fact that a customary law is old and ancient does not make it inapplicable or unenforceable if the people recognize it as their customary law and binding on them. However, it must be responsive to present conditions and lifestyle of the people and would not qualify if it is a relic of by-gone days. This principle has found application in the case of Ogbai v. Okogbue

(1991) 7 NWLR (pt.204) 391 where the court held inter alia that the customary law which the courts are required to enforce must be existing and current customary law and not of bygone days. Similarly, the rule was emphasised in Esuagbayi Eleko v. Government of Nigeria [1931] AC 622 at 677. For example, in those days in Esan culture, if a man falls into a pit toilet, and such incidence is brought to the king's notice, he automatically becomes a slave to the king. But today, such a person would be rescued and be administered treatment. In a nutshell, this custom is no longer in existence and as such, it cannot be enforced. In Kimdey & Ors v. Military Governor of Gongola State (1988) 1 NSCC 827; it was held that a customary law must be in existence at the relevant time and must be recognized and adhered to by the community.

Acceptability

Customary law is the accepted custom of the people based on the usage. It is a popular law which commands common allegiance from the majority of the people subject to it. The people believed in the custom and accept it to regulate the conduct and actions of the members of the society over the years so that every member of the community knows the custom. Based on the continuous usage, the people are bound to accept whatever sanctions that may be attached to it. The Received English Law binds everybody once it is signed into law. It is not based on the acceptability by the people. In Owonyi v. Omotosho (1961) 2 SCNLR 57, the Supreme Court per Bairama F.J., defined customary law "as a mirror of accepted usage as pronounced by the superior court of record. Customary law, to be enforceable, must be recognised and adhered to by the community. In fact, it is the assent of the native community that gives a custom its validity.

Validity

Another characteristic of customary law is that it is valid. Any customary law rule that does not pass the test of validity is deemed invalid and cannot be enforced by the court. It is incontrovertible that before the Europeans came into contact with most of the city-states and empires on the African continents, structures of government existed in various forms and in varying degrees of perfection irrespective of the levels of political and social development of the individual communities.

When the colonial masters came to Africa, Nigeria inclusive, they abolished some customs and traditions which they perceived to be barbaric and primitive among the native people but some others were allowed to operate. Because they did not study the sociology and history of the people, they could not comprehend the rationale behind the operation of those customs. They therefore formulate a standard test which every customary law must pass before it can become valid. This test was provided for in section 13 of the Supreme Court Ordinance 1900 which was enforceable in Southern Protectorate. The section provide as follows "nothing in this proclamation shall deprive the Supreme Court of the right to observe and enforce the observance or shall deprive any person of the benefit of any existing law existing in the protectorate such

law and custom not being repugnant to natural justice, equity and good conscience. Section 18(3) of the Evidence Act 2011 captures this test as follows "In any judicial proceeding where any custom is relied upon, it shall not be enforced if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience". This provision of the law has been applied in many cases by the courts in Nigeria. In Laoye v. Oyetunde (1944) A.C. 170, it was held that custom which is impliedly "barbarous" or uncivilized is repugnant to natural justice, equity and good conscience and have to be rejected. The reason for inserting this clause according to Lord Wright might have been to invalidate "barbaric customs". Consequently, for a customary law to be valid and consequently binding and enforceable, it must pass the validity test. These tests are; repugnancy test, incompatibility test, and public policy test.

Repugnancy test

The word repugnant means offensive, nasty and dislike. In legal language or parlance it means contrary to three different things which are; natural justice, equity and good conscience.

Natural justice: this means fair play

Equity: this means to be fair to everybody and given the opportunity to explain oneself before any decision is taken as done by God to Adam and Eve.

Conscience: this is the ability to know within oneself the right and wrong in a particular situation. Therefore a customary law which is distasteful and offensive to humanity will never be enforced under this principle.

THE VALIDITY TEST

When the British authority took over the colony now known as Nigeria, some rules of customary law which they perceived as barbaric and obnoxious such as the killing of twins, human sacrifices, and the taking of lepers to the forest to die were abolished. All the practices which were not abolished were subject to the test of validity prescribed by statute. Only those practices which were able to pass the validity test were recognised and applied. Therefore, before a customary law rule is applied by the Nigeria court, it must have passed the prescribed validity test. The test is laid down in the Supreme Court Act, the various High Court Law of the States of the Federation, and the Evidence Act.

The applicability test is a test that enhances one's knowledge on the validity or otherwise of a particular custom. Three distinct tests are implied or used to determine this. The tests are;

a. The repugnant test,

b. The public policy test, and

c. The incompatible test.

The Repugnancy test

The word repugnant means offensive, nasty and dislike. This test is gotten from the word "repugnant to natural justice, equity and good conscience". This phrase prima facie is susceptible to two interpretations. The first is to split it up into its three component parts, that is, "natural justice", "equity", and good "conscience". Natural justice means fair play. Equity means to be fair to everybody and given the opportunity to explain oneself before any decision is taken as done by God to Adam and Eve. Conscience refers to the ability to know within oneself the right and wrong a particular situation. Therefore a customary law which is distasteful and offensive to humanity will never be enforced under this principle.

The consequence of using this approach is to ascribe to it the technical meaning of the phrases. This was the approach taken by the court in Lewis v. Bankole when it stated that because a custom did not form part of the English doctrine of equity, it is therefore repugnant to equity and invalid.

The second approach is the liberal and flexible attitude which rejects the first approach. This was the approach taken by the Supreme Court in Lewis v. Bankole when Speed Ag. C.J. stated that the test did not form part of the English system of equity. Consequently, the Supreme Court rejected the view of the trial judge that because a custom did not form part of the English doctrine of equity, it was invalid by virtue of the repugnancy test.

In Dawodu v. Danmole (1950) 3 F.S.C. 40, the Privy Council stated that the principle of natural justice, equity and good conscience applicable in a country where polygamy is generally accepted should not be readily equated with those applicable to a community governed by the rule of monogamy. In that case, the court considered two customary rules of sharing the property of a deceased Yoruba man. Under the first rule known as Idi-igi, the property of the deceased who died leaving a number of wives and a large number of children is to be divided into as many portions as he had wives and distribute it accordingly. This custom gave rise to numerous disputes, and to avoid this, a second rule known as Ori-Ojori was evolved. Under this second rule (Ori-Ojori), the property of such a deceased man is divided into as many parts as his children, if the family head so directs. In this case, the family head had not directed that Ori-Ojori should be utilized, but the trial court was of the opinion that Idi-igi was inconsistent with the modern idea of equality among children. But the Privy Council rejected this approach.

In Edet v. Essien (1932) 11 NLR 49, the plaintiff paid bride price on a woman when she was a child. The woman without returning his bride price left him and entered into a new marriage with another man by whom she had two children. The plaintiff now claimed that under a rule of customary law, he was entitled to claim custody of the children since his bride price had not been repaid to him. The trial court refused to apply such rule on the ground that it was repugnant to natural justice, equity and good conscience.

In Nzekwu v. Nzekwu (1989) 3 S.C.N. J. 167, the rule of Onitsha customary law which entitled the head of the family to alienate a deceased's property while the widow is still alive was held by the Supreme Court to be barbarous and uncivilised and repugnant to natural justice, equity and good conscience.

In the case of Okonkwo v. Okagbue (1994) 9 NWLR Pt. 368 p. 301, the Supreme Court declared that the customary law which recognised a marriage between a dead man and a living woman was repugnant to natural justice, equity and good conscience.

The above cases exemplified situations where customary law rules were subjected to the validity test and did not pass the test. There are however instances where the customary law rules were subjected to the validity test and the same passed the test. So long as customary law passes the validity test, such custom is adopted as part of law governing a particular set of circumstances.

In Ogiamien v. Ogiamien (1967) ALL NLR 245, the Supreme Court held that the Benin customary law of inheritance under which the eldest surviving son of a hereditary Chief inherits all the property of his father is not repugnant to natural justice, equity and good conscience.

In Amachree v. Goodhead (1923) 4 NLR 101, the issue was whether an illegitimate child born to the chief's household after the death of the mother's husband belonged to the chief's household. The mother of the child had no issue for her husband before he died. The court accepted the local custom as not being repugnant to natural justice, equity and good conscience and held that the child belonged to the chief's household.

The above cases are cases in which the repugnancy test has been applied. But in some other cases, the courts have evaluated the result of applying the rule rather than the rule itself in reaching their decisions.

A case illustrating failure to appreciate the place of possible result of the application of customs is the case of Mariyama v. Sadiku Ejo (1961) N.R.N.R. 81 involving a custom under Igbirra customary law whereby any child born within ten months after a divorce was the property of the former husband of the child's mother. It seemed clear in that case that the former husband was not the father of the child. The court therefore declared that the rule was invalid with respect to the case. The court then stated "we must not be understood to condemn this native law and custom in its general application. We appreciate that it is basically sound and would in almost every case be fair and just in its results". The court nevertheless refused to enforce the rule in this case on the ground that it is repugnant to natural justice, equity and good conscience since it would have taken a child away from the couple who were generally acknowledged to be the parents.

A custom which is invalid for any particular purpose is invalid for all other purposes.

Incompatibility test

Various enactments direct the courts to enforce applicable customary law which is not incompatible with some laws. Many of the enactments provide that for a customary law to be enforced, it must not be incompatible either directly or by implication with "any law for the time being in force". Others provide that it must not be incompatible with any written law. For example, section 26(1) of the High Court Law of Lagos State provides as follows: "the High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force".

Section 13(1) High Court Law 1964 of Mid-Western Nigeria Statute provides as follows: "the High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force". Consequently, any customary law which is repugnant to natural justice, equity and good conscience or incompatible either directly or by implication with any law for the time being in force will not be enforced. In Uke v. Iro (2001) 17 W.R.N. 172 C.A., the Court of Appeal declared that the Nnewi custom which precluded a woman from giving evidence in relation to title to land offended the constitutional provision guaranteeing equal rights to all sexes.

It has been argued that "any law for the time being in force" includes English law in force. Thus, in Re Adadevoh (1951) 13 W.A.C.A. 304 at 310, the West African Court of Appeal expressed the view that "any law in force" included the rules of the common law as to the applicability or enforceability of claims contrary to public policy. Of course, if any law includes the common law, it also includes the other classes of the received English law, namely, equity and statute.

Similarly, in Adesubokan v. Yinusa, the Supreme Court of Nigeria expressed the view that the term "any law" in section 34(1) of the High Court Law of the Northern States included the received English statutes of general application. The issue raised in this case was whether a Moslem testator could by a will made in accordance with the Will Act 1837 (a received English statute of general application) validly disposed of his property in a manner inconsistent with Maliki law (a version of Moslem law applicable in the Northern States). Under Maliki law, a Moslem testator cannot give more than one-third of his estate to persons other than his heirs, and the dispositions to his male children must be in equal shares. The learned trial judge assumed that the term "any law" included the received English statute. But he went further to hold that English law does not apply. He did this by bringing in aid a proviso to that section which states that "and nothing in this law shall deprive any person of the benefit of any such native law and custom". The Supreme Court accepted the view that the term "any law" included the received English law and statutes of general application and refused to apply the Moslem law.

Admittedly, it is arguable that normally the words "any law for the time being in force" may be construed to include the received English law and English law applying directly to Nigeria. But it should be noted that customary law is so inconsistent with English law that prescribing an

incompatibility test by reference to English law will result in virtual abolition of customary law. It does not seem that such a destructive effect is intended by such legislation. Consequently, the decision of the court in the case of Jadesimi v. Okotie Eboh (1996) 2 NWLR (Pt. 429) 128 seem to have taken this criticism into account when the Supreme Court held that the circumstances of Nigeria militate against the application of section 18 of the Will Act of 1837 (a statute of general application) to nullify a 'Will' made prior to contracting a marriage under the marriage Act.

On the other hand, the interpretation of the term "any written law" does not appear to raise any controversy. The term is used in the High Court laws of the Western States. The interpretation laws of those states defined "written law" in such a way as to exclude the received English law. Consequently, in those states, a rule of customary law that is inconsistent with the received English law (so long as it is not repugnant to natural justice, equity and good conscience or contrary to public policy) would be declared valid. But if it is inconsistent with any local enactment, it could be declared invalid.

Public Policy test

Public policy means making decisions that will ensure the security and welfare of the individual and the state in general. The security and welfare of the people is the primary purpose why government is established as captured in Section 14(2)(b), of the Constitution Federal Republic of Nigeria 1999 as amended. Public policy is usually expressed in the plans, pronouncements, policies, manifesto, programmes, actions and projects of government.

Presently, Section 18(3) of Evidence Act 2011 captures this test when it provides that "a custom shall not be enforced as law if it is contrary to 'public policy', or is not in accordance with natural justice, equity and good conscience".

A custom permitting two women to get married to each other was denied enforcement in Merigbe v Egwu [1976] 3. S.C.23. Madarikan JSC stated thus "in every system of jurisprudence known to us, one of the essential requirements for a valid marriage is that it must be the union of a man and a woman thereby creating the status of husband and wife. Indeed, the law governing any decent society should abhor and express its indignation of a 'woman to woman' marriage; and where there is proof that a custom permits such an association, the custom must be regarded as repugnant and ought not to be upheld by the court".

Similarly, in Okonkwo v. Okagbue [1994] 9 NWLR (Pt. 368) 301, an alleged custom whereby a woman married a dead man in order to bring forth children for him, in his name was held to be contrary to public policy.

The test of public policy was considered as a common law rule forming part of the incompatibility test. A case in which public policy was mentioned in relation to customary law was Cole v. Akinyele (1960) 5 F.S.C. 84 in which the Federal Supreme Court held that the same Yoruba custom of legitimation by acknowledgment of paternity was void on the ground of public

policy in its application to a child born outside wedlock during the subsistence of a marriage under the Marriage Ordinance.

All the enactments starting criteria for determining the validity of customary law contain the repugnancy test but only the Evidence enactments contain as a second test the criterion of public policy. The other enactments contain the criterion of incompatibility with any local enactments as a second test. It is not easy to understand the intention of the legislature in introducing the test of public policy. It could be that the legislatures were of the opinion that "contrary to public policy" meant incompatibility to any other enactment.

1.2 What is Islamic Law?

Introduction

Islam is a religion. Islam is also a way of life of the Muslim. Just as one cannot talk of a Christian outside Christianity as a religion, so also Moslem cannot be talked of without Islam as a religion. Religion means a system of faith and worship usually involving belief in a supreme being and usually containing a moral or ethical code according to the Black's law dictionary, 10th edition. Islam as a religion is believed by Muslims to have been sent by God the Almighty Allah through his Messenger, the Holy Prophet Mohammed who by divine power disseminated the message of Islam from its immediate Arab home and world to Africa, Asia, and Europe.

Islamic law, as the name implies gets its name from Islam. Islam is the religion and way of life of the Muslim. Accordingly, Islamic law is the law of Islam. It is believed that Islamic law is divine law; it is immutable, irreversible, permanent, absolute and unchangeable. It is sacrosanct, indelible, and constant. It is fixed by the Almighty Allah for all times and must be obeyed by the people. Man cannot add or subtract from it without doing violence to the holy and moral intention of the Almighty Allah.

To the Muslims, all other laws have human origin since they are enacted by transient authority, and therefore must bow to Islamic law. The Islamic law to its followers come from above and so cannot be changed on earth by any human force

To the Muslims, any human action has its classification subsumed under five categories, viz;

1. Some actions of human are commanded by Allah,

2. Others are merely recommended in the sense that one who acts accordingly may expect to have a reward in the world to come. Conversely, one who refuses to carry out the things recommended will be punished,

3. There are other areas where Allah is indifferent in the sense that nothing has been recommended or commanded,

4. In other areas, actions of men are made reprehensive, and

5. There are actions that are completely prohibited of men

It then boils down to the fact that it is only where the injunctions of Allah are indifferent that mortal have any scope of positive legislation.

Dr. Perron in his 19th century contribution said "Muhammadan law in all its detail religious as well as civil has for us an immense interest. It necessitated the study of the social institution of people which an imitable law has, for twelve and a half centuries, moulded and remoulded at frequent intervals. For here it has been neither the nation nor the people which has made the law, rather, it is the law which has made and moulded the nation and the people. Both the outer form and the inner spirit bear the impress of the one word – religion. In Islam, there is but one law, and it is the religious law, signified in the word 'Shariah' in other words, it is the only supreme law, for it emanates from God who decreed it main basis in the Koran".

It may be necessary to attempt the question as to whether Islamic law is customary law. Colonial legislation generally regarded and treated Islamic law as 'native law and custom' which had no separate and distinct existence. For example, section 2 of the Native Court Ordinance 1914 provided that "native law and custom includes Islamic law". It has however been argued that the above reflected the negative approach of the Colonial authority to Islamic law as well as their Christian background.

The administration of Muslim law is modified by the local law and custom in Pagan Districts, provided that by so doing the judge does not directly oppose the teaching of the Qur'an.

Keay and Richard had argued that custom is not a source of Islamic law. The duo agreed that in certain spheres, customary law has in the Islamic world co-existed with Muslim law and has filled the lacunae in it. Islamic law unlike customary law is not flexible. Islamic law unlike customary law is written. Islamic law is rigid, precise with divine ossification/preservation and rigidity. There is no basis for any speculation or conjecture (guess work/assumption) as in the case of customary law. The acceptability of Islamic law is a divine command by the Almighty Allah and therefore spontaneous on the part of all Muslims. Islamic law therefore does not depend on its acceptability by the Muslims because that is taken for granted. A person who disobeys the divine words of the Qur'an cannot call himself a Muslim. Such a person is not with Allah as he will be regarded as an unbeliever. According to Prof. Emoila, Islamic law is based in religious faith and not on custom or culture. Therefore, as a religious law it is fixed, constant and cannot be changed. It has universal appeal and application, and it binds all adherents across the world. The fact that Islamic law is not customary law has been recognized by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) where Islamic law is mentioned separately from customary law. See sections 227 & 228.

The traditional sources of Islamic law include the Holy Qur'an, the Sunnah, the Ijma and the Qiyas.

Origin and spread of Islam and Islamic law

Islam as a religion came into the world through the Holy Prophet Muhammed, the messenger of the Almighty Allah. It is argued that Islam as a religion was chosen by God for the Holy Prophet Muhammed, who was to spread or disseminate it. For example, Chapter of Al-Maidatu, Verse 3 reads "This day gave I and perfected your religion for you, completed my favour upon you, and have chosen for you Islam as your religion".

It is also contended that Islam was the last religion sent by God, and it came after Christianity. Chapter of Al-Imrana, Verse 85 reads as follows "If anyone desires a religion other than Islam (submission) to God, never will it be accepted of him and in the hereafter he will be in the ranks of those who have lost".

Islamic law, the law of Islam, originated and is founded upon the tenets of the Qur'an. And so, Islamic law from its early formative years to date has not been only a law governing Muslims but a formidable, dominant and comprehensive legal system of the Islamic world, a legal system which does not create an artificial dichotomy between law and morals. Islamic law covers virtually every areas of life of the Muslim such as contracts, Torts, Evidence, Crimes, Company and Partnership, Islamic Personal Laws, State Laws, International Law, Moral Laws and Administrative Laws, etc.

Islam was introduced in the Northern parts of Nigeria as early as the 14th century and gradually germinated into fruition despite the hostility of the colonial masters. The colonial masters with their missionary or Christian background did not see anything good in Islam and Islamic law and they did not pretend about it. Mahmud argued that in places where pagans were in minority, the colonialists would pretend to be protecting their interest by quickly establishing customary courts, enrolling their children in Mission Schools where they would be taught Christianity. But where the Moslems were the minority, their interests would never be protected, nor would Sharia Courts be set up to administer Islamic law for them. They were never allowed nor encouraged to enroll their children in European schools. They affairs were left in the hand of customary courts that customary law would be applied to the issues of their marriage or inheritance notwithstanding its adverse effect. Mahmud further contended that Late Sir Abubakar Tafawa Balewa, the first and only Prime Minister of Nigeria was a victim of forced Western education against the will of his parents and Emirate background.

Mahmud further argued that in the Southern provinces, there was the same hostility. The difference however was that because of the lesser Muslim population there, the impact of the hostility was not felt as much as it was in the Northern provinces. Mahmud said that in the Southern Nigeria, the application of Sharia was banned.

However, after the country attained independence in 1960 that Islam as a religion and way of life of Muslims experienced a tremendous growth in terms of spread particularly in the Northern Region, a growth which has endured to date. Islamic law has since spread side by side with Islam

because they are inseparable. Since independence, Islam has been spreading tremendously with the establishment of teaching institutions all over the country, particularly in the Northern States. Almost all the universities in the Northern State teach Islam and Islamic law. This is in addition to other higher institutions teaching same.

1.3 SOURCES OF ISLAMIC LAW

i. The Holy Qur'an

The word 'Qur'an' came from the name 'Koran'. Muslims use the words interchangeably because they mean the same thing. They all refer to the Holy Book of the Almighty Allah.

The Qur'an is the first source of Islamic law. It is believed to be the Holy Book of the Almighty Allah written in Arabic in Heaven and revealed by Him to Prophet Muhammad through Angel Gabriel with all the contents complete. It is written in Chapter of Al-Nahali, Verse 3 "And we have sent down to thee the Book explaining all things, a Guide, a Mercy and Glad tidings to Muslims.

It is believed and so written that the Qur'an contained all the messages sent by God in previous books sent before it. It is also believed and written that Qur'an is the last Book of God and Islam which is the message in the Qur'an, the last religion.

Historically and spiritually, the person who received the Qur'an was the Holy Prophet, Muhammad. He acted divinely and in spontaneous obedience to the Qur'an. His life style was an embodiment of the tenets and dogmas of the Qur'an.

The contention that Islam was the last religion sent by God, and it came after Christianity is contained in Chapter of Al-Imrana, verse 85 which reads as follows "If anyone desires a religion other than Islam (submission) to God, never will it be accepted of him and in the hereafter he will be in the ranks of those who have lost".

The Almighty Allah, the Supreme Law Maker makes the Qur'an, the Supreme Law. The Qur'an contains all the commandments and injunctions of the Almighty Allah. The Qur'an verses are complete, comprehensive, immutable and sacrosanct. They are a direct revelation from the Almighty Allah and therefore cannot be changed or tampered with by any human being. The Supreme Culture of the Qur'an cannot be denied or disputed by any true believer of Islam. Any person who denies or disputes the Supremacy of the Qur'an is a non-believer of Islam. Flowing from the concept of the supremacy of the Qur'an, if any law, rule or injunction is inconsistent with the Qur'an, that law, rule of injunction is null and void ab initio.

While the Qur'an is not the constitution of Muslims, as a matter of fact, there is no basis for any analogy since the Qur'an is made by God and the constitution is man - made. Even though any analogy can be made, the analogy is restricted to the position of the law that whenever any law

conflicts or is inconsistent with the provisions of the constitution, the constitution will prevail and that law will be null and void to the extent of its inconsistency.

The Qur'an contains the law of Islam. It is revealed that of the 114 chapters dealing with all aspects of humanity and human endeavours, 500 of the verses deal with law, in virtually all its ramifications such as family law, contract, tort, mortgage, trust, states affairs, laws of war and peace, succession among others.

The Qur'an teaches four basic principles, viz: faith, worship, ethic, and law. The teachings of the Qur'an bear the solemn, pious or moral and divine message of the Almighty Allah to all Muslims anywhere in the universe. The different principles are accepted as dogma, belief, doctrine, philosophy or tenet which cannot and should not be questioned by any true believer of Islam.

The view that the Qur'an as a book was written by Allah in heaven and revealed to Prophet Muhammad has been widely criticized. Some scholars have argued that prior to the coming of Prophet Muhammad, the people of Saudi Arabia already had their way of life. They argued that it was this culture of the Saudis that Prophet Muhammad revealed claiming that it is from Allah.

ii. Sunnah

As stated earlier, there are four sources of Islamic law namely, the Qur'an, Sunnah, the Ijma and the Qiyas. Sunnah is the second source of Islamic law in the order of importance after Qur'an which is the first and most important source.

The Arabic word 'Sunnah' literally means 'a way or rule or mode of life'. Mahmud said that Sunnah in essence signifies the ideal practices followed by the Holy Prophet and included what he said, did or approved. In other words, Sunnah is the way and practice of Prophet Muhammad.

According to Suleiman, Sunnah is the elaboration and exemplification of the principles in Qur'an, exhortations and laws in life situation by the Prophet.

The Sunnah as a source of Islamic law, emanated from the tradition and deeds of the Holy Prophet. As a person, the Prophet said and did certain things, as a person he took certain actions, as a person he approved and disapproved certain actions of his companions and followers. It is the totality of these acts that constitute Sunnah, the second source of Islamic law. Although the Sunnah emanates from the Qur'an, it goes beyond the principles of the Qur'an in certain instances. The Sunnah amplifies, elucidates, and consolidates the principles of the Qur'an as collected from the physical life style and comportment of the Holy Prophet. The Sunnah interprets, expounds and explains the Qur'an. Where the Qur'an is silent on an issue, the Sunnah speaks. Muslims at times refer to the Sunnah as the living Qur'an.

The Qur'an contains many verses on the need for Muslims to follow the most pious and exemplary conduct and way of life of the Holy Prophet. It is believed that Allah recognised the exemplary life of the prophet in the Qur'an. For example, the Holy Qur'an, Chapter 33, verse 21

reads thus "indeed in the Apostle of Allah you have a good example to follow". To Muslims, any person who deviates from the life of the Prophet is not a Muslim but an unbeliever. Chapter 4, verse 59 of the Holy Qur'an reads thus "obey God and obey the Messenger" and verse 80 of the same chapter 4 reads "He who obeys the Messenger obeys God". In chapter 59, verse 7 reads "Whatever the Prophet gives you accept, and whatever he forbids you abstain from it".

The expressions 'Apostle', 'Messenger' and 'Prophet' in the above verse stand for and mean the Holy Prophet Muhammad. This claim is substantiated in the Holy Qur'an Chapter 53, verse 3 and 4 which clearly mention the name of the prophet. In the nutshell, the Sunnah is an act of the Prophet guided by Allah. Consequently, all Muslims believers are enjoined to follow the Prophet's life style.

It is argued that there cannot be any conflict between the Qur'an and the Sunnah as a source of Islamic law. This is because the traditions of the Holy Prophet Muhammad are derived from the Qur'an. It does not however appear that the same submission can be made in respect of the other two sources (the Ijma and the Qiyas). This is because in the course of establishing juristic consensus (the Ijma) or drawing an analogy (the Qiyas), there is bound to be some human element and interventions which may deviate from the teachings of the Holy Book. This is possible because human is never perfect. However, in such situation where there is conflict between the teachings of the Holy Book and the other two sources (the Ijma and the Qiyas) with the exception of the Sunnah, the teaching of the Holy Book will prevail. In other words, neither the Ijma nor the Qiyas can detract from the Holy Book.

The word "Hadith" is another expression used interchangeably with the "Sunnah". The expression 'Hadith' literally means "a saying conveyed to a person or that which has happened, and hence it includes those words and deeds of the Holy Prophet.

Technically, Hadith signifies the saying and the Sunnah the actions of the Holy Prophet. According to recent researchers, Hadith is the story of a particular occurrence or event and the Sunnah is the rule deduced from that occurrence or event.

It is submitted that there is not practical utilitarian difference between the Sunnah and the Hadith because they both relate to the pronouncements, actions, and activities of the Holy Prophet. If at all there is any difference, it is as a result of the Isnal (chains of narrators) and the mat'n (the subject matter of the tradition) by great compilers of the Prophet's traditions. It does not appear that the Holy Book and indeed the Holy Prophet intended any practical difference between the two. More succinctly, the so-called difference is not scriptural. While the compilers and narrators of the tradition adopted scientific methodology and made use of all available parameters including the use of both internal and external texts in which the Isnad and the mat'n were thoroughly evaluated and viable conclusions reached, in religious matters, mere rhetorics or doctrinaire rationalism takes people nowhere because most of the events occur as a result of divine inspiration.

iii. The Ijma

The Ijma as a source of Islamic law occupies the third position in order of importance after the Qur'an and the Sunnah. Ijma in the words of Mahmud means consensus or concurrence of opinion or agreement on a particular question of law of all Muslim jurists of a particular age after the death of the Holy Prophet.

Technically, Ijma has been defined as the agreement of Muslim jurists in any particular age on a judicial rule. Islam is a dynamic religion. It is also a very practical religion in the sense that it reflects the dynamics, dogmas and tenets of the society. Ijma as a source of Islamic law has both characteristic of rigidity and flexibility. It is flexible because it responds to the time. It has to keep track with changing circumstances of the Muslim society in any given question of law. This is necessary and desirable because if the Muslim world is changing and the well entrenched principles of Islam in the Qur'an are not interpreted to accommodate the changing society, it will be bad for the entire Muslim world.

Ijma as a source of Islamic law is traceable to the Holy Qur'an and the Sunnah. By implication, the Muslims did not just wake up one morning and unilaterally decided that Ijma should be a source of Islamic law. In their true tradition, they followed the principles laid down by the Almighty Allah in the Qur'an and the teachings of the Holy Prophet. Examples abound in the Sunnah on the validity of Ijma as a source of Islamic law. It is argued that there is valid authority to the effect that the Holy Prophet himself made regular consultations with his companions and accepted their well-considered opinions on matters, and this was on a regular basis.

Ijma as a source of Islamic law is binding on Muslims, in so far as it does not conflict with the Qur'an. Ijma strengthens the unity and collectivity of Muslims and Muslim activities.

Islamic writings have categorised Ijma into three categories, namely; Ijma of the companions of the Prophet, Ijma of the jurist and Ijma of the people. The collective consensus of opinions of the people who worked with the Holy Prophet are referred to as Ijma of the companions of the Prophet. The Ijma of the jurist can only have unflinching or unwavering force of law if there is evidence that the jurists did not dissent from the consensus during their life time, or majority of them did not dissent. The real existence of the Ijma of the people has always been a subject of debate and argument. While community opinion of the Muslim world is generally recognised, Ijma of the people carries very low weight.

iv. The Qiyas

Qiyas is the fourth source of Islamic law. Technically, as a term of Islamic jurisprudence, Qiyas denotes the process of deduction by which the law of the text is applied to cases which though not covered by the language of the text or governed by reason of the text. Qiyas is an analogical

deduction. Qiyas as a source of Islamic law arises from the application of the already established and dogmatic principles of Islamic law to new or concurrent situations and circumstances. The jurist does this by a careful analysis of the already existing situation, and by some scientific application makes some sensible analogical deductions. In effect, the process of analogy predicated upon already existing principles is known as Qiyas. Like Ijma, Qiyas is also based on the Qur'an and the Sunnah.

Accordingly, the individual rai (opinion) which results in the deduction must be based on the Qur'an and the Sunnah. Anything outside that is null and void, and will not have any binding force or effect. The Qiyas must have clear affinity, resemblance or relationship with the Qur'an and the Sunnah.

Qiyas as a source of Islamic law is the most modern in relation to the other three sources (Qur'an, Sunnah and Ijma). With the expansion of Islam following the acquisition of new Islamic States through conquests, new Islamic ideas and ideals developed. The logical and systematic reasoning developed into very useful and pious opinions (religiously reverent opinions) which were documented. The documentation hardened into what is now known as the Qiyas.

The authenticity or veracity of Qiyas as a potent source of Islamic law cannot be over-emphasised. While there is to some extent a division of opinion in this respect, the fact however remains that there is enough evidence from the life and utterance of the Holy Prophet and his companions that Qiyas is a valid and authentic source of Islamic law. The four Sunni Schools also give credence to the fact that Qiyas is a source of Islamic law. The four Sunni Schools which are secondary sources of Islamic law include Istihsan (juristic preference), Istislah (public interest), Istidlal (reasoning), and urf (custom).

Before Qiyas is valid, the following conditions must be fulfilled;

1. The original order in the text to which analogy is sought to be applied must be acceptable of being extended, thus it must not have been confined to a particular state of facts.

2. Where the law of the text in the original order is beyond comprehension, analogy cannot be applied.

3. The original order of the Qur'an or the Hadith to which Qiyas is to be applied should not have been abrogated or repealed.

4. The result of the Qiyas should not be inconsistent with the rule laid down in the original prescription by the Qur'an and the Sunnah.

5. Qiyas should be applied to ascertain a point of law and not to determine the meaning of the words used.

6. The cause must be a compelling factor, that is, the idea intended by the Sharia. It should be apparent, complete in itself and not hidden or ambiguous**.**

Conclusion

By and large, Islamic law is not and should not be regarded as an appendage of customary law in Nigeria. It must be treated as separate and distinct source of Nigeria law and its place in the Nigeria legal system must be duly recognised.

From the above explanation of the sources of Islamic law, it is clear that while the Qur'an and the Sunnah are the divine sources, the Ijma and the Qiyas on the other hand are the human sources (man-made). Although the Sunnah had some little human component, its divine source from the Holy Prophet is overwhelming.

While all the four sources are binding on all Muslims, the Qur'an and the Sunnah are specifically referred to as nass, which means 'binding ordinance'. This however does not imply that the Ijma and the Qiyas are not binding. It only emphasises the major and distinct place or important given to the Qur'an and the Sunnah.

The place of Islamic law in the development of the Nigeria legal system cannot be over-emphasised. Islamic law has a separate and distinct identity from customary law to equate the two or give the impression that Islamic law is either an off-shoot or an appendage to customary law is to say the least an ignorant assumption or conclusion.

It is clear from the above that urf (custom) is not a primary source of Islamic law but a secondary source. The wrong assumption is traceable to the wrong impression the colonial masters had on the real content of Islamic law and from their negative and uncompromising approach to Islamic law particularly as a distinct and separate religion from Christianity based on the Qur'an and not the Bible. The colonial approach merely reflects their Christian background.

The definition of customary law as defined under the law does not apply to Islamic law even though for the purpose of application and enforcement in Nigeria, it is regarded as part of customary law.

1.4 LEGISLATION IN TRADITIONAL AFRICAN SOCIETIES

Introduction

In the old traditional African society, there was nothing like National Assembly which makes laws for the governance of the entire community. There were two types of society, viz; the cephalous and the acephalous society. While the cephalous society has strong centralized government, the acephalous society (e.g. the Ibo community) on the other hand is the direct opposite. Under the cephalous society, the king has the power to issue policies after consultation with his council executives, and such policies will automatically become laws which the

inhabitants are bound to obey. There were also influential secret court societies such as the Ogboni in the Yoruba land which can come up with directives purported to be from the gods which then become laws. Invariably, the secret court society is a source of customary law legislation.

In the Igbo land where there was no centralized government (acephalous), the people in the community will usually assemble together at a general assembly to take decisions which thereafter become laws.

1.5 SOURCES OF CUSTOMARY LAW LEGISLATION

Legislation in the old African system was usually influenced by detailed fiction and fairness of equity. The methods by which the legislations become under the customary law system are as follows:

1. The personal decree of a reigning king or chief

2. Joint resolution of the king's advisers arrived at during deliberations in executive councils.

3. Ad hoc proclamation by spokesmen of some secret society in existence in the community.

4. Authoritative declaration of specific rules and regulations arrived at after the debates at public assembly summoned for the purpose.

5. Opinions of writers of books and judicial modifications of old rules in the course of settling disputes.

The Personal Decree of a Reigning King

Under the customary law system, there were some societies in the centralized government otherwise known as cephalous societies as well as societies with no strong centralize government which is also known as acephalous societies. The method of law making in the society with centralize government was quite different from the one with no centralize government. In a society with strong centralize ruler or king, such a ruler can decree or make a new law personally or change an existing law. The people are bound to obey such laws because they are subjects of the traditional ruler. The obedience arises particularly when the tradition ruler's conduct in the society has been acknowledged by the people and so whatever he says, every member of the society will respect. It is however pertinent to state that this method of lawmaking was not very popular and the traditional ruler normally consult his people before arriving on a law on a particular issue.

Executive Council

In a society with central government and a regular system of administration, the king and his advisers and chiefs operating as traditional council could meet and deliberate on a particular issue and come out with a resolution which would be proclaim as the law in the society. Under the Bini traditional system, the Oba and his council of chiefs could in their executive meeting make regulation on a customary issue that would be enforced by the members of the kingdom. Such joint resolution of the king's advisers arrived at during deliberations in executive councils has the capacity to become law which all the inhabitants of the particular society are bound to obey. In other areas, the Enigies, Otarus and other traditional rulers could also make laws to guide their activities within their area of domain.

Institutional Legislation (secret societies)

There is this body of subsidiary or delegated legislation which is usually enacted by certain well recognised institutions operating within a given community. Such bodies are the so-call secret societies that are so prominent in the traditional African society. Such bodies could make laws to regulate trade and other activities or men in the society for the general good of such society. In the old Oyo Empire, there was the Ogboni society that has power to make some regulations that have the force of law within the community. In some other cases, the local chief priest can come up with message purported to emanate from the gods even though such messages are unverifiable by any ordinary human being, and it then become laws which will guide the conduct of the people in that society. For Customary Law instance, where it is noticed that the market is no longer booming and this has become a source of concerned to the villagers or some interest groups, the chief priest can purport to have consulted with the ancestors and come up with a directive that the gods had warned that no native of the particular community should go to the farm on market days, that on such a day, the spirit will be in the farm or bush. The fear of being afflicted by spirit would automatically engender obedience to such directive.

Legislation in Public Assembly

Either in addition to or in substitution for legislation by king or chief in the executive council, there was this other method of law making by public discussion. Public assemblies are usually held for the express purpose of a full discussion and deliberate on public affairs of the community with a view to making some laws or to review the existing law to meet the societal condition at the particular time. Participation is not usually limited to any person, and every person present has the right to contribute. The sense of the meeting is to ascertain the express opinion of every person before arriving at a general resolution. Among the Ibos of Nigeria, this method of law making was very popular because the Ibos operated acephalous structure with no centralized government. The meeting could be held on a popular market day or the occasion of a burial ceremony to change an existing law. Authoritative declaration of specific rules and regulations arrived at after the debates at such public assembly summoned for the purpose have

the capacity to become law which thenceforth govern the affairs of the particular local community.

Opinions of writers and judicial modification of existing laws

In most cases, when the need arises, the various opinions of book writers knowledgeable in the custom of the people would be accepted as the customary law to settle a particular issue in the court, and upon the application of that, it now become the customary law on that particular issue which would be relied upon in subsequent issues or cases on the basis of judicial precedent.

2.0 THE JUDICIAL PROCESS: INDIGENOUS SYSTEMS OF ADJUDICATION

The judicial process refers to the process and procedures for customary law adjudication. The indigenous systems and methods of adjudication in the traditional African society are of major focus here. These systems shall be examined hereunder.

2.1 CUSTOMARY ARBITRATION

Customary arbitration was defined in Agu v. Ikewibe as arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community, and the agreement to be bound by such decision or freedom to resile where unfavourable.

Customary arbitration refers to a recognised non-judicial process governed by customary law where third party is use in the settlement of dispute without recourse to the formal court of law.

Customary arbitration is the prevailing practice or arbitral process of arbitration governed by rules of customary law. The practice of chiefs and elders of the community of settling disputes between members of their community which is distinct and different from arbitration by statute is recognised by the Nigeria legal system and is not in conflict with the exercise of judicial powers of the Constitution. For example, upon the inauguration of the new Oba of Benin, Oba Ewuare 11 in October, 2016 the Oba established a customary arbitration panel within the premises of the palace to settle disputes between members of the Benin community.

Even before the inauguration of the current Oba of Benin, the palace had always resolved disputes through customary arbitration. The procedure for arbitration in the palace according to the book titled, ‘’ A Handbook on Some Benin Customs and Usages issued by the Benin Traditional Council on the authority of the Oba of Benin at pages 5 and 6 is as follows:

Firstly, a Complaint must be brought before the Oba by a Complainant. Then the Complainant shall thereafter appear before the Oba. When a Complainant appears before the Omo N`Oba, he or she narrates his or her problem to the Omo N`Oba and the chiefs in attendance. If the complainant`s problem is personal assistance, the Omo N`Oba, in consultation with the chiefs in attendance finds a solution to the person`s problem. If the Complainant brings

a report against another person, palace emissaries are sent with the Complainant to invite the person complained against to come and answer. No fee is charged for the service and the emissaries sent on that assignment are forbidden to demand money or gift. When the person invited appears before the Omo N`Oba, the complainant is asked to repeat the report he or she earlier made to the Oba, and the accused person is asked to say his own side of the matter. In the process, both sides are free to question each other, and any Chief present may ask the parties questions. At the end of it all, based on the weight of evidence and in keeping with custom, if custom applies the Omo N`Oba pronounces a ruling which is final. On the other hand the Omo N`Oba may decide to refer the case to a panel of selected Chiefs or the whole body of Chiefs present for further investigation , usually of matters of details, and report back to the Omo N`Oba. When the Chiefs bring their findings, together with recommendations, the complainant and defendant are always present and they are permitted by the Omo N`Oba to point out faults in the report presented. At the end of all these, the Omo N`Oba will pronounce ruling which is also final. No fine imposed on any guilty party, unless the offence is a violation of a custom that carries a customary fine (which is not dictated in monetary terms or cash).

The award of customary arbitration is binding to the extent that the unsuccessful party is barred from re-opening the question decided, and if he tries to do so in the courts, the decision may be successfully pleaded by way of estoppel. In the recent case of Azeoma v. Ugocha (2001) 29 WRN 179, the Nigeria Court of Appeal recognised the award of customary arbitration as constituting an estoppel barring one of the parties from re-litigating the same issue in the High Court.

2.2 CONDITIONS PRECEDENT FOR BINDING CUSTOMARY ARBITRATION

When parties voluntarily submit their dispute to customary arbitration, the arbitrators decide the merit of the case and an award is issued against the person whom the panel found to be at fault. The award so issued serves as estoppel against any party to the dispute (especially the party who loses) to resile from the decision of the arbitration panel.

For a customary arbitration award to be binding or complied with by the parties concerned, the following four conditions must be met or satisfied;

1. The parties must have voluntarily submitted themselves for customary arbitration

2. The award must be in accordance with the custom of the people in the given community

3. Initial willingness of parties to be bound by the decision of the chiefs and elders of the community

4. The award must be final and must be published.

Voluntarily Submission for Customary Arbitration

This is the first condition for binding customary arbitration. The voluntary submission of both parties of their cases or point of difference between them for arbitration is the starting point for a binding arbitration. The decision of customary arbitration has the same effect as a decision of a court. Since a party cannot resile from the decision of a court or other judicial body, so also can a party to customary arbitration not resile from the decision of the arbitrators if all the conditions precedent are satisfied. Neither side to customary law arbitration can resile from the decision of the arbitrators if all the condition precedent to bindingness of a customary arbitration are satisfied. In effect, customary law arbitration may act as an estoppel or constitute per res judicata in later actions over the same subject matter by the same parties. This condition was exemplified in the case of Agu v. Ikewibe [1991] 3 N.W.L.R. (Pt. 180) 385, where delivering the leading judgment, Karibi Whyte – a justice of the Supreme Court held that the principles described by T.O. Elias in his book "Nature of African Customary Law" at page 212 were applied in the instant case. T.O. Elias in that book listed the following principles for binding customary arbitration, viz; (i) voluntary submission of the parties to the authority of the chiefs and elders of the community, (ii) Initial willingness of parties to be bound by the decision of the chiefs and elders of the community, (iii) the chiefs and elders of the community exercise judicial functions according to custom, and (iv) the terms of the decision must be known, final and unconditional. The Supreme Court held that there was evidence of voluntary submission of the parties to the authority of the chiefs and elders of the community as described in the above book. This condition satisfied the requisite of estoppel.

In Okpuruwu v. Okpokan [1988] 4 N.W.L.R. (Pt. 90) 554. Oguntade JCA (as he then was) said "I find myself unable to accept the proposition that there is no concept known as customary or native arbitration in our jurisprudence. It was realised and acknowledged that if parties to a dispute voluntarily submit their dispute to third parties as arbitrators and agree to be bound by the decision of such arbitration, then the court must clothe such decision with the garb of estoppel per rem judicatum". The fact of the instant case is that the respondents (as plaintiffs) sued the appellants at the High Court claiming a declaration that they were entitled to the customary right of occupancy over the land in dispute which they call Ekpakhekpaha but which the appellants call Ofuna Nzie Asuo. Both parties testified at the trial. In addition, the plaintiffs relied on the decision of a customary arbitral proceeding conducted by Ofutop chiefs and elders in respect of the land in dispute between Ofuna Nzie Asuo of Okangha (accepted to be the present appellants) and Ofuna Ogar Nfom of Okangha (accepted to be the present respondents). The learned trial judge held that customary arbitration exists under the Nigeria legal system and the decisions given pursuant thereto bind the parties. His Lordship accordingly held that the appellants, having accepted to be bound by the customary arbitral award, could not be held to reject that decision on the grounds that it was against them. It must be noted that neither party to the case had disagreed that customary arbitration is unknown in their particular locality.

Thus, Nigerian law recognizes customary law arbitration which is distinct and different from arbitration under statute. Customary law arbitration is an arbitration founded in dispute on voluntary submission of the parties to the decision of the arbitrators who are either the chief or elders of their community and the agreement to be bound by such decision or freedom to resile where unfavourable.

However, where one of the parties is coerced to submit himself to the arbitration panel, any decision reached at such panel will not be binding on him.

Acceptance of the Terms of the Arbitration

Usually, by the custom of the people, every wrong has its penalty. This is known and recognised by the people. For instance, where a particular offence or wrong is known to carry a particular sanction, and there is now a deviation from the recognised rule, this can give right to any of the parties to the arbitration to resile from the decision of the panel. The rule should not be subjective such that it is not applied uniformly. As described by T.O. Elias in his book "Nature of African Customary Law" at page 212, as condition for binding customary arbitration, the chiefs and elders of the community exercise judicial functions according to custom.

In Philip Njoku v Felix Ekeocha (1972) 2 ECSLR 199 Ikpeazu J held that where a body of men, be they chiefs or otherwise, act as arbitrators over a dispute between two parties their decision shall have binding effect, if it is shown firstly that both parties submitted to the arbitration. Secondly that the parties accepted the terms of the arbitration, and third, that they agreed to be bound by the decision. Such decision has the same authority as the judgment of a judicial body and will be binding on the parties and thus create an estoppel.

Willingness to be Bound by the Decision of the Arbitration Panel

Parties must agree from the outset to be bound by the decision or award issued by the arbitration panel. They must have it at the back of their minds that they would be bound by the award given by the panel. This need not be expressly shown because it is expected that anyone subjecting himself for customary arbitration should know that the panel is not a child's play and should not be handled with levity. It is a seriousness business and must be seen as such. There must be proof either from the words or conduct of the parties that they intended to be bound by whatever decision is reached at the arbitration panel. It is trite law that a delegate cannot further delegate his functions. This rule was illustrated in Nwuka v. Nwaeche [1993] 5 N.W.L.R. (Pt. 293) 295 where the Court of Appeal held that a delegate cannot further delegate. In that case, the appellant alleged that the problem started when he cleared a bush within the area in dispute and started to assemble cement blocks in preparation for a building project, and then the respondent for the first time, started laying claims to the land, that in pursuance of this, the respondent summon the appellant before the elders of Okwelle Union, the Union as against hearing the case delegated their functions to arbitrate on the dispute to "nominated people". The appellant objected to the jurisdiction of the "nominated people". The nominated people immediately went into action and

quickly found for the respondent as being the owner of the disputed portion. The appellant rejected the decision of the nominated people. When the action was brought before the Court of Appeal, the Court of Appeal unanimously held that as a court of law cannot assign its function to settle the case before it to another court or judge or group of persons without telling the parties, a customary arbitration cannot properly delegate the power conferred upon it as a choice, of the parties to the case, to other people to mediate the controversy, as a delegate cannot further delegate (delegatus non potest delegare). In the instant case, the parties chose the elders of Okwelle Union to settle their dispute out of court, the said elders of Okwelle Union could not rightly delegate its function to the so called nominated people as they purported to have done.

The Award Must be Final and must Be Published

Publication here refers to the conveying of an arbitral award to all parties to arbitration, as opposed to the use of the word in common parlance, which connotes the making available of information to the general public. This limited use of the term underscores one of the cornerstones of arbitration, which is the privacy ensured in proceedings, except of course where the parties to the arbitration are whole communities as has been observed in some communal disputes. The Supreme Court in Odonigi v. Oyeleke [2001] 6 NWLR (Pt. 708) 29, held that the failure to convey an arbitral award to all the parties vitiates the whole process. It is submitted that the answer to the question whether or not the award of a customary arbitration can or ought to be reduced into writing is a matter to be gleaned from individual customs. It appears that publication of awards is universal to arbitration irrespective of legal tradition, as it is the logical end point to any arbitration. It is also pertinent to state that the kind of award which must be binding in customary arbitration should not be an interlocutory award or awards given by the way (orbiter). Interlocutory or peripheral awards are forms of decisions reached pending when the final decision is reached. In effect, a decision which gets to the party prior to when it is finally conveyed by the arbitration panel to all the parties concerned is not a binding decision or award. For example, where parties are in dispute over ownership of goods which are of high perishable nature and such goods may get damaged before the arbitration panel reaches a final decision, the panel can advise the party who currently has possession of the goods to dispose it off by way of selling them and keep the money prior to the final decision of the panel. Such an action should not be taken to be a final decision. The parties must wait for the final decision of the panel to be made public.

In a nutshell, if the above four conditions are fulfilled, the decision of an arbitration panel would be binding on the parties. Consequently, if all these four conditions are fulfilled and a party who loses in arbitration purports to rescind from the arbitration process, he is stopped from going to court to challenge the decision of the panel. As a matter of fact, the decision of a duly constituted arbitration panel serves as estoppel which stops a party who loses from re-awakening the case. In other words, once it is brought to the notice of the regular court that the above four conditions were met the court cannot and will not entertain such matter.

Once the customary award has been issued, there is no going back. This rules was judicially noticed in Igbokwe v. Nlemchi [1996] 2 N.W.L.R. (Pt. 429) 185. The case concerned land dispute between the appellant and the respondents. The Appellant reported the matter to Umuobaa village, Uratta to which both parties belonged. The village meeting appointed a special arbitration committee to look into the dispute, and the committee looked into the matter and decided in favour of the respondents. The appellant being dissatisfied with the decision of the committee sued the respondent (as defendants) in the Owerri High Court claiming declaration of title to land, damages for trespass and perpetual injunction against the respondents. The court at the conclusion of the trial dismissed the appellant's case and the appellant appealed to the Court of Appeal. The Court of Appeal unanimously held that the law relating to customary arbitration is that parties chose their arbitrators for better or for worse and neither party can resile from the decision of the arbitrators simply because the decision did not favour him. In the instant case, the appellant was the first party to refer the dispute to Umugbagwaraegbe family meeting, who in turn appointed a Special Arbitration Committee to look into the dispute and the decision of the committee was not favourable to the appellant. Hence the appellant rejected the decision of the committee. The appellant cannot approbate at will. He can no longer resile from the decision of the committee.

Similarly, in Ojibah v. Ojibah [1991] 5 N.W.L.R. (Pt. 191) 296, the Supreme Court held that where two parties to a dispute voluntarily submit their matter in controversy to arbitration according to customary law and agreed expressly or by implication that the decision of the arbitrators would be accepted as final and binding, then once the arbitrators reach a decision, it is no longer open to either party to subsequently back out of such a decision. A party rejecting such a decision must prove that it was wrong in principle. In this case, the appellant not having proved that the decision of the Obi-in-Council is wrong in principle, he cannot resile from it. See Nkpa v. Nkpa [2010] 14 N.W.L.R. (Pt. 1214) 612.

It is pertinent to state that the rule of natural justice must have been followed for an award of a customary arbitration to be binding, e.g. there must be fair hearing. In effect, if a party allege that he has not been given fair hearing in the course of an arbitration, he reserve the right to rescind from the process and any decision reached cannot bind him. For example, section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended provides as follows: "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality".

A party is at liberty to withdraw from the arbitration process before the final decision is reached especially where he perceives that a member of the arbitration panel has a vested interest in the matter under consideration.

2.3 OATH TAKING IN CUSTOMARY ARBITRATION

Oath-taking is a common method of dispute resolution under the African adjudicatory system. If parties in customary arbitration agree to be administered oath in the course of the arbitration, it is binding. The use oath taking under customary arbitration is recognised by the court. This procedure was the last resort when all other forms of dispute resolution have failed. It is used by persons who are bound by their custom and tradition from time immemorial. It is administered by the Chief Priest of the community in the presence of their Elders where the parties concerned will be asked to take the oath either at the shrine of their deity or any other prescribed public place like the market place. The parties to the dispute will take a piece of Kola nut or any other thing that may be prescribed. Sometimes a condition will be attached to the oath -taking, for example that any of the parties who dies within a specified period will be deemed to have lied or that the person who took the oath and survived after one year will be the owner of the property in dispute.

Among the Esan tribes in Edo State if there is a dispute as to the ownership of a cash crop, the parties will be asked to dig the root of the crop and any of them who chew the root and swallow the water will take the crop. In most cases a person who knows that he is lying will decline to swear the oath because sanction is between him and the spiritual forces. It is important to state that this method of oath-taking was often used both at arbitration panel or trial of criminal matters under the customary adjudicatory system. The Nigerian courts have reportedly accepted that decisions arrived at during customary arbitration decided by means of oath-taking is legal and binding on the parties and none of the parties concerned will be allowed to resile from the decision.

Oath taking has been recognised by the courts as an accepted form of proof existing in certain customary judicature and may be sworn extra-judicially, but as a mode of judicial proof, it's esoteric and reverential feature, the solemnity of the choice of an oath by the disputant and imminent evil visitation to the breaker if he swore falsely, are the deterrent sanctions of the form of customary judicial process which commends it alike to the rural and urban indigenous courts. In Ofomota & Ors v. Amoka & Ors (1974) 4 ECSLR 251, the plaintiffs claimed that a customary tribunal awarded title to land to them subject to their swearing to an oath on juju to be produced by the defendants. The parties failed to meet for the oath swearing. The defendants pleaded that the arbitration ended in fiasco, that no decision was reached. It was held inter alia that where a decision of an arbitration panel was dependent on a contingency of whatever nature, as in the instant case, the swearing of an oath, the decision although legal, was not final and as the swearing of an oath was part of the arbitration and not an extraneous matter, the arbitration award was not final. It is submitted that if either party to a customary arbitration proceeding is compelled to appear before a paramount ruler-in-council on pain of punishment any decision arrived thereat cannot be said to be in accordance with a valid customary arbitration. This is because the element of voluntary submission is lacking. Agbakoba J. held that: Oath taking is a recognized and accepted form of proof existing in certain customary judicature. Oath may be

sworn extra-judicially but as a mode of judicial proof its esoteric and reverential feature, the solemnity of the choice of an oath by the disputants and imminent evil visitation to the oath breaker, if he swore falsely, are the deterrent sanctions of this form of customary judicial process which commends it alike to rural and urban indigenous courts. It is, therefore, my view that the decision to swear an oath is not illegal although it may be obnoxious to Christian ethics; Christianity, however, has not come to destroy, its mission is to edify, to correct and to reconcile. See ; Iwuchukwu v. Anyanwu [1993] 8 NWLR (Pt. 311) 307.

The use of supernatural remedies especially oath taking was put into its proper focus by the Supreme Court in Ume v. Okoronkwo [1996] 10 N.W.L.R. (Pt. 477) 133, when Ogundare JSC said "oath taking was one of the methods of establishing the truth of a matter and was known to the customary law and accepted by both parties. In Azeona v. Ugocha (2001) 29 W.R.L. 179, the respondent (plaintiff at the High Court) alleged that the defendant (now appellant) had accused him of putting juju (charm) at his doorstep to kill his son who was then a member of the legislature. The plaintiff protested his innocence by dragging the defendant before the body of the elders of the community, accusing the defendant of slander. Both parties submitted the issue to customary arbitration, which because of the serious nature of the accusation – as it involved the life of a person, requested that the parties swear to an oath. This was done in the presence of the elders. The belief was that if the allegation was true, calamity would befall the defendant. It turned out that no calamity happened to the defendant. Whereupon the accuser was directed to perform certain customary rituals for the plaintiff/respondent's age-grade as a sort of cleansing. But thereafter, the plaintiff commenced a fresh suit in the Port Harcourt High Court claiming the sum of N100,000 damages for slander. The court delivered judgment in plaintiff's favour and the defendant appealed. The Court of Appeal allowing the appeal, Pats Acholonu, JCA said "the party defamed, having elected or opted for a mere native arbitration to help assuage his bruised ego and personality, cannot now resort to another mode of channelling his complaints, the remedy of which he has obtained from elsewhere. He would be estopped from doing that".

In Onwusike v Onwusike (1962) 6 ENLR. 10 at p. 1418, Betuel P.J. held as follows: "this decision given by the elders, authorised by custom to settle such disputes, and exercising their customary functions, as a result of the submission of the parties to their jurisdiction, unless clearly wrong in principle, is binding on them". I hold that decision of the Udiuhu- Umuegbe family meeting, Ndinhu Umegbe Alaeyi – Ogwa Mbaitoli is based on the ratio, law and custom prevalent in the area and is binding on the parties. It is a final and not an interlocutory decision ..." The use of oath to resolve thorny legal problems where there is paucity of other forms of proof is recognised by the courts and has been highly effective. This is illustrated in the case of Uzowulu v Ezeaka (2000) All FWLR (Pt 46) 932, where the Supreme Court described the forum where the oath is taken as one which by custom is invested with judicial aura.

The Supreme Court also in a recent decision, in the case of Onyenge v Ebere (2004) All FWLR (PT219 98), held that oath-taking before "Ogwugwu Shrine" Okija, which is a form of native arbitration in accordance with the custom and tradition of the people is legal and binding. The

use of supernatural remedies especially oath taking was put into its proper focus by the Supreme Court in Ume v. Okoronkwo (1996) 12 SCNJ 404 when Ogundare JSC said "oath taking was one of the methods of establishing the truth of a matter and was known to the customary law and accepted by both parties. I am bound by that decision.

It is worthy of mention that customary arbitration cannot be used to settle matters that are criminal in nature under our jurisprudence. For any offence to qualify as criminal offence it must be written and the punishment must be prescribed and written in a law book (criminal code, penal code, etc.). This rule is provided for in section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria as amended which provides that "Subject as otherwise provided by this constitution, a person shall not be convicted of criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law".

The rule that no person should be punished for an offence not written in the law book has been judicially noticed in Aoko v. Fagbemi (1961) 1 All N.L.R. 400 where a woman was convicted by the Ijebi-Ijesha Grade "D" Customary Court on the February 21 1961 of an offence of adultery under the native law and custom (customary law). An offence not defined as offence under any written law. However, an application was made for an order quashing the conviction entered against the applicant by the Ijebu-Ijesha Grade "D" Customary Court on the 21st day of February, 1961. Consequently, the High Court quashed the decision of the Customary Court on the ground that the appellant had not violated any written law that the conviction was contrary to section 21(10) of the Constitution of the Federation of Nigeria 1960 now section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 as amended which provides that "a person shall not be convicted of any criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law".

Although the decisions of customary arbitration are binding on the parties where all the four conditions are fulfilled, parties are however not bound if the performance of the decision of the customary arbitration would constitute an illegality. That is, if the condition required by the costmary award would constituted a criminal act. See Akaose v. Nwosu [1997] 1 N.W.L.R. (Pt. 482) 478, Assampong v. Anuaku (1992) 1 W.A.C.A. 192, Okere v. Nwoke [1991] 8 N.W.L.R. (Pt. 209) 317, Achor v. Adejor [2010] 6 N.W.L.R. (Pt. 1191) 537.

It may be important to succinctly make a distinction between oath taking in customary arbitration and trial by ordeal. While the former is a voluntary act, the latter is often associated with compulsion. Under oath taking in customary arbitration, the party is left with the option of submitting to such oath taking or refuse to. Trial by ordeal on the other hand usually goes with coercion and requires the party to do the extraordinary.

2.4 METHODS OR MODES OF PROOF OF CUSTOMARY LAW

Under section 315(4) & (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), customary law qualifies as an existing law. In other words, the above section and by extension the constitution of Nigeria recognises customary law as an existing law in Nigeria. It therefore means that customary law can be applied by individuals in deserving cases. Section 16(1) of Evidence Act 2011 provides that "a custom may be adopted as part of the law governing a particular set of circumstances it if can be judicially noticed or can be proved to exist by evidence". In Nigeria, customary law is a peculiar system of law in that under the Nigeria Legal System it is regarded as a matter of fact not a matter of law.

However, customary law even though it is called "law" it is a peculiar law that can only be applied in certain cases. By implication, the constitution of the Federal Republic of Nigeria remains supreme to all other laws of the land. If customary law is 'law' strictly speaking, it is regarded as a matter of fact not a matter of law even though it is recognised as a system of law in Nigeria Legal System.

As a general rule, a party is not expected to prove any law by calling evidence to prove it. It is presumed that judges know the law (juria novi curia). Parties are therefore only saddled with the responsibility of proving facts asserted by them. But customary law is an exception. Because of the relativity of customary law, judges cannot rely on the customary law of one community to decide a customary law case in another community.

A rule of customary law has to be proved or established before the courts because it is regarded as fact. The court can only judicially notice a custom that has been proved frequently. Section 18(1) of the Evidence Act 2011 provides that "where a custom cannot be established as one judicially noticed, it shall be proved as a fact". This rule was formulated by the Privy Council in the Ghanaian case of Angu v. Attah where the Privy Council stated that "as is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native customs until the particular customs, by frequent proof in the courts have become so notorious that the courts will take judicial notice of them".

Similarly, section 16(2) of the Evidence Act 2011 provides that "the burden of proving a custom shall lie upon the person alleging its existence". This rule has found judicial application in Onwuchekwa v. Onwuchekwa [1991] 5 N.W.L.R. (Pt. 194) 739. In this case, the appellant and the 1st respondent were wife and husband respectively. The appellant alleged that both herself and the 1st respondent contributed money jointly to purchase the plot of land on which the building in dispute was erected, and that she also contributed toward the erection of the building. The 1st respondent without her consent sold the property to the 2nd respondent. She then sued claiming a declaration that the property was owned in equal shares by herself and the 1st respondent; a cancellation of the sale, or alternatively, a declaration that she is entitled to one–half of the proceeds of the sale. The 1st respondent denied the appellant's allegation. In the

alternative, he claimed that under Isikwato customary law under which they were married, the appellant with her money is owned by the 1st respondent. The appellant on her part on the issue of Isikwato customary law said that even if such custom alleged by the 1st respondent existed, such custom was repugnant to natural justice, equity and good conscience. The Court of Appeal held that the burden of proof that a particular customary law is repugnant to natural justice, equity and good conscience is on the party putting up or erecting the defence. That in Nigeria jurisprudence, customary law is regarded as a fact and therefore must be specifically pleaded like all other facts. In other words, the particular custom relied upon must be specifically pleaded in order to enable the adverse party join issues if need be.

In Motoh v. Motoh [2011] 16 N.W.L.R. (Pt. 1274) 474 particularly at 522, the plaintiff brought an action against the defendant seeking an order for a declaration that the plaintiff is the Okpala and indeed the only male issue of the late Jeremiah Anagor Motoh who died intestate and as such entitled to hold and manage the property of the late Jeremiah Anagor Motoh according to the custom of Umuanaga village Awka since the first wife Mercy Nwojini Motoh had no male child for the deceased. The defendant denied the claim arguing that she was the only wife lawfully married to Jeremiah Anagor Motoh and that they wedded at St. Faith's Cathedral Church Awka, and that Gloria Mgbogafor Motoh the plaintiff's mother only lived with herself and her deceased husband as a maid. She claimed that when the plaintiff's mother became pregnant, she was driven away. The defendant then contended that she had six daughters and two sons for Jeremiah Anagor Motoh, the names of the two sons whom she gave as Chukwuemeka and Nwankwo. The defendant denied participating in a customary court case and in a customary arbitrations. After a careful consideration of the evidence before it, the court held that there was merit in the claim consequently gave judgment in favour of the plaintiff.

METHODS OF ESTABLISHING CUSTOMARY LAW

Customary law can be established or proved in two major ways;

1. By calling witness (es)

2. By judicial notice

Calling Witness

Customary law can be proven by the person who alleges its existence by calling witnesses to give viva voca evidence (oral testimony or evidence) as in most cases the burden of proving a custom lies upon the person alleging its existence. The witnesses then testify in the open court to show that the custom relied on by the party is actually what is obtainable in the given community. In such case, the evidence of people who are experts in the given customary law are more reliable. Section 73(1) of Evidence Act 2011 provides that "when the court has to form an opinion as to the existence of any general custom or right, the opinion as to the existence of such custom or right, of person who would be likely to know of its existence if it existed are

admissible".

It is important to mention that expertise in this context is not dependent on the age or educational qualification of the person giving the evidence. It is a matter of experience. For example, chiefs, elders as well as traditional rulers are more likely to know the custom of their community compare to a man of 80 years of age but has lived all his life outside his community.

It is also pertinent to state that the weight ascribed to particular evidence is not determined by the number of witnesses called. The testimony of one credible witness is enough to prove the existence of a custom. The credibility of any witness can be determined after cross-examination. If the witness for example is inconsistent in his testimony, the testimony of such witness will weigh little. See Kopek Construction Ltd v. Ekisola [2010] 3 N.W.L.R. (Pt. 1182) 618 at 654-656. Adenigi v. Onagoruwa [2000] 1 N.W.L.R. (Pt. 639) 1.

However, even though the credible evidence of one witness is enough to establish the existence of custom, the court is warned not to rely on the evidence of the party who is claiming the existence of the custom alone. In other words, such testimony needs corroboration. In Giwa v. Erinmilokun (1961) 1 S.C.N.L.R. 377, the appellant instituted a case of title to land for himself and on behalf of the Aromire chieftaincy family. It was for declaration of title under native law and custom to the property in dispute and an order for possession against the defendant/respondent. The plaintiff had contended that the Aromire chieftaincy family were at one time owners of the land in dispute; that the land was granted to one Saba, a War Chief. This fact was not contested. It was further contended that the grant was not absolute but subject to reversion; further that as a result of certain adverse dealings with the land, the land was reverted to them. On this point, the appellants place reliance on native law and custom. The learned trial judge dismissed the claims on the ground that the onus of proving the customary law was upon the family, and they failed to discharge this onus. Whereupon, the plaintiff appealed, and pending the hearing of the appeal, the appellant died and by order, the Supreme Court substituted Yesufu Abiodun, Chief Oneru as appellant to pursue the appeal. The Federal Supreme Court unanimously dismissing the appeal, held that native law and custom is a matter of evidence to be decided on the facts presented before the court in each particular case, unless it is of such notoriety and has been so frequently followed by the court that judicial notice would be taken of it without evidence required in proof. In the instant case, since there is no reported case on the position of 'War Chiefs' as regards grants by land-owning chiefs, of which the trial judge was bound to take notice, he was justified in holding as he did that the appellant family had not discharged the onus placed on them. See Osolu v. Osolu [1998] 1 NWLR (Pt. 535) 532, Motoh v. Motoh supra.

Judicial Notice

The second method of establishing or proving customary law is by judicial notice. Customary law is regarded as fact which must be established before the law. The assumption is that the judge knows the law, so one is not expected to teach the judge the law but all that is required of the party is to cite the law.

A custom that has been judicially noticed need no proof by way of calling witnesses. By judicial notice in this regard, it means that it has been established before the court in previous times that such custom exist.

The position of the law was that for a custom to be judicially noticed, such custom must have been proven more than once (frequent proof). In Larinde v. Afiko [1940] 6 W.A.C.A. 108, the court of Appeal refused to uphold the decision of the trial court taking judicial notice of a particular Awori custom on the ground that the single decision relied upon by the trial court did not amount to frequent proof by the court

Similarly, in Osinowo v. Fagbenro [1954] 21 N.L.R.3, the plaintiff relied on three earlier decisions in which the rule of customary law had been adopted and it was held sufficient for the court to take judicial notice of the custom.

Prior to this time, a custom need be proved more than once before it can be judicially noticed. But by virtue of section 17 of the Evidence Act 2011 "a custom may be judicially noticed when it has been adjudicated upon once by a superior court or record". Under the Nigeria legal system, superior courts of record refer to the High Court, the Court of Appeal and the Supreme Court, while every other court below the High Court are called inferior courts.

In line with the new position of the law that a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record, Federal Supreme Court in Cole v. Akinyele (1960) 5 F.S.C. 84, accepted a customary law rule which has been previously applied only once.

Judicial notice can also be taken of registered declarations of customary law. In Oladele v. Aromona II, the Supreme Court held that a registered declaration obviates the necessity of proof by oral evidence in court.

Use of Books or Manuscripts

Apart from the two major ways of establishing custom as identified above, another way of proving or establishing customary law is the use of books of authority. Parties can rely on textbooks or printed materials containing the practice or rule of a particular custom in order to establish that the custom exist. The party relying on these book can cite them in the course of their arguments in court and the views and opinions expressed in those books are strongly persuasive, and in some cases, binding. Section 70 of the Evidence Act 2011 provides that in deciding questions of customary law and custom, the opinions of traditional rulers, chiefs or other persons having special knowledge of the customary law and custom and 'any textbook or

manuscript' recognised as legal authority by the people indigenous to the locality in which such law or custom applies, are admissible..

However, it is not just any kind of textbook or manuscript that is acceptable. The textbook or manuscript that is relied upon must be the type that has gained prominence among the people of the locality or community as containing a true reflection of the native law and custom that is binding on the people of that locality or community. In other words, the textbooks or materials in question must have been recognised by the people in question as an authority with regard to the particular custom in issue. In Adedibu v. Adewoyin (1951) W.A.C.A. 191 where the appellant was the defendant, the trial court declared that the appellant was not entitled to be appointed Mogaji of the House of which the parties were members. The judge had recourse to document described as "Mr. Ward Price's Memorandum of Land Tenure in Yoruba Province" and based his judgment thereon. The document was not put in evidence, but the judge treated it as a legal textbook or such authority as would warrant its citation in court. However, on appeal, the Appeal Court held that the memorandum was not shown to be recognised by natives as a legal authority and should not have been taken into account. The judge not being satisfied that either party has proved his claim was not justified in making a declaration based on conception of native law and custom to which neither party subscribed. Consequently, the Court of Appeal set aside the judgment of the trial court and substituted therefore a judgment of non-suit. In the above case, it was held that for the book to be admitted as proof, it must; (a) form a part of evidence in the case, and (b) be recognized by natives as a legal authority.

In using textbooks or manuscript to prove customary law, caution must always be exercised because custom is dynamic. It changes with time. What may have been custom of a particular people with regard to a particular issue in 1960 for example, may no longer be the custom today. A later custom can upstage an old one if it can be proven that the new one is the one currently in use in the community. In other words, if a customary rule judicially noticed has been replaced by another one and the later custom is established by evidence before a court and accepted, the previous judicially noticed customary law rule must give way for the later rule. For example, prior to 1960, the Bini custom with respect to Igiogbe was that the eldest surviving son of a deceased father inherits the house where the father lived and died while the rest children then take the other houses which in some cases may be more sophisticated or standardized than the Igiogbe. However this practice engendered series of complaint by the eldest children who felt they were being cheated. Consequently, the Bini Council in 1960 reviewed the custom, and currently, the eldest son is at liberty to choose from the number of house which the deceased father may have left behind. In effect, the old custom has been upstaged.

The fact that custom is dynamic was judicially noticed in the case of Apoesho v. Awodiyi (1964) 1 All N.L.R. 43 where the Court of Appeal submitted inter alia that it is a well known fact that in recent years customs have change rapidly and what was custom twenty years ago has ceased to be the custom of the people. See Nwogu v. Njoku [1990] 3 N.W.L.R. (Pt. 140) 570 at 584,

Finally, a custom which is repugnant to natural justice, equity and good conscience will not be enforced by the court. This point is provided for in section 18(3) of the Evidence Act 2011 which states as follows: "in any judicial proceeding where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience.

2.5 PUNISHMENT AND REMEDIES UNDER CUSTOMARY LAW

The essence of punishment under English law is to deter offenders and potential offenders from committing such offence. On the other hand, the reason for punishment of criminal wrong under customary law is for the following;

1. Embarrassment or humiliation – for example, when a man steals a goat and he is caught, the man is rendered naked and the goat hung on his neck. The essence of this is to make the man feel ashamed, demeaned, disgraced, and debased.

2. The punishment for wrong under customary law could be banishment, especially for heinous crime like witchcraft, incest, etc.

3. Ostracism is another punishment associated with criminal wrong under customary law. Any act or action capable of causing public disorder and a menace to the society are looked at with disfavour and for such conduct, the sanction was ostracision from the community.

4. Flogging. Authorities may sometimes resort to lashing/whipping of an offender as a way of punishing him for a particular wrong. This is common under Islamic law.

5. Amputation. Offender in certain criminal wrongs like stealing stands the risk of having his hand amputated as the punishment for his wrong. This is usually the practice under Islamic or Sharia law even though it amounts to violation of human right and contravenes the provision of the constitution.

6. Killing. In rare cases, offender may be killed depending on the gravity of the offence committed. This again may be tantamount to extra-judicial killing under the English law.

Remedies for Civil Wrong

There are basically two types of remedies for civil wrong under customary law, namely;

1. Temporary remedy also known as physical remedy, and

2. Supernatural remedies like oath taking. In effect, the punishment is not carried out by human agents but believed to be done by some supernatural forces. It is firmly entrenched in African jurisprudence that a wrong doer cannot escape punishment. But as has been appropriately stated, physical punishment was not so much a deterrent as the fear or the anger of the gods.

Mode of enforcing judgment under customary law

There are equally two modes of enforcing judgment under customary law. These include;

1. Self – help. This is a condition of doing things by oneself without the help of others. In legal parlance, it is taking an action either in person or by a representative that results in legal consequence. From its general definition, self-help is the rule of force rather than the rule of law. under this mode, the aggrieve party – if he is creditor, initiates enforcement proceedings, for instance by seizing the property of the debtor, and this usually leads to the intervention of a third party and subsequently to arbitration. This mode of right enforcement was common among the Yorubas and was used to enforce payment of debts. The practice was for the creditor to either seize some property of his petty debtor or prevent him from going about his normal business. The creditor would wake up very early in the morning to lay a siege on the debtor's residence, insisting that he be paid before the debtor would be allowed to do anything. In extreme case, the debtor is prevented from cooking or even eating. On occasions, the creditor would detain his debtor in public places where people are likely to intervene. The debtor dare not touch him for as the Yorubas would say "the day you beat up a creditor you must be ready to pay up the debt".

2. Spiritual sanction like swearing to an oath or some kind of juju.

3.0 LAW OF WRONGS: Distinguishing between criminal wrong and civil wrong

A wrong is a violation of the legal right of another. It is important to state from the outset that termed "wrong" is used under customary law to mean the breach of or deviation from an accepted rule of behaviour. The term is known as "offence" under the English law. Kofi Quashigah puts it succinctly when he observed that in traditional Africa, "a particular behaviour joined the category of crime only when it threatens the interest and peaceful survival of the society as a whole. Unlawful killing of any member of the community for example was viewed as a criminal act. The offences of murder, stealing, burglary, etc. were classified as crime. Other wrongs especially those which would attract compensation to the injured party rather than punishment were usually regarded as civil wrong, e.g. adultery. All acts and omissions that do not fall within the category of criminal wrong are classified as civil wrong, although this classification may not satisfy all contending opinions. It is safe however to say that the customary law of civil wrongs cover about the same areas as the English law of tort, law of property and breach of contract.

The difference between civil wrong and criminal wrong is that while in civil wrong, the action affect only the party or the victim, in criminal wrong however, the action affects the generality of the masses.

3.1 CUSTOMARY LAW CONTRACT: OBLIGATIONS ARISING FROM CONTRACT AND STATUS

A contract is defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties. It is an agreement between two or more parties which will create reciprocal legal obligations to do or not to do particular things. For a contract to be valid there must be mutuality of purpose and intention. There must be in fact, "consensus ad idem" that is, a meeting of the minds.

Under the customary law system, there existed contract between the natives. Sales of land, chattel, and other things were carried out by trade by barter. Once the goods involved exchanged hands and payment made, the contract was completed. In the sales of land for example, once the buyer pays the owner of the land in the presence of witnesses and he is put into possession of the land, the contract is completed. Sale of land under the customary law system does not require writing, and English law of modern day does not affect such sale. The payment could be effected by exchanging of coconut tobacco, gin and clothes or exchange of an animal such as goat, cow, etc. This point was judicially noticed in Cole v. Folami (1956) SCNLR 180, where the appellant claimed to have inherited the land in dispute from his late father whom he claimed bought the land from one Tasan. The respondent contended that the land in dispute was a portion of land granted to Governor Glover for allotment to some refugees but that the plot of land in dispute was unallotted by the Governor, thus it reverted to the Oloto chieftaincy family who then sold and conveyed the land in dispute by a registered deed of conveyance to Adebamiro in 1950. The latter in May 1951 sold and conveyed this same property by a registered deed of conveyance to the respondent. The issue of who had better title was decided by the trial court in favour of the respondents. The appellant appealed against the decision and the Court of Appeal dismissing the appeal, held that customary law does not recognise writing, and the issuing of receipt is strange to custom and tradition. That once the buyer is put into possession by the seller, the contract is completed.

This point was again emphasised in the case of Adesanya v. Aderonmu (2000) FWLR (Pt. 15) 2492, when the court held that contract of sale of land under the customary law does not require writing as long as the transaction took place in the presence of witnesses and the purchaser was put into possession, the contract was valid.

Similarly, in Griffin v. Talabi, the Court of Appeal at page 372 held that purchase receipt and conveyance clearly evidence a transaction, the nature of which is unknown to native law and custom.

The provision of section 4 of the Statute of Fraud 1677 does not affect the contract of sale of land under the customary law. Section 4 of the Statute of Fraud provides thus "any contract of sale of land which is not in writing or contained a memorandum of the arrangement is unenforceable in the court".

CONCLUSION

The practice of customary law in Nigeria has been very interesting. While a lot of reforms have been done in the various laws, customary law is yet to enjoy same. For example, under the New High Court Rules of Edo state, 2018 provision is made for the multi-door court house to fast-track some selected cases like land matters. Under the new multi-door court system customary arbitration was not included. If the aim is to fast-track proceedings then customary arbitration ought to be covered to enable the customary courts enforce fast track proceedings. This is because most of the cases under customary law are instituted in the customary courts. This will also help to develop the practice of customary law in the courts.

QUESTIONS

1. Discuss the characteristics of customary law and distinguish them from the received English law

2. Explain the meaning of 'repugnancy' in law

3. To what extent is it correct to say that Islamic law is part of customary law? Justify your answer.

4. The Quran is the only source of Islamic jurisprudence. Do you agree?

5. Discuss the mode of customary legislation prior to the advent of colonial government in Nigeria.

6. Omo is a native of Ugbogui. In 1980 he had a land dispute with Esama, also a native of Ugbogui. Omo reported the matter to the elders of the community in accordance with the custom of Ugbogui. Each party stated his case and the matter was resolved in favour of Esama. Both parties accepted the verdict. In 1994, Omo filed an action against Esama at the Customary Court over the same parcel of land. Esama has approached you with the claim. With the aid of decided cases, advice Esama on his defence to the suit.

7. Ambode was born in Zamfara State. When he was 20 years old, he moved over to Enugu State. While there, he bought a parcel of land on which he constructed a bungalow of three bedrooms. He also acquired some household items such as plasma television, an air-conditioner, and a walking stick. Unfortunately, Ambode died intestate. With the aid of decided cases, advice Ambode's children on the law which will govern the distribution of Ambode's properties in Enugu State.

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