EDO UNIVERSITY IYAMHO

FACULTY OF LAW

DEPARTMENT OF PRIVATE AND PROPERTY LAW

COURSE: **THE NIGERIAN LEGAL SYSTEM**

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Lectures: Wednesday,8:00am-10:00am,Thursday, 10:00 -12:000pm, Moot Court: Phone: (+234) 703-085-8005

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General Overview of lecture: The main aim of this course is to introduce the students to the study of the Nigerian legal system generally and to acquaint them with the machinery for the administration of justice in Nigeria. The students must have the ability to understand the problems and concept of substantive law by elucidating the judicial process**.** Emphasis will be placed on the interactions between various arms of our legal system and the social context which the legal system is supposed to serve.

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

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

i. To know the Sources of Nigerian Law.

ii. Understand the various models for statutory Interpretations**.**

iii. Understand the Characteristics / Features of Customary Law

iv. Know what Case Law, Doctrine of Stare Decisis / binding /persuasive Judicial precedents are.

v. Understand the internal conflict of law between different Customary Laws/ Islamic laws, English law and Customary law, English law and Islamic law**.**

vi. The Judicial institutions, the role of the Judiciary and the history and development of the Courts.

vii. Types and Jurisdiction of Courts in Nigeria.

viii. Have and know the Outlines of Civil and Criminal Procedure in Nigeria

ix. Know what the Legal Aid Council is all about

x. Propose legal development and the future of law in Nigeria and

xi. Understand the organization of legal education and Legal Profession in Nigeria

Assignments: Students will have 3 home assignments 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 (75%) percent class attendants is a pre condition 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:

- The Nigerian Legal System. Text and Cases. Ese Malemi 4th Edition.2012.
- Nigerian Legal System Akintunde Olusegun Obilade 2009
- Introduction to Nigerian Legal System J.O Asien 2nd Edition.2005
- The English Legal System Jacqueline Martin 3rd Edition.2007.

1.0 INTRODUCTION

SOURCES OF NIGERIAN LAW

The term sources of law among others, means or use refers to the fountain of authorities of a rule of law i.e. the origin from which a legal rule derives its authorities. It is the means through which a rule form a part of the body of law. In this sense, a source of law, is a legal source:

The sources of Nigerian law are not wholly local by reason of our history. Following the colonization and imposition of British rule in Nigeria between 1861 & 1914.English law was introduced into different part of the country at different times by series of proclamation & ordinances

In 1914 the South & Northern Protectorate were amalgamated to form the Colony, and Protectorate of Nigeria. This Nigeria as a political entity came to bear on this date and the Supreme Court ordinance was enacted to supersede all other ordinance and proclamation in Nigeria as an entity and survived until October 1st 1954.

Section 14 of the Supreme Court Ordinance provide thus,

> *"..Subject to the terms of these or any ordinance, the common law, the doctrine of equality and statutes of general application which were in force within the jurisdiction of the court in England on Jan 1st 1901, shall be in force within the jurisdiction of those courts.."*

After Nigeria became a federation in 1955, comprising of the new regions and a Federal Capital Territory of Lagos and much later the Mid Western Region, which was created in 1963, the above provision was repealed, and re enacted in the High Court Laws in the respective regions.
The same was enacted in the Interpretation Act of 1960. See section 45. Since then, the English Laws became one of the sources of Nigeria Law.

Apart from English laws, we have also as a source of Nigerian law, Nigerian legislature, the constitution, case law, customary law, by laws .decrees, edict etc

The Received English Laws are

1. The common law,
2. The doctrine of equity.
3. The Statutes of General Application:- e.g Conveyance Act 1881, Land Transfer Act 1897, The Will Act 1837 etc.

Common Law:

The common law can be used in several sences; but as a source of law, it actually refers to the law developed by the judges of the old common law courts of England, namely the King's Bench, i.e." the court of common pleas" and the court of exchequers from the custom of the various English communities.

There was originally several system of law known as the common law of England, since it's almost entirely a development of judges, its principles are to be found in previously decided cases, as it cannot be found in a common code.

The common law been a system of rule, extractable from previous decision, was held together and developed by the doctrine of *stare decisis* i e. standing by previous decisions. Thus when a judge decides a now case brought before it, the new rule declared in that case was subsequently followed, by the other judges in subsequent cases with similar facts and circumstances.

In later times, the law crystallized into a form known as the binding force of judicial precedents and judges felt to follow previous judicial decision instead of merely looking for them as mere guidance by these means, the common law earned the status of a system. In summary, the common law, is a judges system of making laws out of the local custom, of the people universalized by the common law courts.

Equity and its Origin

In the general juristic sense, may refer to the power to meet the moral standard of justice in a particular sense by a tribunal having discretion to mitigate the rigidity of the application of strict rules of laws, so as to adapt the relief to circumstances of the particular case, without actually antagonizing the common law itself.

In the technical judicial sense, equality means the law developed, by the old body of chancery, as a result of the rigidity of the common law

At early times (about two centuries ago) Law & Ethics (custom) were referred to as inseparable. Thus equity in the general juristic sense formed part of the law. At that time, the power of courts to dispense justice was directly linked with the royal courts. In other to bring an action in one of the kings court, the aggrieved person will have to obtain from the chancery a "writ" (it was a sealed letter written in the name of the king's court and it ordered some person/ defendant to do whatever the writ specified). It begins with a statement of the Plaintiff 's claim, which was largely in common form and was prepared in the royal chancery and not by the Plaintiff adviser or lawyer as it is today.

Since justice was administered under wide and expensive prerogative of the king, no citizen was denied access to court, mainly because the cause of action did not fit into any of the existing writ. When a new cause of action arises chancery was empowered to frame a new writ thus extending the law. Thus both the common law and equality were operated in the early common law courts.

Towards the end of the 13th century however, there was a noticeable and remarkable change in the judicial attitude of the common law judges in the administration of justice. The administration of the common law by judges was becoming inflexible or rigid. This was associated to the growing powers of the parliament to make laws for the people of England.

Secondly the parliament which was empowered to make laws was offended by the chancery issuance of writ without its approval.

Furthermore there was too much emphasis on form, thus relegating justice, where there was/were no existing remedies ,writs were not used.

during period under review, the germ of positivism was rampant in England, or English jurisprudence

The defects in the common law system are

(a) The writ system
(b) Procedures
(c) Defenses/corruption
(d) Decision of courts was becoming unenforceable
(e) Inadequate remedies

For these reasons, many people who could not obtain appropriate remedy in the common law courts started addressing tier complains to the king in council. Later it was delegated to the chancellor to oversee the complain, but he did not follow any laid down procedure hence the remark "*equality varies with chancellors foot"* the chancellor however succeeded in the issuance of a decree of specific performance, injunction etc.

At this stage of development, in other to bring certainty into the system, equity began to follow the principle of precedent in time, and like common law, it gradually developed into a well established reasonable and ascertainable body of principles.

RELATIONSHIP BETWEEN LAW & EQUITY

The relationship between the common law courts and the chancery was not cordial; both used their powers to get at each other. The common law court did not allow the chancery to water down their power and vice versa.

In the ***Earl of oxford case*** 1615; **Lord Coker**, offered a direct challenge to the court of chancery jurisdiction and the dispute was referred to **King James 1** for settlement. He resolves thus!

> "*...It is former of equity by stating that where common law rules and equitable laws are in conflicts the later taker should prevail ".*

Thereafter the aged long conflict was resolved, and cemented by the Judicature Act of 1873-75 which brought about the amalgamation of the English law courts. Since then both the common law of England and the equitable remedies are available to a litigant under the same action.

Please note that while common law is the basic law of the land, equity operates within certain areas of law to complement or supplement pre existing common law rule upon the same subject. It is thus a gloss upon the common.

<u>Statutes of General Application</u>

These are laws made by the parliaments. It is also called an enacted law of England. English statutes operational in Nigeria are in two folds;

Laws Enacted in England Applicable in Nigeria.

Laws enacted in England, which were to have a force of law in Nigeria as a colony and are still in force except repealed by legislation.

The Received English Statutes / Law

These are laws enacted in England but were *received* into our legal system by choice. The received English laws were originally enacted for England, but co-opted into our laws .i.e they were made applicable by our various local enactment which specifically and expressly declared that they were to be in force within the jurisdiction of the countries court.

The Technique for Reception.

The reception of English law into Nigeria was effected by local statute or legislation. The most recent enactment that received English law into Nigeria include the interpretation Act 1964, and the various High Court of the various States in Nigeria.

The reception procedure in all the jurisdiction are substantial the same save for the western Region which enacted " the law of England (application law) Laws of Western Region|"1959 applicable to all the Western States including Edo and Delta states which did not embrace the English Statute.

S.3 of the law merely receives the common law and the doctrine Equity, While **S.4** specifically declares that that no English statute hitherto in force in these states shall continue to be in force, so far as they deal with matters within the legislative competence of the states.

It must be pointed out that the Law of England (application law) Laws of Western Region"1959 applies only to the extent that it does not conflict with federal laws by the nature of our constitution in matter exclusively reserved for the Federal (government) laws which embraced the statutes of General Application.

It must however be noted that there are four principal legislature that are of English origin adopted into Nigeria without any alteration and are identical in all states. They are Probate, Divorce, Matrimonial causes and its Proceedings.

S.32 of the Northern Region High Court law reads thus,

"The jurisdiction of the high court in probate divorce, matrimonial causes and proceedings may be exercised by the court in conformity with law and practice for the time been in force in England."

What is the implication of the term "for the time being in force in England "used in S.32 **of the Northern Region High Court law.**

The section introduced the English law that is in force for the time being rather than that which existed out of any specific date, The implication of these is that as English law on the section changes, so are the alteration automatically incorporated in the laws of Nigeria.

It must be noted that the English laws on these matter are incorporated wholly by reference where no attempt is made to tie it to any specific date and the English and the English laws received by means of general provision tied to 1st Janary, 1900.

S.45 (1) of the Interpretation Act Reads:

1. *" Subject to these provision of this sanction and except in so far as other provision is made, by any federal laws, the common law of England, and the doctrine of quality together with statutes of General Application that were in force in England on the 1st day of January 1900 shall be in force in Lagos and in so far as they relate to any matter within the exclusive legislature competence of the federal legislature shall be in force elsewhere in the federation.*

2. *Such imperial laws shall be in force, so far on the limits of the local jurisdiction and local circumstances shall permit, and subject to any federal law.*

3. *For the purpose of facilitating the application of the said imperial laws, they shall be read with such liberal alterations not affecting the substance as to names, locally cover officer, persons, moneys penalty and otherwise as may be necessary to render the same applicable to the circumstances.*

Text for Applicability of Statutes:

1. ***Should the law be applicable only in England or United Kingdom*** *?*

   The place of reference is in England and not United Kingdom.

   In Re Ishola(1932) 2 NLR pg 37, **Webber J.** held that the Land Transfer Act of 1879 was not applicable in Scotland and Ireland and so was not a statute of General Application.

   In ***Young V Abina*** (1946) 6 WACA pg. 180.The Court however held that the Act was in force in Nigeria and wondered how a statute can be more general.

2. ***Should the law be applicable in all colonies before it can be referred to as statutes of general application?***

   Chief. J. Osborne reflected on this in the 1st instance in the case of ***A.G V.John Holt & Co (*****1910) 2 ANLR pg**!

   The reasoning of the learned CJ was that if the suggestion was correct, it will mean that if a status was in question in Nigeria, the court will have to address evidence as to whether the statute was applicable in other colonies, which will mean a heavy work for the court.

3. ***Another argument was that must the law be generally applied by all court, and or must it apply to a generality of people and not a class before it can be accepted as a general law of application.***

It is conclusive that none of this factors will limit the application of the rules, but the matter and the general content of the particular statute must enjoy contextual application. i.e. if from the nature of statute via a viz the circumstances of the case, then the statute cannot be held to be one of general application.

In determining the nature of the statute, the court must examine the generality of the wordings of a particular statute.

STATUTORY INTERPRETATION AS A SOURCE OF LAW

As a source of law and for all purposes the problem of legislation usually occur in the language used in writing them. **John Far** put its these way in his book Legal Method.

"Legislation usually speaks in general terms and in the abstract. The problem there is to place the Species within the type of genres and facts of a particular case within a specie".

The Court is bound to interpret the law to meet the intention of the legislature at all times, however owing to human nature, it is practically impossible to for see all kind of events that lies ahead. A statute which is ambiguous or unclear must be interpreted. ***Idehen V Idehen*** (1991) 6 NWLR Pt 198 382: Rat 32.

It s the duty of the court to give meaning to an ambiguous expression, where the word of a statute are clear enough, or unambiguous, it is the words that govern, but words are usually not clear enough.

RULES OF INTERPRETATION.

The primary duty of the Court is to arrive at the true intention of the legislature based on the letters of the statute which are merely the external manifestation of the former.

This privilege does not offer the Court to re write statute.

As a general Rule, the court cannot, under the guise of reformulating the intention of the law maker, tamper with the law as enacted or impose its own conceived version of what that intention should be. It should not ordinarily concern itself with the alteration of words in a statute merely to make it read the way it thinks. See the case of Bairamiah JSC in ***Okumagba V Egbe (1965)1 All NLR.P.62***

It must however be pointed out that where there are obvious mistakes, on the face of a law, if uncorrected will lead to absurdity, the court is bound to act.

In interpreting the intention of the legislature "rules" have evolved, we shall now study a few of these rules.

It should be noted that that titles, headings and preamble(s) in statutes are a guide for interpretation of statute.

Literal Rules.

Where the words of a statute are clear and unambiguous, the court must give effects to them.

See ***Ibrahim V J.S.C*** (1998) 14 NWLR.Pt 11041; ***Kasunmu V Shitta Bey*** (2007) All FWLR PT 356 741. R.2. see also ***Ogba V State*** *(1992)2 NWLR Pt 164 at186 SC; Miscellaneous Offences Tribunal V Okorafor (2001)FWL Pt81 at 1737*

In ***RV Inhabitant of Ramstat***: **Barley J** had this to say.

> *"It is very desirable in all cases to adhere to the words of an act given to then in that sense which is in their natural import in the order in which they are placed"*.

However, if the literal interpretation of a statute may lead to absurdly, ambiguity and/or injustice, the court must adopt another type of interpretation, to arrive at the intention of the legislation.

The Golden Rule:

It is attributed to the celebrated case of **PARK B** in the case of **Beck V Smith :** 150 ER 724, 726.

> *"it is a very useful rule in the construction of a statute to adhere to the ordinarily meaning of the word used, and to the grammatical constructions, unless that is at variance with the intention of the legislature…"*

Where the interpretation of a statute will lead to absurdity or be repugnant, the language may be varied so as to give meaning to the intention of the legislature.

See. ***Awolowo V Federal Minister of Internal Affairs*** (1962) LLR 177. see also ***Dantsoho V Mohammed*** (2003)FWLR PT 150 1717 at 1725,

To achieve the aim of the legislature, the court may sometimes use the word "**OR**" to mean **"AND"**; and vise versa to avoid absurdity.

The Mischief Rule:

It is about the oldest rule of interpretation. **Lord Coke** report in **Heydon's case** (1584) 76.ER. 637 that the exchequer unanimously resolved thus, that four things were necessary for the interpretation of a statute and this was re-echoed in the Nigerian celebrated case of ***Savannah Bank V Ajilo*** (1987) 2 NWLR PT 5.7 Pg 421,where it was stated that, where the meaning or subject of a statutory provisions cannot be easily got from the plain words used, the court must ask itself the following questions to arrive at the intention of the parliamentary legislation.

a. What was the common law position before the passing of the Act or legislation?
b. What was the mischief/ defect which the common law did not provide for?
c. What remedies has parliament incurred to cover the remedy, prior to the Act.
d. And finally they would have a construction or pronouncement to advance a remedy.

In applying the mischief rule of strict interpretation, it is the duty of court to construe the statute in such a manner as to express the mischief which the statutes is aimed at, advance the remedy provided by the statute and to add force and life to the cure and remedy according to the true intent of the law maker.

See also ***Balogun V Salami*** (1963) 1 All NLR 129;*Akerele V IGP* (1955)21 NLR 37

SUPPLEMENTARY RULES OF INTERPRETATION.

We shall discuss briefly, two of the rules of interpretations the court will usually employ to interpret a statute.

(a) Expressio Unus Rule.
(b) Ejusdem Geners Rule.
(c) Noscitur a Sociis

Expressio Unus Rule.

Where the expression of one thing leads to the exclusive of the other. i.e the others not mentioned are excluded. See **Lead Smith Co V Richardson.**

A tax was leveled on the occupier of land, houses, and local mines. Since coal were specifically mentioned by name, in applying this rule, the court held the mines were excluded.

Ejusdem Generes Rule.

Where a specific provision is followed by a General word, the general word must be confined to things of the same kind as those specified.

Noscitur a Sociis Rule.

The purport of this rule of interpretation is that words are taken in their context. i.e a word has no absolute meaning , its meaning is relative to the context in which it is used**. a word is known by its company.**

CUSTOMARY LAW AS A SOURCE OF NIGERIAN LAW

What is Customary Law?

In ***Kharie Zaidan v. Fatima Khalil Mohssen*** (1973) All NLR p. 740 at 753 the Supreme Court of Nigeria defined Customary law thus;

> *"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.''*

Customary law in a general term includes all laws that were in operation in Nigeria before the colonial rule. In the pre-colonial period, there were numerous autonomous entities in Nigeria. When the British colonized the territory known as Nigeria, in typical colonial fashion, they classified all indigenous laws as customary law and subjected them to English law. This is what informed the definition of customary law in the case of ***Joseph Ohai vs. Samuel Akpoemonye (1999) 1 SCNJ 73 @ 77*** *as:*

> *"any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject of its sway."*

Flowing from the above definition, the courts will recognize all laws that are neither common law nor enacted by the legislature as customary law.

The Validity Test

Nigerian customary law has its fair share of laws that we will out rightly consider abhorrent. A very popular instance is the killing of twins that Mary Slessor stopped in pre-colonial Calabar. There are also numerous other gory instances like human sacrifice. It was due to instances like this that the colonialists created the validity tests. Before the court can apply a custom in Nigerian, it has to pass the validity tests. The validity tests have remained in Nigerian legislation since the colonial times. In the present dispensation, you can find them in the High Court Laws of the various states and in the Federal Capital Territory.

S. 44 of the High Court Law of Oyo State (1978) provides that;

Customary Law will be applicable in the court if it is not: *Repugnant to natural justice, equity and good conscience, it is not Contrary to public policy and /or incompatible directly or by implication with any law for the time being in force.*

See also S. 18 (3) of the Evidence Act 2011.

Natural Justice, Equity, and Good Conscience

It can be quite tricky to try getting an exact meaning of natural justice, equity and good conscience. The concept of natural justice and equity varies from society to society. Some societies view respect for elders as immutable while some pay a passing reference to it. Regardless of this confusion, we can get a bearing on the meaning of this term by looking at the various decisions of the court.

In the case of ***Dawodu vs. Danmole***, the custom in question bordered on the Yoruba law of inheritance. Under this custom, if a man dies intestate with multiple wives, his property was divided according to the number of wives he left behind.

As a result, all the children of one wife inherited the property allocated to the wife's branch of the family. For instance, if Tofunmi has two children and Tayo has six children, the property of Tayo's children would be the equal to Tofunmi's children's share. The Yoruba called this the *idi igi* system of inheritance.

The trial court ruled that this custom was repugnant to natural justice because it negated the common law doctrine of equality of inheritance among the children. The appeal was allowed in the Court of Appeal wherein the Court stated that it will be erroneous to import doctrines of natural justice that applied in monogamous society to a polygamous one like Nigeria.

An instance of a case where the courts did not apply a custom because it was not compatible with natural justice is the case of ***Guri vs. Hadejia Native Authority***. In this case, the custom in question was one that didn't allow a suspected highway robber to defend himself in court. The court did not apply this custom because it was contrary to the principle of fair hearing.

A Custom has to be Compatible with Public Policy.

A custom will not apply on the grounds of public policy if it undermines the already established laws. In the case of ***Cole vs. Akinleye***, the custom in question was one concerning the legitimacy of children born out of wedlock.

Under Yoruba custom, if a father acknowledges a child born out of wedlock as his child, he would become a legitimate child. This means that he would have an equal right to inheritance along with those born legitimately in the marriage.

In the case, the father acknowledged the illegitimate child while he had other legitimate children under the Marriage Ordinance. The court held that equating the right of a child born out of wedlock with the rights of children born under the Marriage Ordinance would be contrary to public policy.

The rationale behind the decision was that the Marriage Ordinance was of colonial origin. As a result, any custom that would try to undermine a colonial law would be contrary to public policy.

If a customary law can pass these validity tests, it is well on its way to becoming a primary source of Nigerian law.

QUESTIONS:

Question 1

As a member of the Constitutional Drafting Committee of Irhirhi State, you have been given a copy of the 1999 Constitution (as Amended) of the Federal Republic of Nigeria as a model to ascribe powers to the office of the Attorney General of the Federation.

a) What powers will you ascribe to him
b) How can his powers be regulated Constitutionally.
c) The Coroner and the Juvenile courts are special courts with distinct features. Discus

Question 2

a) Segun has faulted his arrest by the police while on a patrol for being in possession of firearms meant for his self protection without a warrant.

b) Jessica in her statement to the police denies her participation in the Shagamu Bank robbery incidence but admit giving her Prado Jeep to her boy friend John, the gang leader to kidnap the Bank Manager for a ransom only.

c) Emeka a human right activist is threatening to go to court over the senate's amendment to the electoral laws ousting the Jurisdiction of the Court in pre election matters.

d) Julie is arrested and is to be prosecuted by the police for helping her husband Abel to escape arrest after keeping the proceed of crime.

Question 3

Write short notes any four(**4)** the followings;

a) The expressio unus Rule
b) Retrospective Legislation
c) Judicial Powers of a Court
d) Interpretative theory.
e) Private Prosecutor
f) Judicial Precedent

Question 4

a) Arrange these Courts in order of hierarchy ;
The National Industrial Court, The Customary Court of Appeal, The Federal High Court, The District Customary Court, The Magistrate Court, The Court of Appeal, The Area Customary Court, The Supreme Court, The Sharia Court of Appeal, The High Court of a State.
b) "...The defects in common law gave birth to the principle of Equity..." Discuss

Question 5

a) "*...Once there is a defect in competence,it is fatal,as the proceedings are a nullity..*" Bairamian F.J in **A.G. Kano state V A.G Federation** (2007) All FWLR Pt 364,Pg 251.
When will a court be said to be competent to hear a matter ?

b) Joseph was murdered in cold blood by an armed bandit in Irhirhi, near Benin City.The armed bandit were later arrested by the Federal Special Anti Robbery Squad (FSARS) in Okenne, Kogi State en route Nasarawwa Joseph's family members wants the case instituted in the Supreme Court by B. Uzum (SAN), Joseph's uncle who resident in Abuja because of proximity.
You have been approached to give legal advice on this proposal.

Question 6

a) What are the special features of the customary law of your place of origin that makes it unique.
b) What is the uniqueness in the Golden Rule of Statutory Interpretations
c) The Constitution of the Federal Republic of Nigeria is the grundnorm, the source from which all other legislation derives its authority and validity. Discuss

BIBLIOGRAPHY/ FURTHER READING

The Nigerian Legal System. Text and Cases. Ese Malemi 4th Edition.2012.

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- Introduction to Nigerian Legal System J.O Asien 2nd Edition.2005
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