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LA THÈSE A ÉTÉ
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A UNIFORM NIGERIAN FAMILY LAW

A Thesis Presented to
The School of Graduate Studies
UNIVERSITY OF OTTAWA

In Partial Fulfillment
of the Requirements for the Degree
MASTERS IN LAWS (LEGISLATIVE DRAFTING)

By

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UNIVERSITY OF OTTAWA

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RESUME

Since Nigeria is a member of the Commonwealth, English common law is part of the laws of that Country. Other laws which are part of the laws of Nigeria are the Islamic and the Indigenous Customary laws. The English common law and Islamic law are alien to Nigeria. The English common law came through the South, while the Islamic law came through the North. The importation of these laws was the result of trade, treaties and conquests. English common law and the Islamic law exist along with the Nigerian indigenous customary laws. The three laws conflict with one another in application in the area of family law. For example, an existing marriage under English family law in a community whose customs allow multiple marriages is not a bar to another marriage. Similarly, an existing marriage under English family law is not a bar to another marriage under Islamic family law. Generally, neither English nor Islamic family law recognizes the automatic succession of a deceased husband by his surviving brother as constituting a valid marriage with the widow as do some Nigerian indigenous customary laws.

The Nigerian English family law is codified (the Marriage Act, cap. 115 of 1914, and the Matrimonial Causes Decree, 1970), while the Islamic and Nigerian indigenous customary family laws are not. The principles of Islamic and indigenous customary family laws are, therefore, not as easily ascertainable as under the Marriage Act, and the Matrimonial Causes Decree.

Chapter One of the paper deals with the brief history of judicial and executive institutions of Nigeria, which indicates the reason why the three different systems of family law exist in Nigeria.

Chapter Two deals with a survey of the principles of family law of each of the three systems and how each system operates vis-a-vis the others in Nigerian society. The conflict of laws between the three systems is examined in this chapter. A statute unifying the principles of the three different systems forms the last part of this paper. The statute provides a possible statute which reconciles the conflicting principles of the three different systems and consolidates them into one in a way which may be acceptable to the majority of Nigerian society. The diversity in the educational, social, cultural and religious backgrounds of Nigerian society have been taken into consideration in drafting the legislation. It is to be hoped that the proposed legislation will reduce the confusion of Nigerian family law and bring certainty.

However, as with all reforms, legislation alone is not a complete solution to the confusion. It is merely a first step.

CHAPTER ONE

1. INTRODUCTION

Family law is a term generally given to a body of legal principles governing the relationship between a husband and wife, parents and children of the husband and wife, and the incidents arising out of such relationship.¹ In the Nigerian context, family law is generally viewed from three different sources:-

1. The Nigerian indigenous customary laws;
2. English law; and
3. Islamic law.

Each of the sources has its own principles governing such relationship. For instance, marriage under English law is "a voluntary union for life of one man and one woman to the exclusion of all others".² Thus, an English law marriage is monogamous in form and an individualistic affair in nature. Under the Nigerian indigenous customary and Islamic family laws on the other hand, marriage is a union of one man and one woman or women and a union between the families of the husband and the families of the wife or wives.³ A marriage under these laws is polygamous in form and a collective affair in nature.

Each of the sources operate vis-a-vis one another and the combination of the three sources form Nigerian family law. We shall examine each of the sources separately and find out the origin and principles of each source and how they are combined to form Nigerian family law. To examine the origin and principles of each source, an acquaintance with the history of the Nigerian judicial and executive institutions is essential.

2. History

To comprehend the history of the Nigerian judicial and executive institutions effectively, discussion of this history will be done by dividing the evolution into two periods — 1886 to 1951 and 1951 to the present.⁴

(a) The Period between 1886 and 1951

The evolution of Nigerian judicial and executive institutions could be said to have started at the end of the nineteenth century. At the end of that century, three British judicial and executive jurisdictions (the Colony and Protectorate of Lagos, the Niger Coast Protectorate and the Territories controlled by the Royal Niger Company) existed in what is now called Nigeria. These jurisdictions came into being as a result of trades⁵ and treaties between the British Government and the indigenes of those areas.

(i) The Colony and Protectorate of Lagos

In 1886, the Colony of Lagos came into being. By that year, the British had settled at the Colony and had established some trade relationship with indigenes of the Colony. Later in the century, the indigenes of Pakro, Addo and other territories adjacent to the Colony agreed to join the Colony so as to put themselves under British protection. These territories were accepted and administered as integral parts of the Colony of Lagos under the leadership of a Governor. Hence, the administration of the Colony was known as the Government of the Colony and Protectorate of Lagos. It is important to note here that it is natural for mankind to carry along with him, his laws and customs to his new settlement. The British, therefore, came along with the English common law and English customs to the Colony and Protectorate of

Lagos. The common law and English customs were used in transactions between the British themselves and between the British and indigenes of the Colony and Protectorate of Lagos.⁶

In 1876, the British administration established a Supreme Court of Lagos for the Colony and Protectorate of Lagos. The court was a superior court of record in the area with all the jurisdiction and powers which were vested in Her Majesty's High Court of Justice in England. The law to be administered by the court was English common law, doctrines of equity and statutes of general application in force in 1874, so far as applicable. The court was, in addition, conferred with powers to administer indigenous customary laws of the Colony and Protectorate of Lagos, provided that the customary laws were not repugnant to natural justice, equity and good conscience and also were not incompatible with any local statute enacted by the British administration. The indigenous customary laws were to apply to matters arising between indigenes of the Colony and Protectorate of Lagos only. Such matters were restricted within the spheres of indigenes' family and other civil affairs alone. The application of indigenous customary laws by the Supreme Court of Lagos did not, however, oust the jurisdiction of the pre-existing indigenous customary courts over civil matters affecting the indigenes.

Gradually, the Colony and Protectorate of Lagos extended its area over the Yoruba Land of the interior. In 1893, the Alake of Abeokuta signed a treaty to settle a dispute between his people and the British missionaries who penetrated into his land in order to preach Christianity and to trade. In that year, the British administration extended the Colony and Protectorate of Lagos

to include Yoruba Land under the rule of the Alake of Abeokuta. In the same year also, similar treaties were signed between the British administration and the Alafi of Oyo, and some chiefs of the rest of Yoruba Land. By the end of 1893, the Colony and Protectorate of Lagos extended its area over all the Yoruba Land, with the exception of Ilorin, which was under the administration of Shehu Usman Dan Fodio of the Protectorate of Northern Nigeria⁷ (see discussion later in the paper).

Even though the British administration extended its government over the newly ceded Yoruba territories, the jurisdiction of the Supreme Court of Lagos was not extended to those territories until 1904. Prior to that year, indigenous customary courts were the only courts existing in the areas. The British administration appointed an English officer (styled *g.* Resident) to be resident in Ibadan as a representative of the Governor of the Colony and Protectorate of Lagos. The function of the Resident, among other functions, was to oversee the administration of justice by the customary courts in the newly ceded Yoruba territories before the extension of jurisdiction of the Supreme Court of Lagos. Those courts were manned by the principal chiefs of the towns, administering Yoruba indigenous customary laws in both civil and criminal matters. Appeals lay from the principal chief's court to the head chief of a tribe, e.g., the Bashorun of Ibadan, the Alafi of Oyo, the Owa of Ilesha and the Ooni of Ille Ife.⁸ The head chief of a tribe held his court as an appeal court where the necessity arose. The functions of the Resident in the newly ceded Yoruba Land, as far as the administration of justice was concerned, was just of supervisory capacity. The extension of jurisdiction of the Supreme Court of Lagos in 1904, however, eroded the judicial powers of customary courts of the

newly ceded Yoruba territories. For example, the Supreme Court exercised original criminal jurisdiction over both British subjects and indigenes of the areas, and civil jurisdiction over matters arising between British subject and indigenes of the areas where the subject matter of dispute exceeded £50 in value. The court also exercised jurisdiction over the administration of estates of British subjects who died intestate in the areas.

In addition to the Supreme Court, the administration also established mixed courts in those areas. The courts were to settle disputes arising between the indigenes of the areas and British subjects where the Supreme Court was not conferred with any jurisdiction. The mixed courts were presided over by presidents appointed by the Chief Justice of the Supreme Court. Indigenous customary courts exercised jurisdiction in civil and family matters only under customary laws over indigenes of the areas.⁹

In 1904, the judicial set up of the Colony and Protectorate of Lagos was as follows:

- (1) The Supreme Court of the Colony and Protectorate of Lagos;
- (2) Mixed Courts; and
- (3) Indigenous Customary Courts.

(ii) Protectorate of Southern Nigeria

Similar to the Colony and Protectorate of Lagos, British administration simultaneously expanded its area over the Niger coastal areas east of the Colony and Protectorate of Lagos. Those areas housed the ports along the coast of West Africa, e.g., the Ports of Benin, Brass, Calabar and

Bonny. The administration appointed consuls in those areas for the purposes of regulating trade between the British merchants and the ports. Towards the end of the nineteenth century, however, the influence of British administration was not as strong in the Niger coastal areas as it was in the Colony and Protectorate of Lagos. This was because French and Portuguese influence existed in the coastal areas before the British, and the presence of British administration in the areas was just for the purpose of protecting the interests of British subjects trading in the ports. The French and Portuguese influence had existed side by side with British influence in the coastal area. British administration, therefore, exercised vague and indeterminate authority in the Niger coastal areas over British subjects only, and persuasive authority over indigenes of the areas with whom the British subjects traded, through the threat of naval force.

The administration established a few mercantile courts in the Niger coast areas, e.g., in Brass, Bonny, Calabar, the Bight of Benin and the Bight of Biafra.¹⁰ The courts exercised criminal and civil jurisdiction over both British subjects and indigenes in the areas in order to protect the interests of the British in the areas. Other civil and family matters between indigenes were left to the jurisdiction of indigenous customary laws of the areas. The areas were named the Oil River Protectorate, and were entrusted to the Royal Niger Company, a British business in the areas.

Between 1886 and 1900, the Royal Niger Company administered the newly acquired British territories under the name of the Niger Coast Protectorate, together with the newly existing territories of the Company.¹¹

Unlike the administration in the Colony and Protectorate of Lagos, the Royal Niger Company did not concern itself with the judicial organization of the Niger Coast Protectorate, but rather with its trade.¹² The political and judicial development of the Niger Coast Protectorate was therefore slower than that of the Colony and Protectorate of Lagos. On the other hand, the assimilation of English law and culture was faster in the Niger Coast Protectorate than in the Colony and Protectorate of Lagos because of the compulsory jurisdiction which was exercised over both indigenes and British subjects in the Protectorate, by the Mercantile Courts established by the administration.¹³ The opportunity for refining and developing indigenous customary laws of the Niger Coast Protectorate was not given to the indigenes as was the case in the Colony and Protectorate of Lagos. Nevertheless, a few indigenous customary laws of the Protectorate have survived.

As we have seen above, the French also, like the British, had influence in the Niger Coast areas. The British administration saw the sluggish administration of the Royal Niger Company not only as a threat to the British chances of gaining more influence in the hinterland back of the Niger coast areas, but also as a threat to the administration of losing the already acquired territories to the French. In order to be safe from such a threat, in 1899, the administration decided to revoke the charter of the Royal Niger Company for the administration of Niger Coast Protectorate and administered the Protectorate under the name of the Protectorate of Southern Nigeria.¹⁴

Under the new government of the Protectorate of Southern Nigeria, a full judicial system for the Protectorate was established upon the

administrative and business foundation laid by the Royal Niger Company during its administration. A Supreme Court,¹⁵ similar to the Supreme Court of Lagos, was established in the new Protectorate. The Court, similar to the Supreme Court of Lagos, administered English common law, doctrines of equity and statutes of general application in force in 1900, so far as applicable. The Court was also a superior court of record with all the powers vested in Her Majesty's High Court of Justice in England. Unlike the Supreme Court of Lagos, however, the Supreme Court of the Protectorate of Southern Nigeria was conferred with full original and appellate jurisdiction in both civil (except customary civil and family matters affecting indigenes) and criminal matters throughout the Protectorate. The Court also exercised original jurisdiction in matrimonial matters affecting British subjects. The conferment of full jurisdiction was because of the absence of organized indigenous customary courts in the Protectorate, as there had been in the Colony and Protectorate of Lagos before the arrival of the British.¹⁶

In order to make the newly established judicial system work effectively, the Protectorate was divided into divisions and the divisions were further sub-divided into districts. Each division was put under the charge of a Divisional Commissioner, while each district was put under the charge of a District Commissioner. Both the Divisional and District Commissioners were appointed by the High Commissioner of the Protectorate.

In each of the divisions, the British administration established a Commissioner's Court. The court was manned by the Divisional Commissioner, subject to directions of the Supreme Court of the Protectorate of Southern

Nigeria. The laws administered by the court were to be prescribed by the Supreme Court of the Protectorate, and general administration of the court was also subject to the supervision and review of the Supreme Court of the Protectorate. Commissioner's courts exercised both civil and criminal jurisdiction over indigenes where the subject matter in dispute did not exceed £100 in value or imprisonment for a term not exceeding six months or a fine not exceeding £50.¹⁷

The British administration thought that to ignore the customs and traditional laws of the indigenes of the Protectorate entirely would not be in the best interests of the administration. The administration, therefore, saw it necessary to establish an indigenous judicial organization for the Protectorate which would look similar in structure to the already existing customary courts of the Colony and Protectorate of Lagos. To this end, indigenous customary courts, which were started administratively under the administration of the Royal Niger Company, were established on a statutory basis with the same set-up as they were during the Company's administration. Customary Courts were established in each of the districts. The courts operated at district levels below the Divisional Commissioner's courts. The courts were established on two levels, namely, Native Councils and Minor Courts. Native Councils exercised both civil and criminal jurisdiction over indigenes and non indigenes (with the consent of the non indigene) where the subject matter in dispute did not exceed £100 in value or imprisonment for a term not exceeding one year or fine not exceeding £100. The courts consisted of the District Commissioner as the President of the court and such members as may be appointed by the High Commissioner of the Protectorate. Minor Courts consisted of such members

appointed by the High Commissioner of the Protectorate. The members elected one person from among themselves as the President of the court. Minor courts exercised both civil and criminal jurisdiction over indigenes only where the subject matter in dispute did not exceed £25 in value or imprisonment for a term not exceeding three months or a fine not exceeding £50. The High Commissioner established procedural laws for the courts, which were based on the indigenous traditional procedure for settling disputes in the area of jurisdiction of the court.¹⁸

In the first quarter of the twentieth century, the judicial structure of the Protectorate of Southern Nigeria was as follows:

- (1) The Supreme Court of the Protectorate of Southern Nigeria;
- (2) Commissioner's Courts; and
- (3) Native Councils and Minor Courts.

The jurisdiction of all Commissioner's Courts, Native Councils and Minor Courts were ranked on the same footing as the jurisdiction of the well-established customary courts of the Colony and Protectorate of Lagos. The aim of uniformity in the judicial structure of the two Protectorates was to provide for administrative convenience, for peace, order and good government, and for the welfare of indigenes of the Protectorates as well as promoting trade links among the Protectorates.

Even though a uniform judicial system was established in the two Protectorates, British administration continued to rule the two Protectorates as separate entities until 1906,¹⁹ when the two Protectorates were merged into one under the name of the Protectorate of Southern Nigeria. The Supreme

Courts of the two Protectorates were also fused under the name of the Supreme Court of the Colony and Protectorate of Southern Nigeria, with all the jurisdiction of the former Supreme Courts. All Customary Courts of the former Protectorates were placed under the control and supervision of the new Supreme Court. Each court, however, maintained its jurisdiction within its area.

(iii) Protectorate of Northern Nigeria

The history of judicial and executive institutions in Northern Nigeria began at the end of the sixteenth century. By the end of that century, the Fulani who are cattle nomads and whose original home was in the Senegal River Valley established themselves throughout the Hausa land of Northern Nigeria. They came under the influence of Islam under the leadership of Shehu Usman Dan-Fodio as early as the eleventh century. At the beginning of the nineteenth century, Dan-Fodio and his Muslim supporters waged a Jihad²⁰ against the pagan Hausa rulers of Northern Nigeria. By 1810, he defeated the Hausa rulers and ruled all of the Hausa Land of Northern Nigeria. His administration established Islamic courts based on the Quran and Sunnah.²¹ The courts applied Islamic law and exercised both civil and criminal jurisdiction over Muslims and non-Muslims in the areas ruled by him. Other non-Muslim areas who were not under the administration of Usman Dan-Fodio were along the Niger and Benue Rivers²² and were under the administration of the Royal Niger Company. Customary laws continued to govern family and minor civil matters in those areas.

In 1900, the Royal Niger Company declared its territories along the Niger and Benue Rivers to the British administration. The declared territories were named the Protectorate of Northern Nigeria. The declaration of those areas brought the Hausa and Yoruba Islamic States (Ilorin) under the influence of British administration. The Fulani Islamic rulers were, however, confirmed in their authorities, provided they accepted the tutelage of the government of the Protectorate of Northern Nigeria and were ready to obey its laws.²³ The non-Muslim areas which were not under the Fulani Islamic administration, and which were mainly not susceptible to the Islamic administration, were brought under British control slowly.

Lord Lugard ruled the Protectorate of Northern Nigeria under the umbrella of British administration. The administration succeeded in ruling the Protectorate because the interests of both Muslims and non-Muslims in the Protectorate were taken care of by it. The administration established a superimposed court organization, consisting of the Supreme Court and Provincial courts, to enforce penal laws of the Protectorate. The administration also utilized the existing indigenous court systems in building a comprehensive judicial structure in the Protectorate.²⁴

The Supreme Court of the Protectorate of Northern Nigeria was similar to the Supreme Court of the Protectorate of Southern Nigeria. Appeals from the lower courts of the Protectorate lay to the Supreme Court of the Protectorate. Provincial courts operated at provincial levels. The courts were superior courts of record and were headed by Residents who were in charge of provinces. The courts exercised jurisdiction in both civil and criminal matters

over indigenes and non-indigenes in the Protectorate. The courts applied English common law and statute of general application in force in 1900, so far as applicable. Appeals from the courts lay to the Supreme Court of the Protectorate.

In the first quarter of the twentieth century, Islamic and customary courts were established along with the British type courts in the Protectorate of Northern Nigeria. Islamic courts were manned by Alkalis²⁵ and applied Islamic laws based on the Quran and Sunnah in both civil and criminal matters over Muslims. The courts also applied Islamic family law in family matters over Muslims. In the non-Muslim areas, customary courts were councils of arbitration by tribal leaders, similar to the customary courts of Niger coast areas before the establishment of statutory customary courts. British administration built courts around chiefs for arbitration of civil and family matters between indigenes in accordance with the established customary laws in those areas. Even though the courts were re-organized arbitration panels of elders, they were conferred with powers and competence of ordinary courts of law within their spheres. The courts could award any type of punishment recognized by the customary law prevailing in the area of jurisdiction of the courts, except mutilation, torture or any other punishment which was considered to be repugnant to natural justice and humanity. Customary courts had no jurisdiction over non-indigenes and persons who lived in Army Barracks and British Settlements.²⁶ The rules of practice and procedure of the courts were governed by indigenous customary laws, subject to the control of the government. The courts were under the control and supervision of the Supreme Court of the Protectorate of Northern Nigeria, as customary courts of the

Protectorate of Southern Nigeria were placed under the control and supervision of the Supreme Court of that Protectorate.²⁷

In 1906, British administration re-organized customary and Islamic courts so as to include the Fulani Islamic rulers in addition to the Islamic courts manned by the Alkalis. That brought the Fulani Islamic rulers in line with the non-Muslim chiefs in running the indigenous courts. The Fulani rulers' courts exercised jurisdiction similar to the Alkali's courts and could award death sentences. Appeals from the Alkali's courts lay to the Fulani Islamic rulers' courts. Other re-organization made in 1906, was the extension of jurisdiction of customary courts (with the consent of the Resident of the Province) over the indigenes of the Protectorate living in the Army Barracks and British Settlements, and non-indigenes who were of African descent. Customary Courts of Appeal were also established in that year. Appeals from the customary courts lay to the Customary Court of Appeal. Political officers were appointed supervisors of customary courts in the Protectorate.²⁸

By 1913, Lord Lugard established a comprehensive judicial structure in the Protectorate of Northern Nigeria. The structure of the courts was as follows:

- (1) The Supreme Court of the Protectorate of Northern Nigeria;
- (2) Provincial Courts; and
- (3) Islamic and Customary Courts.

(iv) Amalgamation of Northern and Southern Protectorates

On January 1st, 1914,²⁹ British administration amalgamated the Protectorate of Northern Nigeria with the Protectorate of Southern Nigeria into one Protectorate under the name of the Protectorate of Nigeria. Lord Lugard was appointed the first Governor of the Protectorate.

By the amalgamation date, there were two different indigenous customary court systems existing in the old Northern and Southern Protectorates. The two systems were developed on different foundations. The customary courts system of the Protectorate of Northern Nigeria was different from the customary courts system of the Protectorate of Southern Nigeria, because in the former Protectorate political officers controlled the courts indirectly, while in the latter Protectorate they controlled the courts directly by participating in running the courts. The customary courts system of the Protectorate of Northern Nigeria did not connect with the British courts system, either by channel of appeal or by exercise of powers vested in the Chief Justice, while this was the case with the customary courts of the Protectorate of Southern Nigeria. Also, the customary courts system of the Protectorate of Northern Nigeria followed indigenous traditional patterns as far as possible, whereas that of the Protectorate of Southern Nigeria was purely the creation of the British administration.³⁰

Now that the two Protectorates had been amalgamated under the leadership of one Governor, the first task which the Governor faced was the creation of a comprehensive and uniform judicial system for the whole Protectorate. The customary courts system of the Protectorate of Northern

Nigeria was observed to have worked satisfactorily amongst both Muslims and non-Muslims in the Protectorate, and the system had handled most litigation to the general satisfaction of the indigenes. Since Lugard was instrumental in the introduction of the Northern judicial system, which was the judicial corollary of his policy of indirect rule, he thought that that should work in the Protectorate of Southern Nigeria and remove the confusions of jurisdiction which existed in the Protectorate's judicial system prior to the amalgamation. In order to accomplish this difficult task, Lugard divided the Protectorate into ten zones, Northern Nigeria remained as it was before the amalgamation and was placed under the charge of a Lieutenant Governor, while Southern Nigeria was divided into nine provinces. Each of the nine provinces was placed under the charge of a Resident.

At the Protectorate level, Lugard established the Supreme Court of the Protectorate of Nigeria with exclusive territorial jurisdiction. The court was conferred with both civil and criminal jurisdiction, with little or no limitation. At the provincial levels, Lugard extended the provincial court system he had established for Northern Nigeria into the nine new provinces of Southern Nigeria. The courts were conferred with both civil and criminal jurisdiction over indigenes and non-indigenes, subject to the same limitations which existed in the provincial courts of the former Protectorate of Northern Nigeria. At the local levels, Lugard's administration extended the Northern customary courts system to Southern Nigeria. The courts were to be established by the Residents. By the same token, the Northern Customary Court of Appeal was extended to the south.³¹

By the end of 1918, the judicial system of the Protectorate of Nigeria took new shape, thus bringing uniformity to the system. It is important to note here that the introduction of the Northern judicial system into Southern Nigeria caused the Southern judicial system to lose some of its characteristics. For example, the direct active participation of political officers in running the affairs of customary courts in the former Protectorate of Southern Nigeria ceased with the introduction of the Northern customary courts system in the area. The extended system had also abolished customary powers of Yoruba chiefs, which were considered to be repugnant to natural justice, equity and good conscience. That caused the chiefs to lose some of their traditional status. It is important also to note that the degree of success achieved with the introduction of the Northern judicial system into Southern Nigeria varied according to the degree of political and social set-up of Southern Nigeria prior to the amalgamation. For instance, the success of the new system was slower in the Ibo-speaking areas than in the Yoruba-speaking areas because of the removal of political officers³² from the membership of customary courts (Native Councils and Minor Courts) in the Ibo-speaking areas which made the customary courts almost impossible to function. This was because of the clan structure and the absence of organized system of local administration with recognized chiefs in the Society as there were in Yoruba and the Hausa Societies.³³ The courts, therefore, had to seek the opinion of tribunals of elders in their areas of jurisdiction before deciding which principle of customary law was applicable to the case at hand. Nevertheless, the extended Northern judicial system had achieved its objectives to a satisfactory degree, because the system formed the bedrock of the modern Nigerian judicial system.

In 1933, the Nigerian judicial system was re-organized in order to put the system in good shape. The British administration established the West African Court of Appeal (WACA) for the protectorate of Nigeria and other British Protectorates along the coast of West Africa. The court ranked above the Supreme Court of the Protectorate of Nigeria. Appeals from the Supreme Court lay to the court. The motive behind the establishment of the court was due to the historical background of common links in the cultural and customary laws of Nigerian society, with the people living along the coast of West Africa.³⁴ The Supreme Court remained the highest court in the Protectorate. Appeals from all the lower courts in the Protectorate lay to the Supreme Court. High Courts replaced Provincial Courts at provincial levels. The High Courts exercise all the civil and criminal jurisdiction exercised by the former Supreme Courts of the Protectorates of Northern and Southern Nigeria. The courts also exercise original jurisdiction in matters under English family law. Below the High Courts, Magistrate Courts were established in that year. The courts are courts of summary jurisdiction with limited civil and criminal jurisdiction. At local levels, political officers were re-instated as members of customary courts in the Ibo-speaking areas, and Islamic courts were expanded into grades so as to provide the opportunity for appeals as was done to customary courts. The courts maintained their civil, criminal and family law jurisdictions under Islamic law. Generally, the functions of political officers in the administration of customary courts, except in Ibo-speaking areas, were confined to powers to inspection of customary courts and to order transfer or retrial of cases pending before customary courts before sentence was passed, but not to reverse or quash decisions of customary courts. Customary courts too, maintained their civil and family jurisdiction under customary laws.

The judicial changes and re-organization which took place between 1914 and 1933, though they put the system in good shape, created conflict of laws within the system. This problem was identified in Tsofo Gubba v. The Gwandu Native Authority.³⁵ In this case, the accused was charged, convicted and sentenced to death by the Emir of Gwandu's court for killing his wife. The court acted under power conferred on it by section 10 of the Native Courts Ordinance, 1933, which empowered the court to administer customary laws and to award whatever sentence was laid by the law, subject to the usual repugnancy test. Similar power was also given to the British type courts under section 4 of the Criminal Code as amended in 1933. The Emir of Gwandu's court was an Islamic court and accordingly applied Islamic law of crime and sentenced the accused to death. Such sentence could, however, be mitigated on the ground of provocation if the case had been handled by an English court. On appeal, the Supreme Court of the Protectorate of Nigeria held that it had no power to set aside the decision of the Islamic court and, therefore, dismissed the appeal. On further appeal to the West African Court of Appeal (WACA), it was held that the intention of the amendment to section 4 of the Criminal Code was to make the Code directly applicable to both the Islamic and customary courts and, therefore, they were bound to apply the Criminal Code and not Islamic or customary laws in criminal matters. The West African Court of Appeal (WACA) interpreted section 10 of the Native Courts Ordinance to mean that the powers of Islamic and customary courts were limited only to civil and minor criminal offences which were not provided for in the Criminal Code. The court, therefore, quashed the appellant's conviction and acquitted him.

The decision in this case caused some resentments, particularly in the Muslim areas of Northern Nigeria, where there was strict adherence to Islamic law, a system of written and firmly established jurisprudence according to the Quran and Sunnah. Islamic law was practiced purely as laid down by the Quran and Sunnah, and to ask the Islamic courts to abandon Islamic law in preference to English law as decided by the West African Court of Appeal (WACA) would have been impossible because that would amount to departure from Islamic law. The order for the application of the Criminal Code to Islamic courts would also have amounted to breach of a pre-amalgamation undertaking by the British administration not to interfere with the Islamic religion. In the non-Muslim areas of Northern Nigeria, however, the decision in the Tsofo Gubba³⁶ case did not cause any resentment or fear because the customary courts in the areas were the creation of the British administration and the courts operated under the guidance of political officers and, therefore, were more and more assimilated into the English law orientation.

By 1948, it became clear to the Government of the Protectorate of Nigeria that a re-appraisal of the protectorate's judicial system was necessary. The laws which English, Islamic and customary courts applied did not seem to be clearly defined and the general administration of the courts was not to the satisfaction of both indigenes and non-indigenes in the Protectorate. To that end, the British administration appointed a Commission of Enquiry to review the Protectorate's judicial system and to make useful recommendations on how to improve the system. The Commission, which was divided into four groups, was headed by the Chief Justice of the Supreme Court of the Protectorate of Nigeria, Mr. Justice Brooke. Each of the four groups was charged with the

responsibility of reviewing the systems of the Northern, Eastern and Western provinces and the Colony of Lagos. The terms of reference of the Commission were:

- (1) to investigate the working of customary courts and to review the position with regard to the laws the courts should apply;
- (2) to report on the constitution of customary courts, except Islamic courts;
- (3) to consider a review of practice and procedural laws and general administration of customary courts;
- (4) to make any useful recommendations for legislation to either amend or replace the 1933 Native Courts Ordinance.³⁷

An interim Ordinance, which lasted for about three years, was passed in 1948 to amend the 1933 Native Courts Ordinance pending the completion of Brooke's enquiry. The Commission recommended, among other things, the reduction of criminal jurisdiction of both Islamic and customary courts, the continuation of the functions of political officers in the administration of customary courts, except that they should cease acting as customary courts of appeal (in Ibo-speaking areas) and that High Courts should stop exercising supervisory jurisdiction over customary courts. However, the report of the Commission was not made into law because of the constitutional crisis which occurred soon after the publication of the report.

(b) The Period From 1951 to Present Time

(i) The 1951 Constitution

After two years of political upheavals, which followed the publication of Mr. Brooke's report, a constitution was passed in 1951.³⁸ The Constitution was, however, not able to incorporate the recommendations of the Commission. The 1933 Native Courts Ordinance, as amended, and the 1948 Native Courts Interim Ordinance, therefore, continued to apply through the 1951 Constitution. Basically, the 1951 Constitution did not make any substantial change in the set-up of the Nigerian judicial system.

(ii) The 1954 Constitution

In 1954, another Constitution was passed.³⁹ The Constitution declared Nigeria the Federation of Nigeria, which was made up of Northern, Eastern and Western Regions and the Colony of Lagos (now the Federal Territory of Lagos) and Camaroun. The Constitution also recognized to a limited extent the autonomy of regional governments over their internal administration. The 1954 Constitution made a remarkable modification of the Nigerian judicial system. The Constitution maintained the structure of English courts established after the amalgamation of the former Northern and Southern Protectorates. The courts were under the jurisdiction of the Government of the Federation of Nigeria. The Constitution also conferred powers on the Regional Governments to establish and run Customary and Islamic Courts within their regions. The Regional Governments were also empowered to legislate on matters under Customary and Islamic laws in their regions. This was a significant departure from the previous Ordinances and Constitutions in the sense that the 1954 Constitution defined the powers of the Federal and

Regional Governments in the formation of the judicial system of the country, i.e. by classifying English courts under the jurisdiction of the Federal Government and Islamic and Customary Courts under the jurisdiction of the Regional Governments. The Constitution could, therefore, be said to have attempted removing the fears and resentments of Muslims in Northern Nigeria. The Constitution was the nucleus of the modern Nigerian judicial system.

In 1956 the Northern Regional Government, pursuant to powers conferred on it by the 1954 Constitution, tabled a bill in its House of Assembly in order to review the Customary Courts system in the region. The bill was made into law, based on the recommendations of two separate committees appointed by the Regional Government to draft a proposed Native Courts Ordinance, which Ordinance was appended to the Brooke Report in which he recommended the establishment of a Muslim Court of Appeal in addition to the Customary Court of Appeal.

Appeals from the Islamic Courts lay to the Muslim Court of Appeal in civil and family matters affecting Muslims. In criminal matters such appeals lay to the High Court and then to the Supreme Court of Nigeria. The new law also replaced the name "Native Courts" with "Customary Courts", hence, indigenous courts were called Customary Courts. The jurisdiction of customary courts was also extended over persons other than indigenes who decided to institute proceedings in customary courts. The powers of political officers were reduced to a power of access to customary courts for the purpose of inspection only. Customary courts were empowered to assume jurisdiction in all cases under the new law instead of assuming jurisdiction through warrant, as

was the law previously. The complicated customary courts appeals system, which operated prior to 1956, was also simplified by the 1956 law.⁴⁰ For example, appeals from customary courts lay directly to the Customary Courts of Appeal instead of to the Magistrate's Courts or to the political officers.

There were no Islamic courts in the Western Region, the region, therefore, re-organized its Customary Courts only, similar to that of Northern Nigeria. In addition to that, the region introduced more radical changes in its Customary Courts system. For example, the Local Government Service Board of the region was given the responsibility of appointing, disciplining and dismissing, as well as determining remunerations and tenure of office of customary judicial officers, instead of the Resident as was previously the case. One significant radical change made by the Western Regional Government was that, for the first time in the history of the Nigerian judicial system, legal practitioners were allowed audience before Customary Courts in the region.⁴¹

By the same token, the Eastern Regional Government carried out similar changes in its regions with few modifications. For instance, Customary Courts of Appeal were called Country Courts and Customary Courts were called District Courts. Divisional and District Commissioners continued to preside over Country and District Courts respectively. The Courts exercised jurisdiction over indigenes in the region except those who were living in the Army Barracks and British Settlements.⁴²

(iii) Constitutional Conferences

In 1957, the British administration held a conference in London in order to review the 1954 Constitution and to consider the request for grant of independence made by the Nigerian people. The British Government agreed to grant Nigeria full independence in 1960 upon fulfillment of, among other considerations, inquiries into the question of the safety and future of minority groups in the Protectorate.⁴³ The British Government, pursuant to this, appointed a Minorities Commission from London to travel to Nigeria and to carry out a study of the problems of minorities in every region and to submit a report to the British Government on how to solve those problems.

The minorities in the Northern Region are the Hausa and non-Hausa pagan communities who were not subject to the jurisdiction of either English or Islamic courts in matters affecting their customary family affairs. The main fear of these communities was the domination over their matrimonial affairs by either English or Islamic family law. To provide for the solution to this problem and other fears, two Commissions worked in Northern Nigeria — the Minorities Commission which was appointed from London and the Panel of Jurists which was appointed by the Northern Regional Government.

The Minorities Commission, upon the undertaking given by the Northern Regional Government to protect the interests of minorities in the region, recommended, among other things:

- (a) that the Northern Regional Government should establish a panel of jurists to review the Northern Regional laws so as to remove the fears of the non-Muslims;

- (b) that non-Muslims should be provided with the option of being dealt with by non-Muslim courts; and
- (c) that Alkalis should be appointed and controlled by a judicial commission.⁴⁴

The Panel of Jurists was established in partial fulfillment of the undertaking given by the Regional Government. The panel was headed by the Chief Justice of Sudan and its members were drawn from both Muslim and non-Muslim areas of the Region. The panel's terms of reference were based on the recommendations of the Minorities Commission. The panel was also asked to recommend possible ways of avoiding conflict of laws in the region. The panel recommended, among other things, that only Muslims should be subjected to the jurisdiction of Islamic family laws and non-Muslims to the jurisdiction of their customary family laws. The panel also made general recommendations as to the re-organization of customary and Islamic courts.⁴⁵

Unlike the Northern Region, the Western Region had fewer minorities problems. The judicial set-up in the Region was more unique than in the Northern Region. The Minorities Commission, therefore, did not do much in the re-organization of the Region's judicial system. Nevertheless, the Commission recommended the creation of a Judicial Service Commission similar to that of the Northern Region, and general recommendations as to the improvement of customary courts in the Region. The Commission also recommended that no person should be convicted of a criminal offence other than that defined in written law.⁴⁶

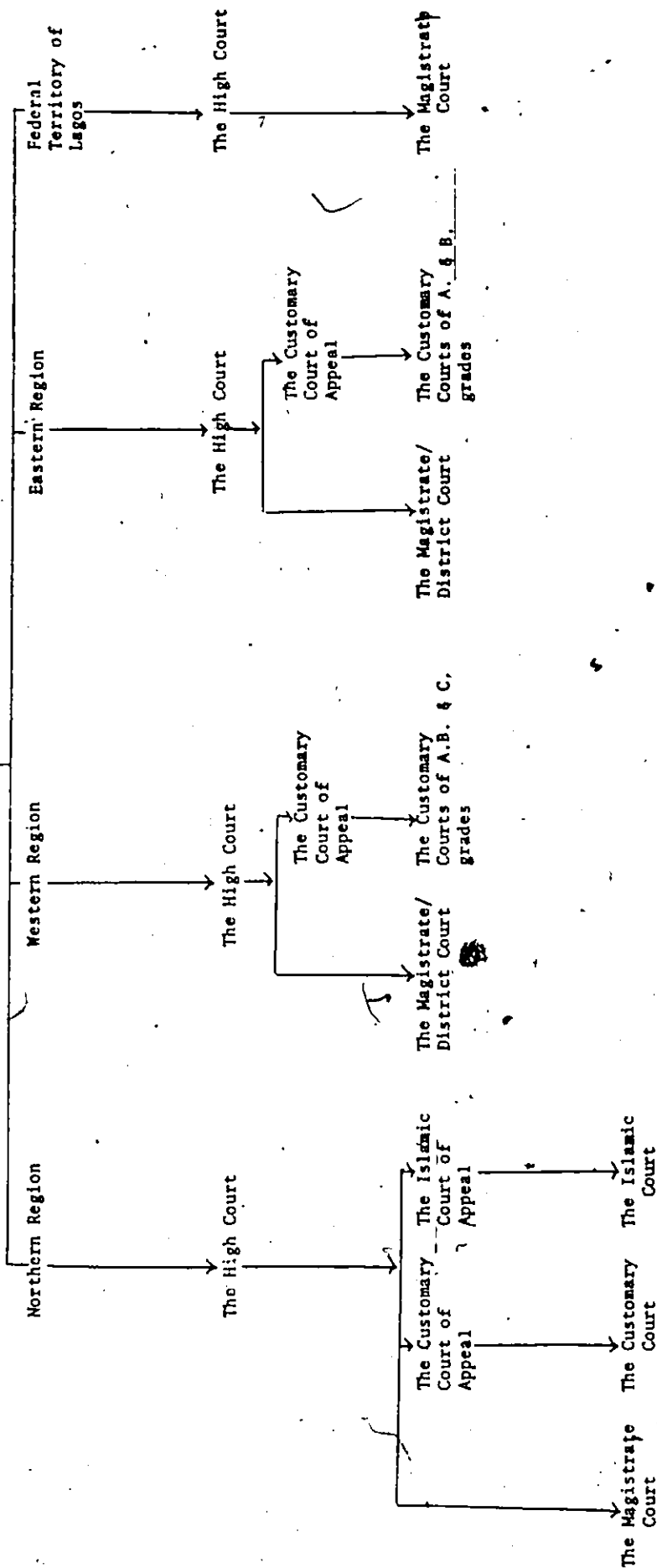
Similar recommendations were made in the Eastern Region. The Commission also recommended the fusing of diversified customary laws of the Region to a few acceptable ones so as to bring the Region's judicial system onto the same footing as the other regions.⁴⁷

(iv) Independence

By the end of 1958, Nigeria fulfilled all the pre-independence conditions set out by the British Government. Accordingly, the British Government granted Nigeria full independence on 1st October, 1960,⁴⁸ and Nigeria was admitted into the Commonwealth on that same day. On the 1st day of October, 1960, the hierarchical structure of the Nigerian judicial system was as follows:

THE FEDERAL SUPREME COURT

(at the Federal Level)



Customary Courts exercised jurisdiction under customary family laws, Islamic Courts under Islamic family law and High Courts under English family law.

The 1960 independence was followed by a series of political rifts, coups d'etat and a thirty-month period of Civil War. After the Civil War, Nigeria was ruled by the Nigerian Military until September 30th, 1979.⁴⁹ On October 1st, 1979, a new Constitution came into being and Nigeria returned to civil administration (with departure from Parliamentary to Presidential system of government), after thirteen years of military rule. The political changes which took place between 1960 and 1979 did not seriously affect the hierarchical structure of the Nigerian judicial system set up on the independence date. There were established, however, the following additional courts during the military regime:

(1) Federal Court of Appeal, which ranks between High Courts and Supreme Court and hears appeals from High Courts and from which appeals lay to the Supreme Court; and

(2) Federal Revenue Court, which was charged with the responsibility of handling revenue matters.

These courts were maintained by the 1979 Republican Constitution, with the Federal Revenue Court renamed the Federal High Court.

The military administration also established some quasi-courts (tribunals), such as, Armed Robbery Tribunal, Anti-Kidnapping Tribunal, Counterfeit Currency Tribunal, Price Control Tribunal, Special Military Tribunal and Foreign Exchange Tribunal. These quasi-courts exercised coordinate criminal jurisdiction in their spheres with High Courts and the Supreme

Court. The 1979 Constitution has, however, abolished these tribunals and reverted their jurisdiction back to the High Courts and the Supreme Court.⁵⁰

In 1970, an important land-mark in the history of Nigerian family law was reached. For the first time, the Nigerian Government, by the Matrimonial Causes Decree No. 18 of 1970, enacted family law, based on English family law, as a uniform law of Matrimonial Causes throughout Nigeria. The decree was a codification of the English law of Matrimonial Causes and was intended to govern only persons who consent to its jurisdiction. High Courts exercised original jurisdiction under the Decree, and the Marriage Act, cap. 115 of 1914.

In the Northern Region, the following modifications in the hierarchical structure of Courts were made:

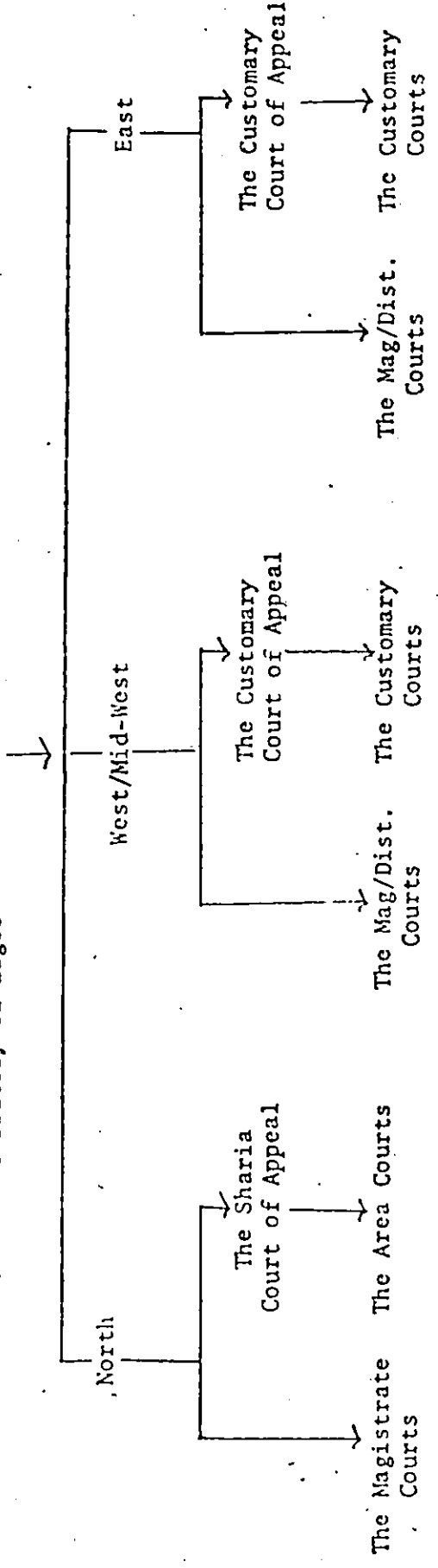
- (1) The Muslim Court of Appeal was renamed the Sharia Court of Appeal;
- (2) The Court of Resolution was established, which heard and resolved conflicts of jurisdiction between Islamic, Magistrates and Customary Courts. The Court was later abolished when Islamic and Customary Courts were fused; and
- (3) The Islamic and Customary Courts were fused under the name of Area Courts.⁵¹ To be appointed to man this court, a person must be learned in both Islamic and Customary family laws of the area of jurisdiction of the Court. The Court exercises jurisdiction under both Islamic and Customary laws and both Muslim and non-Muslim indigenes of the region are subject to its jurisdiction.

Appeals lay from the Area Courts to the Sharia Court of Appeal in cases involving Islamic family law, while such appeals lay to the High Court⁵² in cases involving any other family law. Where the matter involves Islamic and any other family laws, appeals from the Area Courts lay to the High Court⁵³ sitting as an appellate court, manned by a judge both of the High Court and a judge of the Sharia Court of Appeal. In criminal cases, appeals from the Area Courts lay to the High Court.

In Western (mid-West inclusive)⁵⁴ and Eastern Regions, there was little or no modification in the hierarchical structure of their judiciary during the 1960 to 1979 political changes. The regions maintained the structure set up on the date of independence.

Chapter VII of the 1979 Constitution⁵⁵ lays down a comprehensive hierarchical structure of the current Nigerian judicial system. The structure looks like this:-

- (1) The Supreme Court of Nigeria
- (2) The Federal Court of Appeal
- (3) The Federal High Court (Revenue Court)
The High Court of all States, and
The Federal Territory of Lagos



The Chapter also provides for the requirement for the establishment of each court and appointment of judges of the courts. High Courts exercise original jurisdiction throughout Nigeria under the Marriage Act, 1914, and the Matrimonial Causes Decree, 1970.⁵⁶ Area Courts exercise original jurisdiction in Northern Nigeria under Islamic family law over Muslims while Sharia Court of Appeal exercises appellate jurisdiction under the law. Customary Courts in the Western and Eastern Nigeria, on the other hand, exercise original jurisdiction under Customary family laws, whereas Customary Courts of Appeal exercise appellate jurisdiction.⁵⁷

In the next chapter, I will briefly outline the sources and principles of Nigerian family law, which will be followed by an examination of conflict of laws which exist between the three systems. A proposed uniform family law for the country will then be drafted.

CHAPTER TWO

PART A

SOURCES AND PRINCIPLES OF NIGERIAN FAMILY LAW

From the foregoing discussion, principles of Nigerian family law could be derived from the following sources:

- (1) English common law and doctrines of equity;
- (2) English statutes of general application in force in England in 1900;
- (3) Local statutes:
 - (a) Ordinances (1900-1960);
 - (b) Acts of Parliament (1960-1966, 1979);
 - (c) Laws of Regions/States; and
 - (d) Decrees and Edicts (1966-1979).
- (4) Judicial Precedents (judge made laws):
 - (a) law reports; and
 - (b) text books by legal writers.
- (5) Nigerian indigenous customary laws; and
- (6) Islamic law.

In a nutshell, the sources of Nigerian family law can be classified in three categories:

- (1) Western law, which comprises sources enumerated in numbers one to four above;
- (2) Nigerian customary laws, and

(3) Islamic law.

We shall now briefly examine the principles of family law in each of the sources as they apply in Nigeria.

1. Western Law

Western law, otherwise known as English law, has its origin from the common law. It is a well-known principle that law does not exist in a vacuum. The development of English law from common law to doctrines of equity, judicial precedent and to statutes, originates from the customs and usages of English society. An English law, therefore, which applies in Nigeria is based on English customs and usages. The English family law which applies in Nigeria is the Marriage Act, cap. 115 of 1914 which was based on the English marriage laws in force in England in 1900, and the Matrimonial Causes Decree No. 18 of 1970. The laws are local statute in form, but they are of the same substance as the English marriage laws and matrimonial causes.

(a) Essential Ingredients of a Valid English Law Marriage

Under English law, marriage is a voluntary union for life of one man and one woman to the exclusion of all others.⁵⁸ The essential ingredients of a valid marriage under the law are:

- (i) the intending spouses must be of marriageable age (18 years for females and 19 years for males);
- (ii) the valid consent of the intending spouses;
- (iii) neither of the intended spouses can be married to another person at the time the contract to marry is entered into;

- (iv) neither of the intending spouses can be within the prohibited degrees of consanguinity or affinity;and
- (v) there can be no failure to comply with the law of solemnization of marriage which is set out by the law.

A marriage contract which is entered into under the law is void if any of the essential ingredients are missing. A person who, therefore, wishes to enter into an agreement to marry under English law in Nigeria has to satisfy each and every essential ingredient enumerated above. A contract to marry is completed where the intending spouses satisfy those requirements, and the rules and procedures for the solemnization of marriage set out in sections 7 to 12 of the Marriage Act.⁵⁹ However, either of the intending spouses could avoid a concluded marriage where one of the intending spouses turns out to be a person within the ambit of section 5 of the Matrimonial Causes Decree, that is if at the same time of the marriage, either of the spouses is

- (a) incapable of consummating the marriage,
- (b) of unsound mind,
- (c) mentally deformed,
- (d) subject to recurrent attacks of insanity or epilepsy,
- (e) suffering from a venereal disease, or
- (f) the wife is pregnant by a person other than her husband.

(b) Matrimonial Relief

Part II of the Matrimonial Causes Decree provides for matrimonial relief in a marriage which is contracted under English law.

(i) Reconciliation — The court is empowered under sections 11 to 14 of the Decree to effect a reconciliation between spouses. The sections also empower the court to exercise its discretion in effecting the reconciliation. The court may accept any useful information or evidence in reconciling the spouses.

(ii) Restitution of conjugal rights — This is covered by sections 47 to 51 of the Decree. Section 47 provides for the ground under which the court may order a restitution of conjugal rights between spouses. The ground is, failure by a spouse to co-habit with the other spouse without just cause. The rest of the sections provide for the rules and procedures which the court may follow in ordering the restitution.

(iii) Section 52 of the Decree provides the grounds under which the court may grant a decree of jactitation of marriage. The ground is that a person against whom the decree is sought has falsely boasted and persistently asserted that a marriage has taken place between him and the petitioner. The effect of such a decree is to restrain that person from boasting that he is married to the petitioner. The court exercises its discretion under the section for granting the decree.

(iv) The grounds for the decree of judicial separation are provided for under section 39 of the Decree. Those grounds are the same as the grounds for the dissolution of marriage.

(v) Dissolution of Marriage — This is the most important matrimonial relief provided for in the Decree. The Decree provides the grounds under which a marriage may be dissolved. These grounds are:

- (a) that one of the spouses has wilfully and persistently refused to consummate the marriage;
- (b) that since the solemnization of the marriage, one of the spouses has committed adultery and the other spouse finds it intolerable to live with the spouse;
- (c) that one of the spouses has deserted the other spouse for a continuous period of at least one year immediately preceding the filing of petition for dissolution of marriage;
- (d) that the spouses have lived apart for a continuous period of at least two to three years without just cause immediately preceding the filing of petition for dissolution of marriage;
- (e) that one of the spouses has failed to comply with the order of restitution of conjugal rights made by the court within one year;
- (f) that one of the spouses is missing from the matrimonial home for a period he or she will be presumed dead;
- (g) that since the solemnization of the marriage, one of the spouses has behaved in such a way that the other spouse can not reasonably be expected to live with the spouse. To grant a decree of divorce under this paragraph, the other spouse has to satisfy the court that the spouse has, for a period of not less than two years, been a habitual drunkard or habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug;

- (h) that the spouse has, within the period not exceeding five years, suffered frequent convictions for a crime in respect of which he or she has been sentenced in the aggregate to imprisonment for not less than three years;
- (i) that the spouse has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, is in prison at the time of the petition for divorce;
- (j) that the spouse has been convicted of having attempted to kill the other spouse or inflicting grievous hurt on the other spouse;
- (k) that the husband has failed to provide means of support to his wife or has failed to comply with an order of payment of maintenance allowance to the wife as agreed between themselves or as ordered by the court; and
- (l) that the spouse is of unsound mind without hope of recovery.⁶⁰

(c) Custody of Children

Part IV of the Matrimonial Causes Decree empowers the court to grant custody of a child of a dissolved English law marriage to either of the former spouses, or to a third party where it considers that it is in the best interests of the child. The court also has powers under the Decree to order payment of a maintenance allowance for the child, settlement of property to either of the former spouses, and general orders as to the welfare of the child. These powers are discretionally exercised and the circumstances of birth of the child (legitimate or illegitimate) do not affect the powers of the courts in

exercising their discretion when considering the interests of the child in granting such custody.⁶¹

(d) Succession

The rules governing the disposition of property by will or otherwise of a person, who contracts marriage under English law, are governed by the English law of testate and intestate succession in force in England in 1900. Under the laws, therefore, the person may dispose of his or her personal property the way he or she likes while alive, or bequeath such property by will before his or her death. Since 1978, his or her real estate, however, devolves in accordance with the Land Use Decree No. 6 of 1978, whether such person is alive or dead. Upon the death of a person intestate, the English law of intestate succession in force in England in 1900, governs the personal property of such deceased person.⁶²

2. Customary Law

Of all the sources of Nigerian law, customary law is of the greatest antiquity. Customary law continues to play a vital role in the Nigerian legal system.⁶³ The majority of Nigerians, irrespective of their religion or ways of life, conduct most of their family affairs in accordance with the customary family laws of the area in which they live. Unlike English and Islamic family laws, Nigerian customary family laws lack an organized and systematic system of sanctions, as is the case with English and Islamic family laws. The criterion of validity of customary family laws is, therefore, its acceptance by the community whose family affairs are regulated. Nevertheless, Nigerian customary family laws are recognized by English courts⁶⁴ as being as important

as English and Islamic family laws in the Nigerian community. The principles, which courts regard as forming the rules of customary law, must be the mirror of accepted usage.⁶⁵ It was also observed in Eleko v. The Government of Nigeria⁶⁶ that customary family law is a reflection of a community, which validates the law. It must be shown by the person who seeks the protection of customary family law that that custom is recognized by the community whose affairs it is supposed to regulate. The law must, therefore, be the existing and not past customary family law. This makes Nigerian customary family laws dynamic and flexible, as opposed to the rigid English and Islamic family laws.⁶⁷

Nigeria is a country with many ethnic groups, each with its own family laws and customs. Because of the heterogeneous nature of the society, this review of the principles of customary family laws will be limited to a few selected Nigerian customary family laws. The review of Yoruba, Ibo and Birom customary family laws will represent the general nature of Nigerian customary family laws.

(a) Essential Ingredients of a Valid Customary Law Marriage

Unlike marriage under English law, marriage under Nigerian customary laws is a union⁶⁸ between a man and a woman or women,⁶⁹ and a union between parents and relatives of the man and woman or women.⁷⁰ Basically, the essential ingredients of a valid marriage under Yoruba, Ibo and Birom customary laws are the same. There are, however, some minor variations from one custom to another.

(i) Capacity

Age

Under Yoruba, Ibo and Birom customary laws, age of the intending spouses is not a significant essential ingredient to a valid marriage.⁷¹ What is significant under these laws is puberty. The general criterion used by these laws to determine whether an intending spouse is of marriageable age or not is to ascertain whether such intending spouse has attained puberty or not. But this is not a hard and fast rule. Under Ibo customary law, for instance, a girl may be married to a man before she attains puberty, but if the husband takes her before she attains puberty, he may not consummate the marriage until she attains puberty. However, where consummation of customary marriage takes place before the attainment of puberty, such consummation is not an offence under Nigerian Criminal Law.⁷²

The Eastern,⁷³ Western⁷⁴ and Northern⁷⁵ Regional Governments attempted to establish customary law marriageable ages within their areas by legislation, but generally, all the minimum marriageable ages were centred around the age of puberty.

Marriage Within the Prohibited Degrees

Like English law, Nigerian customary laws prohibit certain types of marriages. The prohibition may be based on either consanguinity or affinity relationship, or any other reason. Under Nigerian customary laws, persons cannot marry blood relations, such as sister, brother, mother, father, grandmother, grandfather, daughter or son. By the same token, a man cannot marry his wife's mother, grandmother, etc. and a woman cannot marry her

husband's father or grandfather, etc.⁷⁶ However, some customs allow marriage of distant relations, as is allowed in individual cases by Act of Parliament in Canada,⁷⁷ e.g., marriage between children of cousins or nieces or marriage between a man and the sister of his wife after the death of his wife. However, unlike English law, Nigerian customary laws allow multiple marriages during the subsistence of another marriage, thus, an existing customary law marriage is not a bar to another marriage.

(ii) Consent

Consent is another essential ingredient of a valid customary law marriage. Consent under Nigerian customary laws is in two categories: consent of parents and consent of the intending spouses.

Consent of Parents

As mentioned above, marriage under Nigerian customary laws is not a relationship between the spouses alone, but also between parents of the spouses. Consent of parents under the laws, is in two categories. In the case of a female intending spouse, consent of her parents is the only essential consent of a valid marriage where she is marrying for the first time even if she reaches the age of puberty.⁷⁸ This is because most customs regard females marrying for the first time as having no experience in marital affairs and their parents are, therefore, in a better position of making a good choice of suitors for their daughters than the daughters themselves. Courts can, however, dispense with the consent of the parents where it is found that the consent is unreasonably withheld.⁷⁹

On the other hand, in the case of a male intending spouse, the consent of his parents though is usually sought, is not essential to a valid marriage. For example, under Ibo, Yoruba and Birom customary laws, a man may marry without obtaining a consent from his parents.⁸⁰ Generally, consent of parents of a male intending spouse is not a legal requirement under the laws, rather it is a strong social requirement. The idea behind this could be because a male spouse may marry as many wives as he can afford if the subsisting marriage turns sour, while a female spouse may only seek divorce.

Consent of Intending Spouses

Unlike English law, consent of intending spouses under Nigerian customary laws is not an essential ingredient of a valid marriage. Once the parents of intending spouses have agreed to match their children in marriage, valid consent is said to have come into existence. Parents may, at their discretion, consult the intending spouses, but this is of informative value only.⁸¹ However, this rule has theoretically undergone some modifications in most tribes. There is now some legislation in all the regions providing for the requirement of consent of intending spouses as the legal consent to a valid customary law marriage, instead of the consent of the parents. But, generally speaking, consent of intending spouses continues to be of no significance for a valid marriage under the laws, as the legislation is of no effect because of the lack of penalty in the legislation.⁸²

(iii) Bride Price

Bride price is the most important ingredient of a valid marriage under Nigerian customary laws. Bride price is so essential that its absence

vitiates a customary law marriage. In fact, where a male spouse does not pay bride price, he has no legal claim to the children of such marriage.⁸³ Historically, bride price used to be a form of labour which was being provided by the intending male spouse to the parents of his wife as payment of the price of his wife-to-be.⁸⁴ Such labour was accompanied by a token cash payment and some alcoholic drinks. These days, bride price takes the form of money payment.

The amount of bride price and the mode of its payment varies from one tribe to another. Under Ibo customary law, bride price may range from \$100 to \$10,000, depending on the level of education of the bride.⁸⁵ Similar practice exists within the Yoruba tribe, except that the price is less expensive. Under Birom tradition, however, there has existed over the past twenty years, a fixed \$60 bride price on a female spouse irrespective of her level of education.⁸⁶ The practice of charging exorbitant bride prices makes it very difficult for average Nigerian males to marry under Nigerian customary laws. Some state governments have tried to end this practice by passing legislation limiting the bride price. For example, section 4(1) of the Sokoto State Marriage Law, 1981, provides that a man shall pay Sadaki (bride price in Arabic) of a reasonable sum of not less than the value of Rubu' indinari (the equivalent of ten dollars) to the parents of the bride which shall be delivered to her by her parents.

(iv) Ceremony

Ceremony, like bride price, under Nigerian customary laws is an essential ingredient of a valid marriage under the laws. Ceremony under

customary laws is the conclusion of solemnization of marriage and a physical taking of the bride to the house of the bridegroom. It is at this point a man and a woman are considered to be a married couple under the laws.

Basically, ceremony under Ibo, Yoruba and Birom customary laws is similar in nature though some minor variations as to the form may exist from one custom to another. Under both customs, ceremony includes performance of some rituals, sacrifices, dances, drinking of alcohol in the house of the parents of the bride and physically leading the bride to the house of the groom, where the ceremony continues.

It is very difficult to determine what part of ceremony is essential to a valid customary family law marriage. Nigerian customary courts have, however, taken a safe way, by declaring that all aspects of the ceremony, from the beginning to the end, are essential to a valid customary law marriage. In fact, courts have taken judicial notice that every aspect of the ceremony is an essential ingredient of a valid customary law marriage, because it is through the ceremony that a reflection of a community is seen.⁸⁷

(b) Matrimonial Relief

Unlike the Matrimonial Causes Decree, divorce is the only matrimonial relief provided for under the Nigerian customary laws. A husband under the laws possesses the right to divorce his wife without recourse to the court by driving her out of his house. The husband and wife may also divorce themselves by mutual agreement. The wife, on the other hand, is presumed not to possess the right of divorce other than the right to sue for divorce.

Unlike the Matrimonial Causes Decree, also, Nigerian customary laws have no specific grounds for divorce. A husband may divorce his wife or the wife may seek divorce upon mere suspicion that the husband or the wife has committed an offence considered by the laws as constituting grounds for divorce. However, most customs have "adultery" as a ground for divorce. It is a major ground for divorce, because most customs consider adultery to be a most detestable crime which brings shame, not only to the family of the adulterous person, but to the tribe as a whole. Other grounds for divorce under the laws could be cruelty, impotence, barrenness and any other behaviour which is sufficiently grave enough to justify termination of a marriage.⁸⁸

Where a customary law marriage terminates either judicially or non-judicially, the husband is entitled to a refund of part of the bride price he has paid on his wife. Every custom has its own rule as to the recovery of the bride price. But, generally, the determination of the bride price to be refunded depends on the type of dissolution. Under Ibo customary law, for instance, the husband is entitled to demand the return of the bride price immediately after the dissolution of the marriage if the wife is at fault. But where the husband is at fault, he has to wait until his wife remarries and the new husband pays bride price before his bride price is refunded.⁸⁹ Where the bride-to-be dies after payment of the bride price and before the marriage is solemnized, no demand of a refund of the bride price is made under Ibo customary law because that is considered to be an act of God. Similar ways of recovery of the bride price exist under Bion and Yoruba customary family laws, except that under Yoruba customary law, a person is entitled to a refund of the bride price even where the bride-to-be died before the marriage was solemnized.⁹⁰ In most

customs, the husband may, in addition to the right of a refund of the bride price, sue the person who commits adultery with his wife, whether he divorces the wife or not. Generally, the children of such dissolved marriages are not a considered factor in the determination of the right to a refund of the bride price, i.e., it does not matter whether there are children of the marriage or not; the right exists once the marriage is dissolved.

(c) Custody of Children

Like the right to divorce, the right to the custody of children under Nigerian customary laws is presumed to be in the husband.⁹¹ Unlike the Matrimonial Causes Decree, 1970, Nigerian customary laws do not take into consideration the interests of the children in granting custody of a child of a divorced marriage. This is because most customs consider women and their children as part and parcel of the estate of the husband and the way the husband may dispose of his estate is the way he may dispose of his wife and children. The husband may, at his pleasure, leave the custody of his children to his divorced wife or to any person he may wish, but the right to custody stays with him. Nevertheless, where divorce is effected through judicial process, courts take into consideration the interests of the children in granting custody. Courts, however, only make such consideration where it appears that the father cannot maintain the child either because he has no means of maintaining the child or, in the opinion of the court, he cannot take care of the child. In this case, the courts grant custody to the mother. Where the custody is granted to the mother, the father may be required to contribute (monetarily) in the upbringing of the child.

(d) Succession

Customary law of succession is an important branch of the Nigerian customary laws. A person may under the laws dispose of his property by customary will or otherwise before his death. Upon the death of such person, customary laws of intestate succession govern the property of the person, while his real estate devolves in accordance with the Land Use Decree, No. 6 of 1978. Intestate succession dominates Nigerian customary laws of succession and because the laws are not codified, it is difficult to choose the right rule. However, there are some basic principles of Nigerian customary laws of succession which guide customary courts in determining the existing principles under the laws.

Generally, in most customs, the children of the deceased person have the right of inheritance to the exclusion of all others,⁹² but a legitimate child excludes an illegitimate one,⁹³ and a male child has priority over a female child. Similarly, the eldest son takes priority over all the children of the deceased person in the inheritance because he is going to be the new head of the family.⁹⁴ Women have no right under the laws to inherit the estate of their deceased husbands. Instead, they, too, are subjects of inheritance because they are presumed to be part and parcel of the estate of their deceased husbands. Immediate brothers of the deceased husbands inherit the wives.⁹⁵

Some other details of the principles may vary from one custom to another but, truly speaking, all principles are similar in nature. The variations are in form only. This is common with all the other principles of customary family laws that we have examined above.

3. Islamic Law

Islamic law is the third family law which makes up Nigerian family law. The sources on which Islamic family law is founded are:

- (1) The Quran, which is the "Ground Norm" of Islamic law;
- (2) The Sunnah, which are the sayings and practices of the Prophet Muhammed during his life time;
- (3) Ijma'a, which is the consensus of juristic opinion; and
- (4) Qiyas, which is also the juristic analogical deduction.

The Quran and Sunnah are basic sources and Ijma'a and Qiyas are secondary sources.⁹⁶ The principles of Islamic family law could be classified into three categories:

- (1) Acts which are obligatory, i.e., payment of dowery to a bride, presence of at least two witnesses at the celebration of marriage, etc.
- (2) Acts which are forbidden, i.e., marrying more than four wives or two sisters at the same time, etc.; and
- (3) Acts which are recommended, i.e., consent of parents or intending spouses, etc.

(a) Essential Ingredients of a Valid Islamic Law Marriage

Marriage under Islamic law has been defined as "a contract for the legalization of intercourse and the protection of children".⁹⁷ Such a contract is entered into between a man and woman or women. Like marriage under Nigerian customary laws, marriage under Islamic law is a union between a

couple and their families. However, marriage under Islamic law is a civil contract rather than a sacred institution, as it is under Nigerian customary laws.⁹⁸

(i) Capacity

Age

Like any other civil contract, a contract to marry under Islamic law is entered into by parties when they reach marriageable age. Marriageable age under Islamic law is nine years for females and twelve years for males. These ages are aimed at puberty, like the marriageable age of customary laws. However, even though the law provides for the requirement of marriageable age, age is not an essential ingredient of a valid Islamic law marriage, i.e., a female or a male child may be married at an age below the required age. The age requirement under the law is desirable only.⁹⁹

Marriage within the Prohibited Degrees

Like marriage under both English and Nigerian customary laws, marriage under Islamic law is prohibited within certain classes. The prohibition could be based on either consanguinity, affinity relationship, religious differences or any other reason which may be considered by the law to be within the prohibition. The prohibition could also be permanent or temporary.¹⁰⁰ The permanent prohibitions are:

- (1) number, i.e., a man shall not marry more than four wives at a time and a woman shall not marry more than one husband at a time;

- (2) religion, i.e., a Muslim woman shall not marry a non-Muslim man, but a Muslim man may marry a non-Muslim woman;¹⁰¹
- (3) relationship by either consanguinity or affinity; and
- (4) foster relationship, i.e., a man shall not marry his foster mother or her daughter or his foster sister, etc.

Temporary prohibitions under the law are:

- (1) Unlawful conjunction, i.e., a man shall not marry two wives at a time who are related either by consanguinity, affinity or fosterage, i.e., who, if they were male and female, could not have married each other, for example, two sisters or an aunt and her niece, etc. A man may, however, marry these relations at different times, i.e., where the first wife is dead, the surviving husband may marry the sister, aunt or niece of his deceased wife. Similarly, he may marry the sister, aunt or niece of his divorced wife.¹⁰²
- (2) Iddah — this is a ninety-day period of continence which is imposed on a woman by the law on the termination of her marriage for the purpose of ascertaining the paternity of a child. During this period, a woman is supposed to abstain from having sexual intercourse with anyone and also to abstain from certain luxuries¹⁰³ which will attract a man. After the expiration of this period, the woman is available for marriage.
- (3) Divorce, i.e., where a person divorces his wife three times, he shall not marry her again until she remarries another person and that person divorces her three times also.

- (4) A marriage contract shall not be entered into during a pilgrimage to Mecca, but only after the pilgrimage.
- (5) A person shall not have sexual intercourse with his wife-to-be before marriage. But where such sex took place, the intending spouses have to perform certain rituals to expiate the illicitness in order to make them eligible to marry each other.
- (6) Doctrine of equality, i.e., a person may not marry a woman who is not equal in status with him. There are, however, disagreements between Islamic schools of jurisprudence as to the legality of this prohibition, because it is contrary to principles of equality which are taught by the Islamic religion.

The prohibition may be an Arabic custom.

The temporary prohibitions enumerated above may appear to be moral rather than legal obligations and, indeed, "one of the greatest difficulties in the administration of Mohammedan law, as indeed of all ancient systems, lies in distinguishing between moral and legal obligations."¹⁰⁴

(ii) Consent

As in any other civil contract, contract of marriage under Islamic law is validly formed by the agreement between a man and a woman. The agreement must be voluntary, i.e., it must not be acquired either by duress, fear or deceit. The agreement is formed through the consent of the intending spouses.

Consent under Islamic law is classified into two categories: consent of parents and consent of intending spouses.

Consent of Parents

Where a female spouse is marrying for the first time, consent of her parents or guardians¹⁰⁵ is the essential ingredient of a valid Islamic law marriage and not her consent. On the other hand, where such a female spouse is marrying for the second time or more, or the spouse is male, consent of such female or male spouse is the essential ingredient of a valid Islamic law marriage and not the consent of his or her parents or guardians.

Consent of Intending Spouses

A female spouse marrying for the first time, even if she is above the age of puberty, has no choice other than to marry the suitor chosen for her by her parents or guardians.¹⁰⁶ The idea behind this principle is the same as that of the Nigerian customary laws, i.e., that a girl who is to marry for the first time has no experience in matrimonial affairs and, therefore, her parents or guardians could make a better choice of suitor than she could. But, if such a girl is marrying for the second time or more, she is considered to be experienced in matrimonial affairs and should, therefore, be able to make a choice of suitor better than anyone else. On the other hand, a male spouse marrying for the first time or more is to make the choice of suitor himself. This is because a male spouse may marry more wives, up to four, when his subsisting marriage turns sour.

(iii) Bride Price

Bride price is often referred to as "dower" under Islamic family law. "Dower under Islamic family law is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the

marriage, and even if no dower is fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife.¹⁰⁷ Even though marriage under Islamic law is a simple contract, dower is not considered to be a consideration in the modern sense of contractual consideration, neither could it be considered a purchase price of a woman, as has been claimed by some legal writers, but is considered an obligation which the Quran has imposed on a male spouse and a right granted to a female spouse as a mark of respect to the woman.¹⁰⁸

Islamic law has set out a minimum dower which should be paid to the female spouse, but has not set out the maximum. The minimum dower is three dirhams, which is the equivalent of \$10. A dower may consist of any property or merchandise that is considered by the Quran to be lawful. For example, alcoholic beverages, pork products, gambling instruments or any other similar merchandise shall not be used in the payment of a dower, because these items are unlawful by the Quran. Dower shall also be paid directly to the female by her husband-to-be, and not to the parents or guardians of the female spouse, as is the case under Nigerian customary laws. Dower is one of the most essential ingredients of a valid Islamic law marriage.¹⁰⁹ In fact, without a dower, no marriage would be said to have existed under the law, even if there are children of the marriage. Such marriage is considered an illegal cohabitation and all the children born of such marriage are considered by Islamic law as illegitimate.¹¹⁰

(iv) Ceremony

Ceremony under Islamic law is the conclusion of a contract to marry. Ceremony takes the form of presentation of dower by the male spouse to the female spouse in the presence of at least two adult sane witnesses. The act of presenting the dower to the bride in the presence of the witnesses is, in fact, the only essential legal requirement under Islamic law.¹¹¹ It is at this point that a valid Islamic law marriage is said to have been concluded. Other parts of the ceremony which precede and follow the presentation of the dower are not essential to a valid Islamic law marriage. Those parts of the ceremony are usually done in accordance with the customs and traditions of the community of the intending spouses.

(b) Matrimonial Relief

Like both English and customary laws, Islamic law provides for matrimonial relief in its marriage law. The most important relief provided for by the law is divorce. Dissolution of marriage under Islamic law may be done by either judicial or non-judicial process, as with the customary law dissolution. There are three principal ways of dissolving a marriage under Islamic law, whether the dissolution is by judicial or non-judicial process:

- (1) By "Talaq", which is a unilateral repudiation of marriage pronounced by the husband (one to three times);
- (2) By divorce, which is made by mutual agreement between the spouses to terminate the marriage; and
- (3) By "fask", which is a dissolution of marriage by court order.¹¹²

Like Nigerian customary laws, Islamic law vests the right to divorce on the male spouse. A husband under the law may divorce his wife in any of the three ways mentioned above. A wife, on the other hand, may only request or sue her husband for divorce. Like both English and customary laws, Islamic law also provides for grounds on which either of the spouses may divorce or seek divorce. The following are the grounds upon which a dissolution of marriage under the law may be sought:

- (1) Commission of adultery by either of the spouses;
- (2) Desertion by either of the spouses;
- (3) Cruelty by either of the spouses;
- (4) Failure by the husband to provide for proper maintenance of his wife;
- (5) Appearance of any serious physical defect in either of the spouses, such as sexual impotence, venereal disease, barrenness, epilepsy or insanity, etc.; and
- (6) Any other ground which is considered by the Islamic courts to have resulted in the marriage having broken down.¹¹³

Where a marriage is dissolved before it was consummated, the husband is entitled to a refund of one-half of the dower he paid, but where such marriage was consummated before the dissolution, the husband loses the right of refund of the dower.¹¹⁴

(c) Custody of Children

Islamic law, unlike either the English or the Nigerian customary laws, specifically provides that where a marriage under the law is dissolved, the

right to the custody of the children of the marriage rests in the mother¹¹⁵ irrespective of what the cause was and who was responsible for the divorce. Where the mother cannot take care of the child, the right passes on to the relatives of the mother, with priority given to the maternal relations, i.e., mother's mother, maternal aunt, and grand-aunt, etc. The right of the mother or her maternal relations to the custody of a male child exists until he attains puberty and, in the case of a female child, the right exists until she marries and the marriage is consummated. The law also prohibits a male relation to have custody of a female child unless such child is within the prohibited class of either consanguinity, affinity or fosterage relationship and, therefore, cannot, under any circumstances, marry the child.

As far as the custody of children is concerned, the hands of Islamic courts are tied. Islamic courts can only take into consideration the interests of the children in granting the custody where it appears that the mother will not take care of her child. Such consideration is, however, taken into account, in accordance with the law.

(d) Succession

Like the rules concerning the custody of children, Islamic law provides the ways by which a Muslim should dispose of his property by will or otherwise before his death. The law provides that a Muslim shall not dispose of more than one-third of his personal property by will without the consent of his heirs.¹¹⁶ The law also provides that a non-Muslim heir shall not succeed a Muslim, i.e., a non-Muslim son or a non-Muslim wife has no right of intestate succession to the property of a Muslim father or husband.¹¹⁷ In that case, the

law provides that such a father or husband may bequeath by will only one-third of his personal property to such a non-Muslim son or wife. On the other hand, the law provides that a testator shall not by will bequeath any of his property to his Muslim heirs.¹¹⁸ This is because the law provides the rules by which the property of a deceased Muslim should be distributed among his heirs.¹¹⁹

PART B

CONFLICT OF LAWS

The existence of the tripartite family laws that have been described is responsible for the conflict of law in Nigerian family laws. The conflict may be found most notably in the following areas:

- (i) marriage;
- (ii) divorce;
- (iii) custody of children/guardianship; and
- (iv) succession.

(i) Marriage

Under English law, marriage is a sole affair between husband and wife to the exclusion of all others, while under Nigerian and Islamic laws, it is a collective affair between spouses themselves and between the spouses and their parents and relatives. English law also does not recognize as valid a subsequent marriage while there is another existing marriage. Nigerian customary and Islamic laws, on the other hand, recognize such a marriage as being as valid as the existing one. One will, in this case, discover that a law of bigamy does exist for some, in a society which does not recognize, for others, that it is an offence to marry additional women during the existence of a marriage.¹²⁰ My proposed Act, sections 4(d) and 8, maintains in part the status quo in this regard, i.e., a person who is married under English law and marries again under either law, customary or Islamic, may be punished for the offence of bigamy under section 4(d). Section 8 of the Act, on the other hand, makes it an offence

for a man who is married under customary or Islamic laws to marry additional women without the approval of the Marriage Arbitration Council.

Since only English law marriages, divorces, births of children born of such marriages and deaths of person married under the law are registered, sections 18-21, 26 and 34 of the proposed Act make registration of customary and Islamic law marriages, divorces, births of children born of such marriages and death of persons married under the laws mandatory. This brings the laws in line with the English law which is one of the aims of the Uniform Legislation.

Bride price is an essential ingredient of a valid marriage under both customary and Islamic laws, while it is not a requirement of a valid marriage under English law. Since bride price is recognized by the Nigerian society as constituting one of the most important requirements of a valid marriage, whether the marriage is contracted under English, customary or Islamic laws, sections 12 to 15 of the proposed Act provide for the bride price as a legal requirement in all Nigerian marriages. Those provisions are not in conflict with, nor do they repeal any principle of the Nigerian English Marriage Act, rather they are supplementary to it, because bride price was not provided for.

Age of the intending spouses constitutes an important factor in marriage under English law. A marriage under the law is void where either of the spouses is under-age. A person who, therefore, has sexual intercourse with his underage wife is said to have committed an offence of defilement of a girl under 16 years of age under the Nigerian Criminal Code,¹²¹ because abinitio there was no marriage under the law.¹²² But under both customary and Islamic

laws, such sexual intercourse does not constitute an offence because the laws recognize the marriage of under-age spouses.¹²³

Section 4(a) of the proposed Act provides 18 years to be the minimum age for marriage. That provision is in conformity with section 71(2) of the Constitution of the Federal Republic of Nigeria, 1979, which provides 18 years to be the age of maturity. The provision does not conflict with the Quran nor the Nigerian customs because marriageable ages under Islamic and customary laws are aimed at maturity.

Lack of consent of intending spouses invalidates marriage under English law, but does not under customary and Islamic laws. Consent of the intending spouses is provided in section 4(b) of the proposed Act as the only legal consent. The consent of parents required under customary and Islamic laws ceases to be legal consent with the coming into force of this Act (section 6). The provision does not conflict with the Quran as consent of the parents is recommended and not obligatory. The provision also maintains regional legislation which provides consent of the intending spouses as the only legal consent. Generally, the provision will remove the confusion of determining which consent is necessary, i.e., whether consent of the parents or consent of the intending spouses.

(ii) Divorce

Under the Matrimonial Causes Decree, divorce is effective only when it is judicially executed, whereas under customary and Islamic laws, it is

effective even when it is executed non-judicially. Sections 25 and 26 of the proposed Act provide divorce through the courts as the only effective divorce in the country. The provisions will also make all divorces in the country documented. In fact, divorce through the courts has been the practice in countries where Muslims and non-Muslims live, e.g., Pakistan and India.

By the same token, the Matrimonial Causes Decree vests equal right to divorce in every spouse, while customary and Islamic laws vest such right in the male spouse only. Section 22 of the Act gives both husband and wife equal right to divorce proceedings.

Death of a spouse terminates a marriage under both English and Islamic laws, but under customary laws death of a husband does not automatically terminate a marriage. A surviving brother of the deceased husband may inherit the widow as constituting a valid marriage. Section 32 of the Act is aimed at ending that practice.

Those provisions are in conformity with section 39(2) of the Constitution of the Federal Republic of Nigeria, 1979, which provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Customary laws recognize the right of a former husband or wife to seek a civil remedy against a third party who commits adultery with the former spouse against whom the divorce is granted. Section 43 of the Act maintains

that right. The provision could also be used to seek other civil remedies against any third party by all the three legal systems.

(iii) Custody of Children/Guardianship

Under the Matrimonial Causes Decree courts are vested with the power of granting custody of children to either of the former spouses or to a third party where they think is in the best interests of the children. Customary and Islamic laws do not take such interests into consideration, rather they confer powers of custody of the children to the fathers and the mothers respectively. Sections 28 and 29 of the proposed Act maintain the approach of the Matrimonial Causes Decree because the increase in juvenile delinquency in the country is attributed to the lack of concern of the parents of the children by automatic custody under customary and Islamic laws. For example, a female child who is under the custody of a prostitute mother under Islamic law may be exposed to prostitution.

The law of guardianship is not fully developed in Nigeria. Most guardianships in the country are assumed customarily, whether the parents of the children are married under English, customary or Islamic laws. Section 31 of the Act has therefore vested the courts with the powers to grant guardianship of children to the persons or approved institutions they think is in the children's best interests. The interests of the children against indecent exposure will be protected and it will give the country the opportunity to develop a matured law of guardianship.

(iii) Succession

) The Nigerian English law of succession says a person may bequeath or devise all of his estate¹²⁴ to any person, place or thing before his death (No Dependant's Relief Act),¹²⁵ while intestate rules will govern such an estate where the person dies intestate. Islamic law of succession says "no" to such total bequest, but has only allowed one-third bequest of such estate to some specified persons only, and not to every person, place or thing. Nigerian customary laws lay emphasis on the eldest surviving son of the deceased person in the disposition of such estate. Neither English nor Islamic laws accept that a widow may be inherited by the surviving brother of her deceased husband as accepted by some Nigerian customary laws. The proposed Act maintains all the existing laws of succession, except the inheritance of a widow and the inequality to the right of inheritance against female children under customary laws (sections 37 and 38), because that is contrary to the principles of fundamental human rights provided in cap. IV. and section 39(2) of the Constitution of the Federal Republic of Nigeria, 1979.

FOOTNOTES

1. The incidents are, for example, the law of succession, the law of legitimacy and the law of custody of children. Kasunmu & Salacuse, Nigerian Family Law, London, Butterworths, 1966, p. 1.
2. Per Lord Panzance in Hyde v. Hyde & Woodmanse (1866) L.R. 1 P. & D. 130 at p. 133.
3. The marriage could not be a voluntary union where the spouses are minors, because their consent is not an essential ingredient of a valid marriage under the laws. The marriage could not also be a union for life, because the life span of a marriage under those laws is at the pleasure of the male spouse, i.e., a male spouse may terminate the marriage at his will.
4. The source of this discussion is based on the following books and materials:
 - (1) Sir Alan Burns, History of Nigeria, 7 revised edition, London, George Allen & Unwin Ltd., 1969.
 - (2) Key & Richardson, The Native and Customary Courts of Nigeria, London, Sweet & Maxwell. Lagos, African Universities Press, 1966.
 - (3) Michael Crowder, The Story of Nigeria, London, Faber & Faber, 1966.
 - (4) Thomas Hodgkin, The Nigerian Magazine, edited by M. Crowder, Lagos, Independence Issue, 1960.
 - (5) The Nigerian Lawyers Manual, Lagos, Shelters International Ltd., 1981.

6) The Secretariat of the Asian & African Legal Consultative Committee, New Delhi, India, The Constitution of African States, Vol. II, New York, Ocean Publication Ltd., 1972.

(7) The Constitution of the Federal Republic of Nigeria, 1979, Apapa, Lagos, Daily Times Publication, 1979.

5. Slave trade was one of the main trades at that time. The trade was very lucrative, so much so that the British and French scrambled to colonize the territories along the coast of West Africa. Burns, supra, footnote 4(1), pp. 65-77. Also see Appendix A: "Constitutional Milestones".
6. English common law was applied to the indigenes of the Colony and Protectorate of Southern Nigeria where the indigenes consented to the jurisdiction of the law, or where it appeared that from the nature of transactions, English common law was intended to apply.
7. Burns, supra, footnote 4(1), pp. 127-39.
8. Key & Richardson, supra, footnote 4(2), p. 5.
9. Ibid., pp. 6-7.
10. Burns, supra, footnote 4(1), p. 158. The territories were the British shares of the 1885 Berlin conferences on the division of Africa for the spheres of influence between the European powers.
11. Ibid., pp. 159-81.
12. Key & Richardson, supra, footnote 4(2), p. 9.
13. The assumption of compulsory jurisdiction on the indigenes of the Protectorate was due to the fact that the indigenes of the Protectorate had no centralized political authority with an organized judicial system,

as in the Colony and Protectorate of Lagos before the arrival of the British administration: T. O. Elias, The Nature of African Customary Law, Manchester University Press, 1956, p^r.14.

14. Keay & Richardson, supra, footnote 4(2), p. 11.
15. Ibid, p. 12.
16. Elias, supra, footnote 13, p. 14.
17. Keay & Richardson, supra, footnote 4(2), p. 12.
18. Keay & Richardson, supra, footnote 4(2), pp. 13-14.
19. See Appendix A: "Constitutional Milestones".
20. "Jihād" means holy war in Arabic.
21. "Sunnah" is an Arabic word meaning the sayings and practices of Prophet Muhammed during his life-time.
22. Burns, supra, footnote 4(1), pp. 192-93. The territories are Iddah, Ibi, Bussa, Kabba, Borgu, Jebba and Zungeru.
23. Ibid.
24. Keay & Richardson, supra, footnote 4(2), pp. 19-26.
25. "Alkali" means a judge in Arabic.
26. Indigenes who lived in Army Barracks and British Settlements were considered to have changed their way of life from the indigenous to the British way of life and, therefore, they were presumed to be subject to the English law and not indigenous customary laws.

27. Keay & Richardson, supra, footnote 4(2), pp. 19-26.
28. Ibid.
29. See Appendix A: "Constitutional Milestones".
30. Keay & Richardson, supra, footnote 4(2), pp. 27-32.
31. Ibid., p. 32.
32. Political officers who were appointed to man the courts before the amalgamation, were people knowledgeable in laws and customs operating in the area of jurisdiction of customary courts.
33. Elias, supra, footnote 13, pp. 11-14.
34. Ibid., p. 9.
35. (1947), 12 W.A.C.A. 141.
36. Supra, footnote 35, 141.
37. Keay & Richardson, supra, footnote 4(2), pp. 51-64.
38. See Appendix A: "Constitutional Milestones".
39. See Appendix A: "Constitutional Milestones".
40. Keay & Richardson, supra, footnote 4(2), pp. 51-64.
41. Ibid., pp. 93-98.
42. Ibid., pp. 81-90.

43. The Secretariat of the Asian and African Legal Consultative Committee, supra, footnote 4(6), pp. 1146-51.
44. Keay & Richardson; supra, footnote 4(2), p. 64.
45. Ibid., pp. 64-69.
46. Ibid., pp. 93-98.
47. Ibid., pp. 81-90.
48. See Appendix A: "Constitutional Milestones".
49. See Appendix A: "Constitutional Milestones".
50. The aim of reverting the jurisdiction back to the High Courts and Supreme Court was to restore the Criminal Code and Penal Code jurisdiction which had been eroded by the tribunals.
51. The courts were established by the Area¹Courts Edict, 1976. The aim of fusing these courts was to end the duplication of efforts of employing and training the judicial officers of each court separately, and to bring both Muslims and non-Muslims of the Northern Region to live together under one judicial system.
52. The High Court assumed the jurisdiction of Customary Courts of Appeal which was abolished with the establishment of Area Courts.
53. The court also assumed the jurisdiction of Court of Resolution which was abolished with the establishment of Area Courts.
54. See Appendix A: "Constitutional Milestones". The creation of the Mid-Western Region out of the Western Region was necessitated by the desire to end the political disturbance which erupted in the Western Region in

1962. However, the Western Regional judicial system continued to apply in the Mid-Western Region.
55. See Appendix B: "Cap. VII of the Constitution of the Federal Republic of Nigeria, 1979".
 56. See Section 2 of the Matrimonial Causes Decree, 1970.
 57. See Sections 242 and 247 of the Constitution of the Federal Republic of Nigeria, 1979.
 58. Supra, footnote 2.
 59. For example, filing intention to marry either in the High Court or Magistrate Court and celebrating the marriage in a church or a shrine.
 60. See Sections 15(1) and 16(1) of the Matrimonial Causes Decree, 1970.
 61. Section 39(2) of the Constitution of the Federal Republic of Nigeria, 1979, provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
 62. There is no statutory legislation on the law of testate succession in Nigeria, the law applicable is the English law of testate succession in force in 1900. The law applicable in Nigeria is the English Wills Law, 1837. See E.I. Nwagugu, Family Law in Nigeria, Ibadan, Heineman Educational Books (Nigeria) Ltd., 1974, p. 285. There is no law, therefore, like the Dependents Relief Act in the Nigerian English law of succession, as there is in other common law countries.
 63. T. O. Elias, The Nigerian Legal System, London, Sweet & Maxwell, 1966, p. 12. Also see Kasunmu & Salacuse, supra, footnote 1, pp. 16-17.
 64. Re Southern Rhodesia (1919), A.C. 211 at pp. 233-34.

"Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society. . . . On the other hand, there are indigenous peoples whose legal conceptions, though differently developed, are hardly less precise than our own. When once they have been studied and understood they are no less enforceable than rights arising under English law."

65. Owonyi v. Omotosho (1961), 1 All N.L.R. 304. See Nwagugu, supra, footnote 62, p. xxii. Also see Kasunmu & Salacuse, supra, footnote 1, pp. 16-17.
66. (1931), A.C. 662 at p. 673.
67. Nwagugu, supra, footnote 62, p. xxii. Also see Kasunmu & Salacuse, supra, footnote 1, pp. 16-17.
68. Supra, footnote 3.
69. Supra, footnote 3.
70. A marriage under Nigerian customary laws is not an affair between the husband and wife alone, but also between the spouses, the parents and relatives of the spouses.
71. Nwagugu, supra, footnote 62, p. 41. Kasunmu & Salacuse, supra, footnote 1, pp. 76-77. Also, private interview with Mr. Benson Gang, a Birom tribesman who was married under the Birom customary law, and Rev. Father Dr. Joseph Nyam, a Birom tribesman also who hold a Doctorate Degree in Birom Customary Law, Montreal, July 15, 1982.
72. Nwagugu, supra, footnote 62, p. 41.
73. Ibid., pp. 42-43. Also, a private interview referred to in footnote 71.

74. Kasunmu & Salacuse, supra, footnote 1, p. 77. Also, private interview referred to in footnote 71.
75. Kasunmu & Salacuse, ibid., as well as interview.
76. Nwagugu, supra, footnote 62, p. 46. Also Kasunmu & Salacuse, supra, footnote 1, pp. 79-80.
77. See "Cap. 113, Canada Act of Parliament, 1975".
78. Kasunmu & Salacuse, supra, footnote 1; p. 73.
79. Ibid., p. 74.
80. Ibid., pp. 75-76. Also, private interview referred to in footnote 71.
81. Kasunmu & Salacuse, supra, footnote 1, pp. 75-76, as well as the interview referred to in footnote 71.
82. Kasunmu & Salacuse, ibid., as well as the interview referred to in footnote 71.
83. The law was, however, held to be contrary to natural justice, equity and good conscience. See Nwagugu, supra, footnote 62, p. 221.
84. Nwagugu, ibid., p. 49. Also Kasunmu & Salacuse, supra, footnote 1, p. 78. This is still the practice in the author's tribe, the DAKARKARI, in Sokoto State, Nigeria. It is called GOLMO, and it lasts for about seven consecutive years.
85. Kasunmu & Salacuse, supra, footnote 1, p. 78. The price is aimed at compensating the parents of the bride for the expenses they incurred in her education. Private interview with Mr. Valentine Ihebuzor, an Ibo

- tribeman who was married under Ibo customary law, Montreal, July 15, 1982.
86. Kasunmu & Salacuse, supra, footnote 1, p. 78, as well as the interview referred to in footnote 71.
 87. Kasunmu & Salacuse, supra, footnote 1, pp. 81-83.
 88. Nwagugu, supra, footnote 62, pp. 178-81. Also, Kasunmu & Salacuse, supra, footnote 1, pp. 171-76.
 89. Nwagugu, supra, footnote 62, pp. 181-83.
 90. Kasunmu & Salacuse, supra, footnote 1, p. 45.
 91. Ibid., pp. 178-79.
 92. An exception to this rule exists in a few minority tribes, e.g., the Angas tribes in Plateau State, Nigeria, the surviving brother of an intestate deceased person succeeds the deceased albeit the presence of surviving children of the deceased person. See Kasunmu & Salacuse, supra, footnote 1, p. 295.
 93. This is no longer the case. Supra, footnote 61.
 94. The eldest surviving son automatically steps into the shoes of his father as the head of the family and holds the estate in trust on behalf of himself and his surviving brothers and sisters. Kasunmu & Salacuse, supra, footnote 1, pp. 291-94. Nwagugu, supra, footnote 62, pp. 311-13.
 95. The interview referred to in footnote 71.
 96. Schacht, Introduction to Islamic Law, Oxford, Clarendon Press, 1964, pp. 10-93.

97. Fyzee, Outline of Muhammadan Law, 3 edition, Oxford University Press, 1964, p. 87.
98. Ibid., pp. 85-87. The similarity between Nigerian customary and Islamic laws makes the majority of legal writers on Nigerian Family Law consider Islamic Law to be part of the Nigerian Customary Laws.
99. Fyzee, supra, footnote 97, pp. 90-92.
100. Ibid., pp. 92-106.
101. The idea behind this prohibition is that there is a tendency for a female spouse, more especially if there are children of the marriage, to convert to the religion of her husband.
102. The parents of the divorced wife will, however, be reluctant to give another daughter in marriage to the same man. In fact, I have never seen or heard of this happening.
103. Fyzee, supra, footnote 97, p. 102.
104. Ibid., p. 104.
105. Ibid., pp. 90-92. Parents have equal right of consent under the law, but truly speaking, female parents are denied this right. This is because religion and customs are mixed in Nigeria and most customs regard females as inferior to males.
106. Fyzee, supra, footnote 97, pp. 90-92.
107. Ibid., p. 126.
108. The Holy Quran, Cap. IV, Verse IV.

109. Fyzee, supra, footnote 97, pp. 128-32.

110. Ibid., p. 107.

111. Ibid., pp. 89-90.

112. Ibid., p. 141.

113. Ibid., pp. 162-69.

114. Ibid., p. 178.

115. Ibid., pp. 189-91.

116. Ibid., pp. 353-56.

117. Ibid., p. 387. The idea behind this rule is to discourage Muslim children from converting to another religion.

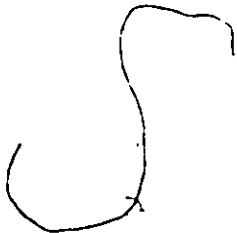
118. Fyzee, supra, footnote 97, p. 359.

119. The Quran classifies heirs into three main classes:

1. Quranic heirs:
 - a. father, mother, grandfather, grandmother, etc.
 - b. husband, wife, daughter, son, etc.
2. Agnatic heirs:
e.g., son's wife, father's father, daughter's daughter, mother's mother, etc., and
3. Uterine heirs:
e.g., brother, sister, uncle, niece, etc.

See Fyzee, supra, footnote 97, p. 389.

120. See Appendix C: New Nigeria Newspapers Publication.

121. See Sections 218 and 221(1) of the Criminal Code.
 122. See Section 3(1)(e) of the Matrimonial Causes Decree, 1970.
 123. Nwagugu, supra, footnote 62, pp. 181-83.
 124. Except real estate, which is governed by the Land Use Decree No. 6 of 1978.
 125. Supra, footnote 62.
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CASE LIST (page references)

1. Hyde v. Hyde & Woodmanse (1866), L.R. 1 P & D, 130. (p. 1, footnote)
2. Tsofo Gubba v. The Gwandu Native Authority (1947), 12 W.A.C.A. 141. (p. 19)
3. Re Southern Rhodesia (1919), A.C. 211. (p. 40, footnote)
4. Owonyi v. Omotosho (1961), All N.L.R. 304. (p. 41, footnote)
5. Eleko v. The Government of Nigeria (1931) A.C. 662. (p. 41)
6. Edet v. Essie (1932) 11 N.L.R. 47. (p. 45, footnote)

LIST OF ABBREVIATIONS

LAW REPORTS:

- L.R. P & D Law Reports; Probate Division
W.A.C.A. West African Court of Appeal
A.C. Appeal Cases
All N.L.R. All Nigerian Law Reports
N.L.R. Nigerian Law Reports

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2. Schacht, Introduction to Islamic Law, Oxford, Clarendon Press, 1964.
3. E.A. Keay & S.S. Richardson, The Native and Customary Courts in Nigeria, London, Sweet & Maxwell; Lagos, African Universities Press, 1966.
4. A.B. Kasunmu & J.W. Salacuse, Nigerian Family Law, London, Butterworths, 1966.
5. E.I. Nwagugu, Family Law in Nigeria, Ibadan, Heineman Educational Books (Nigeria) Ltd., 1974.
6. S.A. Adasanya, Laws of Matrimonial Causes, Ibadan, University Press, 1973.
7. T.O. Elias, The Nature of African Customary Law, Manchester University Press, 1956.
8. T.O. Elias, The Nigerian Legal System, London, Sweet & Maxwell; Lagos, African Universities Press, 1966.
9. Sir Alan Burns, History of Nigeria, 7 revised edition, London, George Allen & Unwin Ltd., 1969.
10. Michael Crowder, The Story of Nigeria, London, Faber & Faber, 1966.

MATERIALS

1. Constitution of the Federal Republic of Nigeria, 1979, Lagos, Daily Times Publications Ltd., 1979.
2. Secretariat of the Asian & African Legal Consultative Committee, New Delhi, India, The Constitution of African States, Vol. II, Dobbs Ferry, New York, Ocean Publications Incorporated, 1972.
3. The Nigerian Lawyers Manual, 1981, Lagos, Shelters International Ltd., 1981.
4. The Nigerian Magazine, Lagos, Independence Issue, 1960.

APPENDIX A. CONSTITUTIONAL MILESTONES.

-CONSTITUTION

Milestones

- 1849 Beecroft appointed British Consul for the Rights of Benin and Biafra with headquarters in Fernando Po, main duty to protect British commercial interests on the Guinea Coast.
- 1861 King Oba Dosunmu (Oba Dosunmu) ceded "the port and island of Lagos, with all rights, profits and revenue—" to the Queen of Great Britain.
- 1862 Legislative and Executive Councils established for the Colony of Lagos.
- 1900 "Nigeria" is born. Creation of Protectorates of Southern and Northern Nigeria each under a High Commissioner responsible directly to the British Secretary of State for the colonies and separately administered from the Colony and Protectorate of Lagos which was under a Governor.
- 1906 Colony and Protectorate of Lagos merged with the Protectorate of Southern Nigeria to form the Colony and Protectorate of Southern Nigeria under Governor Egerton.
- 1914 Colony and Protectorate of Southern Nigeria and Protectorate of Northern Nigeria amalgamated to form the Colony and Protectorate of Nigeria under one Governor, Lugard, who was given the personal title of Governor-General. Legislative Council for Lagos and a purely advisory and deliberative body, the Nigerian Council established for rest of Nigeria as forum for expression of local opinion.
- 1922 Clifford Constitution: Legislative Council for Southern Nigeria, Governor alone, legislated for Northern Nigeria. Franchise introduced for the first time—4 members of Legislative Council elected—3 for Lagos, 1 for Calabar.
- 1946 Richards Constitution: Southern Nigeria divided into two groups of provinces—Eastern Provinces and Western Provinces. One Legislative Council established for the whole country for the first time. Africans made unofficial members of the Executive Council.
- Regional Councils established. North—House of Assembly and House of Chiefs, West—House of Assembly; and East—House of Assembly.
- 1951 Macpherson Constitution: House of Representatives for Nigeria; House of Assembly in each Region; House of Chiefs in North and West Council of Ministers from each Regional House of Assembly. Elections into House of Representatives direct for Lagos and Calabar, indirect for rest of the country.
- 1954 Lyttleton Constitution (Nigeria Constitution Order in Council, 1954). Nigeria becomes a Federation made up of Eastern, Northern and Western Regions, Lagos and Southern Cameroons.
- 1960 Independence Constitution (Nigerian Independence Act, 1960 (8 and 9 Eliz. 2, C. 155) and Nigerian Order in Council, 1960).
- 1963 Mid-Western Region of Nigeria excised from Western Region. (Mid-Western Region (Transitional Provisions) Act, 1963, No. 19 of 1963) and Constitution of Mid-Western Nigeria, Act 1964 (No. 3 of 1964).

Milestones

- 1963 Republican Constitution (Constitution of the Federal Republic of Nigeria, 1963 annexed as schedule to the Constitution of the Federation Act, 1963 (Act No. 20 of 1963). A ceremonial President becomes Head of State while an executive Prime Minister becomes head of government.
- 1966 (Jan. 16). First Military coup d'etat. Constitution Suspension and Modification Decree, 1966 (No. 1 of 1966) introduces the first Military Government; suspends Parliament; suspends certain sections of the Constitution of the Federation, 1963, modifies other sections; makes a Decree the supreme law of the land having primacy over the Constitution.
- 1966 (May 24). The Republic of Nigeria. The Constitution (Suspension and Modification) (No. 5) Decree 1966 (No. 34 of 1966) abolishes the Federal Government and inaugurates a Unitary government called the Republic of Nigeria; the Regions become Groups of Provinces; all public services unified under one service known as the "National Public Service".
- 1966 (July 29). Second Military Coup d'etat. Return of Federal Government. The Constitution (Suspension and Modification) (No. 9) Decree (No. 59 of 1966) Nigeria once more became a Federation with effect from 1st September, 1966.
- 1967 The Twelve States of Nigeria States (Creation and Transitional Provisions) Decree 1967 (No. 14 of 1967).
- 1975 (July 29). Third Military Government. Gowon ousted in a bloodless coup d'etat. The Constitution (Basic Provisions) Decree 1975 (No. 32 of 1975) establishes, inter alia, the Supreme Military Council, a new body called the National Council of States, and the Federal Executive Council. The National Council of States is, subject to the overall control of the Supreme Military Council, charged with the responsibility for:
 - (a) policy guidelines on financial and economic matters and social affairs in so far as they affect the states;
 - (b) the formulation and general implementation of National Development Plans including State Programmes;
 - (c) constitutional matters especially in so far as they affect the states; and
 - (d) such other matters as the Supreme Military Council may from time to time determine.
- 1976 (February 3). The 19 States of Nigeria. Seven new states created to bring the number of states to 19, viz: Bauchi, Benue, Gongolia, Imo, Niger, Ogun and Ondo States (States Creation) States Creation and Transitional Provisions Decree, 1976 (No. 12).
- 1976 (February 23). Head of State assassinated in an abortive coup d'etat.
- 1976 Draft Constitution. A new constitution is now in the making. A Draft Constitution was prepared by the Constitution Drafting Committee. Recommends introduction of an Executive President as head of State and head of government.

Milestones

1977 Draft Constitution submitted to constituent assembly sitting. Draft Constitution recommendation of Executive President approved.

1978 (1) Draft Constitution produced by the Constituent Assembly (with some minor amendment by the Supreme Military Council) became a Legal Constitutional document by virtue of the Constitution of the Federal Republic of Nigeria (Enactment) Decree No. 25 of 1978 under the title of "The Constitution of the Federal Republic of Nigeria, 1979."

(2) By the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 25 of 1978 certain Decrees which constitute impediments to political activities were repealed. The affected Decrees are as follows:

- State Security (Detention of Persons) Decree 1966
- The Suppression of Disorder Decree 1966
- The Public Order Decree 1966
- The Curfew Decree 1966
- Public Order (Amendment) Decree 1966
- The State Security (Detention of Persons) (Amendment) Decree 1966
- The Statutory Bodies (Modification) Decree 1966
- The Curfew (Amendment) Decree 1966
- The Public Security Decree 1967
- The Public Security (Commencement) Decree 1967
- Requisition and Other Powers Decree 1967
- Requisition and Other Powers (Amendment) Decree 1968

Milestones

- Public Order (New Political Associations Restriction) Notice 1969
- Requisition and Other Powers (Amendment) Decree 1969
- The Public Order (Bar to Certain Proceedings) Decree 1970
- Requisition and Other Powers (Amendment) Decree 1975.

1979 For the first time in the history of Nigeria, a government elected under an Executive President started to function.

The following important constitutional documents came into being:

- 1 The Constitution of the Federal Republic of Nigeria, 1979.
2. Constitution of the Federal Republic of Nigeria (Amendment) Decree 1979, No. 104.
3. Constitution of the Federal Republic of Nigeria (certain consequential Repeals, etc.) Decree 1979, No. 105.
4. Constitution of the Federal Republic of Nigeria 1979 - Fundamental Rights (Enforcement Procedure) Rules 1979.

Note: The following sections and items in the Main Constitution are affected by the Amendment Decree No. 104 stated above: 11, 33, 45, 60, 86, 99, 126, 164, 274; entries relating to Niger State in first schedule, entries relating to Rivers State in first schedule. All the items in Part I of second schedule, and finally items 13-28 in Part II of the second schedule.

APPENDIX B. CAP. VII OF THE CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA, 1979.

CHAPTER VII

THE JUDICATURE

PART I

FEDERAL COURTS

A—The Supreme Court of Nigeria

210.- (1) There shall be a Supreme Court of Nigeria.

(2) The Supreme Court of Nigeria shall consist of—

(a) the Chief Justice of Nigeria ; and

(b) such number of Justices of the Supreme Court, not exceeding 15,
as may be prescribed by an Act of the National Assembly.

Establish-
ment of the
Supreme
Court
of Nigeria.

211.- (1) The appointment of a person to the office of Chief Justice of
Nigeria shall be made by the President in his discretion subject to confirmation
of such appointment by a simple majority of the Senate.

(2) The appointment of a person to the office of a Justice of the Supreme
Court shall be made by the President on the advice of the Federal Judicial
Service Commission subject to approval of such appointment by a simple
majority of the Senate.

Appointment
of Justices
of the
Supreme
Court.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

(3) A person shall not be qualified to hold the office of Chief Justice of Nigeria or of a Justice of the Supreme Court; unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than 15 years.

(4) If the office of Chief Justice of Nigeria is vacant, or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the President, acting in his discretion, from among the Justices of the Supreme Court.

(5) Except with the approval of the Senate, an appointment pursuant to the provisions of subsection (4) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment, and the President shall not re-appoint a person whose appointment has lapsed.

Original
Jurisdiction.

212.—(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly:

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.

Appellate
Jurisdiction.

213.—(1) The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal Court of Appeal:

(2) An appeal shall lie from decisions of the Federal Court of Appeal to the Supreme Court as of right in the following cases—

(a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Federal Court of Appeal;

(b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;

(c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;

(d) decisions in any criminal proceedings in which any person has been sentenced to death by the Federal Court of Appeal or in which the Federal Court of Appeal has affirmed a sentence of death imposed by any other court;

(e) decisions on any question whether any person has been validly elected to any office under this Constitution or to the membership of any legislative house or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant; and

(f) such other cases as may be prescribed by any law in force in any State.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

(3) Subject to the provisions of subsection (2) of this section, an appeal shall lie from the decisions of the Federal Court of Appeal to the Supreme Court with the leave of the Federal Court of Appeal or the Supreme Court.

(4) The Supreme Court may dispose of any application for leave to appeal from any decision of the Federal Court of Appeal in respect of any civil or criminal proceedings in which leave to appeal is necessary after consideration of the record of the proceedings if the Supreme Court is of opinion that the interests of justice do not require an oral hearing of the application.

(5) Any right of appeal to the Supreme Court from the decisions of the Federal Court of Appeal conferred by this section shall be exercisable in the case of civil proceedings at the instance of a party thereto or, with the leave of the Federal Court of Appeal or the Supreme Court at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed.

(6) Any right of appeal to the Supreme Court from the decisions of the Federal Court of Appeal conferred by this section shall, subject to section 216 of this Constitution, be exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Supreme Court.

214. For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law, the Supreme Court shall be duly constituted if it consists of not less than 5 Justices of the Supreme Court :

Constitution.

Provided that where the Supreme Court is sitting to consider an appeal brought under section 213 (2) (b) or (c) of this Constitution, or to exercise its original jurisdiction in accordance with section 212 of this Constitution, the court shall be constituted by 7 Justices.

215. Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court.

Finality of determinations.

216. Subject to the provisions of any Act of the National Assembly, the Chief Justice of Nigeria may make rules for regulating the practice and procedure of the Supreme Court.

Practice and procedure.

B—The Federal Court of Appeal

217.—(1) There shall be a Federal Court of Appeal.

(2) The Federal Court of Appeal shall consist of—

(a) a President of the Federal Court of Appeal ; and

Establishment of Federal Court of Appeal.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

(b) such number of Justices of the Federal Court of Appeal, not less than 15, of which not less than 3 shall be learned in Islamic personal law, and not less than 3 shall be learned in Customary law, as may be prescribed by an Act of the National Assembly.

Appointment
of Justices
of the
Federal
Court of
Appeal.

218.—(1) The appointment of a person to the office of President of the Federal Court of Appeal shall be made by the President on the advice of the Federal Judicial Service Commission subject to approval of such appointment by a simple majority of the Senate.

(2) The appointment of a person to the office of a Justice of the Federal Court of Appeal shall be made by the President on the recommendation of the Federal Judicial Service Commission.

(3) A person shall not be qualified to hold the office of a Justice of the Federal Court of Appeal unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than 12 years.

(4) If the office of President of the Federal Court of Appeal is vacant, or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the President of the Federal Republic of Nigeria, acting in his discretion, from among the Justices of the Federal Court of Appeal.

(5) Except with the approval of the Senate, an appointment pursuant to the provisions of subsection (4) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment, and the President shall not re-appoint a person whose appointment has lapsed.

Jurisdiction.

219. Subject to the provisions of this Constitution, the Federal Court of Appeal shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State.

Appeals
as of right
from a
High Court.

220.—(1) An appeal shall lie from decisions of a High Court to the Federal Court of Appeal as of right in the following cases—

(a) final decisions in any civil or criminal proceedings before the High Court sitting at first instance ;

(b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings ;

(c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution ;

(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person ;

(e) decisions in any criminal proceedings in which the High Court has imposed a sentence of death ;

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(f) decisions on any question whether any person has been validly elected to any office under this Constitution, or to the membership of any legislative house or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant ;

(g) decisions made or given by the High Court—

(i) where the liberty of a person or the custody of an infant is concerned,

(ii) where an injunction or the appointment of a receiver is granted or refused,

(iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise,

(iv) in the case of a decree *nisi* in a matrimonial cause or a decision in an admiralty action determining liability, and

(v) in such other cases as may be prescribed by any law in force in Nigeria.

(2) Nothing in this section shall confer any right of appeal—

(a) from a decision of any High Court granting unconditional leave to defend an action ;

(b) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree *nisi* ; and

(c) without the leave of a High Court or of the Federal Court of Appeal, from a decision of the High Court made with the consent of the parties or as to costs only.

221.—(1) Subject to the provisions of section 220 of this Constitution, an appeal shall lie from decisions of a High Court to the Federal Court of Appeal with the leave of that High Court or the Federal Court of Appeal.

(2) The Federal Court of Appeal may dispose of any application for leave to appeal from any decision of a High Court in respect of any civil or criminal proceedings in which an appeal has been brought to the High Court from any other court after consideration of the record of the proceedings, if the Federal Court of Appeal is of the opinion that the interests of justice do not require an oral hearing of the application.

222. Any right of appeal to the Federal Court of Appeal from the decisions of a High Court conferred by this Constitution—

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the High Court or the Federal Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed ;

(b) shall be exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Federal Court of Appeal.

Appeals
with leave.

Exercise of
right of
appeal from
a High
Court in
civil and
criminal
matters.

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Appeals
from
Sharia
Court of
Appeal of
a State.

223.—(1) An appeal shall lie from decisions of the Sharia Court of Appeal of a State to the Federal Court of Appeal as of right in any civil proceedings before the Sharia Court of Appeal with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide.

(2) Any right of appeal to the Federal Court of Appeal from the decisions of a Sharia Court of Appeal conferred by this section—

(a) shall be exercisable at the instance of a party thereto or, with the leave of the Sharia Court of Appeal or of the Federal Court of Appeal, at the instance of any other person having an interest in the matter ; and

(b) shall be exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Federal Court of Appeal.

Appeals
from Customary
Court of
Appeal of
a State

224.—(1) An appeal shall lie from decisions of the Customary Court of Appeal of a State to the Federal Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly.

(2) Any right of appeal to the Federal Court of Appeal from the decisions of a Customary Court of Appeal conferred by this section—

(a) shall be exercisable at the instance of a party thereto or, with the leave of the Customary Court of Appeal or of the Federal Court of Appeal, at the instance of any other person having an interest in the matter ;

(b) shall be exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Federal Court of Appeal.

Appeals
from Code of
Conduct
Tribunal and
other courts
and tribunals.
Fifth
Schedule.

225.—(1) An appeal shall as of right lie from decisions of the Code of Conduct Tribunal established in the Fifth Schedule to this Constitution to the Federal Court of Appeal.

(2) The National Assembly may confer jurisdiction upon the Federal Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.

Constitution
of Federal
Court of
Appeal.

226. For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any other law, the Federal Court of Appeal shall be duly constituted if it consists of not less than 3 Justices of the Federal Court of Appeal, and in the case of appeals from—

(a) a Sharia Court of Appeal, if it consists of not less than 3 Justices of the Federal Court of Appeal learned in Islamic personal law ; and

(b) a Customary Court of Appeal, if it consists of not less than 3 Justices of Appeal learned in Customary law.

practice and
Procedure.

227. Subject to the provisions of any Act of the National Assembly, the President of the Federal Court of Appeal may make rules for regulating the practice and procedure of the Federal Court of Appeal.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

C—The Federal High Court

228.—(1) There shall be a Federal High Court.

Establishment of the Federal High Court.

(2) The Federal High Court shall consist of—

(a) a Chief Judge of the Federal High Court ; and

(b) such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly.

229.—(1) The appointment of persons to the offices of Chief Judge and Judges of the Federal High Court shall be made by the President on the recommendation of the Federal Judicial Service Commission.

Appointment of Chief Judge and Judges.

(2) A person shall not be qualified to hold the office of a Judge of the Federal High Court unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years.

(3) If the office of Chief Judge of the Federal High Court is, vacant or if the person holding the office is, for any reason unable to perform the functions of the office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the President, acting in his discretion, from among the Judges of the Federal High Court.

(4) Except with the approval of the Senate, an appointment pursuant to the provisions of subsection (3) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment and the President shall not re-appoint a person whose appointment has lapsed.

230.—(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have jurisdiction—

Jurisdiction.

(a) in such matters connected with or pertaining to the revenue of the Government of the Federation as may be prescribed by the National Assembly ; and

(b) in such other matters as may be prescribed as respects which the National Assembly has power to make laws.

(2) Notwithstanding subsection (1) of this section, where by law any court established before the date when this section comes into force is empowered to exercise jurisdiction for the hearing and determination of any of the matters to which subsection (1) of this section relates, such court shall as from the date when this section comes into force be restyled "Federal High Court", and shall continue to have all the powers and exercise the jurisdiction conferred upon it by any law.

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Powers.

231. (1) For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the Federal High Court shall have all the powers of the High Court of a State.

(2) Notwithstanding subsection (1) of this section, the National Assembly may by law make provisions conferring upon the Federal High Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the court more effectively to exercise its jurisdiction.

Constitution.

232. The Federal High Court shall be duly constituted if it consists of at least one Judge of that court.

Practice and procedure.

233. The National Assembly may by law make provisions with respect to the practice and procedure of the Federal High Court (including the service and execution of all civil and criminal processes of the court); and until other provisions are made by the National Assembly, the jurisdiction hereby conferred upon the Federal High Court shall be exercised in accordance with the practice and procedure for the time being in force in relation to a High Court of a State or to any other court with like jurisdiction.

PART II

STATE COURTS

A—High Court of a State

Establishment of a High Court for each State.

234.—(1) There shall be a High Court for each State of the Federation.

(2) The High Court of a State shall consist of—

(a) a Chief Judge of the High Court of the State; and

(b) such number of Judges of the High Court as may be prescribed by a Law of the House of Assembly of the State.

Appointment of Chief Judge and Judges.

235.—(1) The appointment of a person to the office of Chief Judge of the High Court of a State shall be made by the Governor of the State on the advice of the State Judicial Service Commission subject to the approval of such appointment by a simple majority of the House of Assembly of the State.

(2) The appointment of a person to the office of a Judge of a High Court of a State shall be made by the Governor of the State acting on the recommendation of the State Judicial Service Commission.

(3) A person shall not be qualified to hold office of a Judge of the High Court of a State unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years.

(4) If the office of Chief Judge of the High Court of a State is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the Governor of the State, acting in his discretion, from among the Judges of the High Court of the State.

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(5) Except with the approval of the House of Assembly of the State, an appointment pursuant to subsection (4) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment, and the Governor shall not re-appoint a person whose appointment has lapsed.

236.—(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

Jurisdiction :
general.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

237.—(1) Without prejudice to the generality of the provisions of section 236 of this Constitution, the competent High Court shall, to the exclusion of any other court, have original jurisdiction to hear and determine any question whether any person has been validly elected to any office or to the membership of any legislative house, or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant.

Jurisdiction
as to certain
proceedings.

(2) In this section, "competent High Court" means—

(a) in any case involving the office of President or Vice-President, the Federal High Court and on the coming into force of section 262 of this Constitution the High Court of the Federal Capital Territory established pursuant to section 263 of this Constitution ;

(b) in any case involving any other office, the High Court of the State as respects which such office is established under this Constitution ; and

(c) in any case involving the membership of or the seat of a person in a legislative house, the High Court of the State where the Senatorial district, Federal constituency or State constituency of that member or person is located.

238. For the purpose of exercising any jurisdiction conferred upon it under this Constitution or any law, a High Court of a State shall be duly constituted if it consists of at least one Judge of that court.

Constitution.

239. The High Court of a State shall exercise jurisdiction vested in it by this Constitution or by any law in accordance with the practice and procedure (including the service and execution of all civil and criminal processes of the court) from time to time prescribed by the House of Assembly of the State.

Practice and
procedure.

B—Sharia Court of Appeal of a State

240.—(1) There shall be for any State that requires it a Sharia Court of Appeal for that State.

Establish-
ment of
Sharia
Court of
Appeal.

(2) The Sharia Court of Appeal of the State shall consist of—

(a) a Grand Kadi of the Sharia Court of Appeal ; and

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(6) such number of Kadis of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State.

Appointment
of Grand
Kadi and
Kadis.

241.—(1) The appointment of a person to the office of the Grand Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State on the advice of the State Judicial Service Commission subject to the approval of such appointment by a simple majority of the House of Assembly.

(2) The appointment of a person to the office of a Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State acting on the recommendation of the State Judicial Service Commission.

(3) A person shall not be qualified to hold office as a Kadi of the Sharia Court of Appeal of a State unless—

(a) he has attended and has obtained a recognised qualification in Islamic personal law from an institution approved by the State Judicial Service Commission and has held the qualification for a period of not less than 10 years; and

(b) he either has considerable experience in the practice of Islamic personal law or he is a distinguished scholar of Islamic personal law.

(4) If the office of the Grand Kadi of the Sharia Court of Appeal of a State is vacant or if a person holding the office is, for any reason unable to perform the functions of the office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the Governor of the State, acting in his discretion, from among the Kadis of the Sharia Court of Appeal.

(5) Except with the approval of the House of Assembly of the State, an appointment pursuant to subsection (4) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment, and the Governor shall not re-appoint a person whose appointment has lapsed.

Jurisdiction.

242.—(1) The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the Law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide—

(a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;

(b) where all the parties to the proceedings are moslems, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;

(c) any question of Islamic personal law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased person is a moslem;

(d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a moslem or the maintenance or guardianship of a moslem who is physically or mentally infirm; or

(e) where all the parties to the proceedings (whether or not they are moslems) have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

243. For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law, a Sharia Court of Appeal of a State shall be duly constituted if it consists of at least 2 Kadis of that Court.

Constitution.

244. The Sharia Court of Appeal of a State shall exercise the jurisdiction vested in it by this Constitution or by any law in accordance with the practice and procedure from time to time prescribed by the House of Assembly of the State.

Practice and procedure.

C—Customary Court of Appeal of a State

245.—(1) There shall be for any State that requires it a Customary Court of Appeal for the State.

Establishment of Customary Court of Appeal.

(2) The Customary Court of Appeal of a State shall consist of—

(a) a President of the Customary Court of Appeal of the State ; and

(b) such number of Judges of the Customary Court of Appeal as may be prescribed by the House of Assembly of the State.

246.—(1) The appointment of a person to the office of President of a Customary Court of Appeal shall be made by the Governor of the State on the advice of the State Judicial Service Commission subject to the approval of such appointment by a simple majority of the House of Assembly of the State.

Appointment of President and Judges.

(2) The appointment of a person to the office of a Judge of a Customary Court of Appeal shall be made by the Governor of the State acting on the recommendation of the State Judicial Service Commission.

(3) Apart from such other qualifications as may be prescribed by the National Assembly, a person shall not be qualified to hold office of a Judge of a Customary Court of Appeal of a State unless, in the opinion of the State Judicial Service Commission, he has considerable knowledge of and experience in the practice of Customary law.

(4) If the office of President of the Customary Court of Appeal of a State is vacant or if the person holding the office is, for any reason unable to perform the functions of the office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the Governor of the State, acting in his discretion, from among the Judges of the Customary Court of Appeal of the State.

(5) Except with the approval of the House of Assembly of the State, an appointment pursuant to subsection (4) of this section shall cease to have effect after the expiration of 3 months from the date of such appointment, and the Governor shall not re-appoint a person whose appointment has lapsed.

247.—(1) A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law.

Jurisdiction.

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(2) For the purposes of this section a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established

Constitution.

248. For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law a Customary Court of Appeal of a State shall be duly constituted if it consists of such number of Judges as may be prescribed by Law for a sitting of the court.

Practice and procedure.

249. The Customary Court of Appeal of a State shall exercise the jurisdiction vested in it by this Constitution or by any law in accordance with such practice and procedure as may from time to time be prescribed.

PART III

SUPPLEMENTAL

Jurisdiction of State courts in respect of Federal causes.

250.—(1) Subject to the provisions of this Constitution—

(a) where by the Law of a State jurisdiction is conferred upon any court for the hearing and determination of civil causes and of appeals arising out of such causes, the court shall have like jurisdiction with respect to the hearing and determination of Federal causes and of appeals arising out of such causes;

(b) where by the Law of a State jurisdiction is conferred upon any court for the investigation, inquiry into, or trial of persons accused of offences against the Laws of the State and with respect to the hearing and determination of appeals arising out of any such trial or out of any proceedings connected therewith, the court shall have like jurisdiction with respect to the investigation, inquiry into, or trial of persons for Federal offences and the hearing and determination of appeals arising out of the trial or proceedings; and

(c) the jurisdiction conferred on a court of a State pursuant to the provisions of this section shall be exercised in conformity with the practice and procedure for the time being prescribed in relation to its jurisdiction over civil or criminal causes other than Federal causes.

(2) Nothing in the provisions of this section shall be construed, except in so far as other provisions have been made by the operation of sections 263 and 264 of this Constitution, as conferring jurisdiction as respects Federal causes or Federal offences upon a court presided over by a person who is not or has not been qualified to practise as a legal practitioner in Nigeria.

(3) In this section, unless the context otherwise requires—

“cause” includes matter;

“Federal cause” means civil or criminal cause relating to any matter with respect to which the National Assembly has power to make laws; and

“Federal offence” means an offence contrary to the provisions of an Act of the National Assembly or any law having effect as if so enacted.

Enforcement of decisions.

251.—(1) The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.

(2) The decisions of the Federal Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Federal Court of Appeal.

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(3) The decisions of a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the High Court and those other courts, respectively.

252.—(1) In exercising his powers under the foregoing provisions of this Chapter in respect of appointments to the offices of Justices of the Supreme Court and Justices of the Federal Court of Appeal, the President shall have regard to the need to ensure that there are among the holders of such offices persons learned in Islamic personal law and persons learned in Customary law.

Appointment of persons learned in Islamic personal law and Customary law.

(2) For the purposes of any appointment pursuant to the provisions of this Chapter, except where otherwise provided—

(a) a person shall be deemed to be learned in Islamic personal law—

(i) if he has attended and has obtained a recognised qualification in Islamic personal law from an institution approved by the Federal Judicial Service Commission and has held the qualification for a period of not less than 15 years, and

(ii) if, in the opinion of the Federal Judicial Service Commission, he has considerable experience in the practice of Islamic personal law or he is a distinguished scholar of Islamic personal law; and

(b) a person shall be deemed to be learned in Customary law if, in the opinion of the Federal Judicial Service Commission, (apart from such other qualifications as may be prescribed by the National Assembly) he has considerable knowledge of and experience in the practice of Customary law.

253. No legal practitioner shall be qualified for appointment as a Justice of the Supreme Court or the Federal Court of Appeal or a Judge of a High Court or a Kadi of a Sharia Court of Appeal or a Judge of the Customary Court of Appeal whilst he is a member of the Federal Judicial Service Commission or a State Judicial Service Commission, and he shall remain so disqualified until a period of 3 years has elapsed since he ceased to be a member.

Disqualification of certain legal practitioners.

254.—(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has taken and subscribed the Oath of Allegiance and the Judicial Oath prescribed in the Sixth Schedule to this Constitution.

Oaths of judicial officers. Sixth Schedule.

(2) The oaths aforesaid shall be administered by the person for the time being authorised by law to administer such oaths.

255.—(1) A judicial officer may retire when he attains the age of 60 years, and he shall cease to hold office when he attains the age of 65 years.

Tenure of office and pension rights of judicial officers.

(2) Any person who has held office as a judicial officer—

(a) for a period of not less than 15 years, shall if he retires at the age of 65 years be entitled to pension for life at a rate equivalent to his last annual salary in addition to any other retirement benefits to which he may be entitled;

(b) for a period less than 15 years, shall if he retires at the age of 65 years be entitled to pension for life at a rate *pro rata* the number of years he

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served as a judicial officer in relation to the period of 15 years, or, to the pension and other retirement benefits to which he is entitled under his terms and conditions of service, if any, whichever is higher; and

(c) in any other case, shall be entitled to such pension and other retirement benefits as may be regulated by an Act of the National Assembly or by a Law of a House of Assembly.

(3) Nothing in this section or elsewhere in this Constitution shall preclude the application of the provisions of any law that provides for pensions, gratuities and other retirement benefits for persons in the public service of the Federation or of a State.

Removal of judicial officers from office.

256.—(1) A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances—

(a) in the case of—

(i) Chief Justice of Nigeria, by the President acting on an address supported by two-thirds majority of the Senate,

(ii) Chief Judge of the High Court of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State,

praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

(b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the Federal Judicial Service Commission or the State Judicial Service Commission that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

(2) Any person who has held office as a judicial officer shall not on ceasing to be a judicial officer for any reason whatsoever thereafter appear or act as a legal practitioner before any court of law or tribunal in Nigeria.

Vacancies.

257. Except for the purposes of exercising any jurisdiction conferred by this Constitution or by any other law, every court established under this Constitution shall be deemed to be duly constituted notwithstanding any vacancy in the membership of the court.

Determination of causes and matters.

258.—(1) Every court established under this Constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses, and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.

(2) Each Justice of the Supreme Court or of the Federal Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion;

Provided that it shall not be necessary for all the Justices who heard a cause or matter to be present when judgment is to be delivered, and the opinion of a Justice may be pronounced or read by any other Justice whether or not he was present at the hearing.

(3) A decision of a court consisting of more than one judge shall be determined by the opinion of the majority of its members.

259.—(1) Where any question as to the interpretation or application of this Constitution arises in any proceedings in any court of law in any part of Nigeria (other than in the Supreme Court, the Federal Court of Appeal, or a High Court) and the court is of opinion that the question involves a substantial question of law, the court may, and shall, if any of the parties to the proceedings so requests, refer the question to a High Court having jurisdiction in that part of Nigeria; and the High Court shall—

References of questions of law.

(a) if it is of opinion that the question involves a substantial question of law, refer the question to the Federal Court of Appeal; or

(b) if it is of opinion that the question does not involve a substantial question of law, remit the question to the court that made the reference to be disposed of in accordance with such directions as the High Court may think fit to give.

(2) Where any question as to the interpretation or application of this Constitution arises in any proceedings in a High Court, and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Federal Court of Appeal; and where any question is referred in pursuance of this subsection, the court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

(3) Where any question as to the interpretation or application of this Constitution arises in any proceedings in the Federal Court of Appeal and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court which shall give its decision upon the question and give such directions to the Federal Court of Appeal as it deems appropriate.

260. In this Chapter, unless the context otherwise requires, "office" when used with reference to the validity of an election to an office includes the office of President of the Federation, Vice-President of the Federation and Governor or Deputy Governor of a State, but does not include the office of President of the Senate, Speaker of the House of Representatives, Speaker of a House of Assembly or any office not established by this Constitution.

Interpretation.

APPENDIX C. NEW NIGERIA NEWSPAPERS PUBLICATION.

NEW NIGERIAN, Thursday, 6 May, 1932

Moves to legalize bigamy

DEBATE continued at the House of Representatives yesterday on the Marriage (Amendment) Bill 1981 which seeks to remove bigamy

from the laws of the country.

In other words, the bill seeks to legalise as many marriages contracted by a man during the life time of his spouse whom he had not divorced, irrespective of the man's religious belief.

The related Criminal Law and Evidence Law to the bill was also debated by members.

The bill is titled "Marriage (Amendment) Bill 1981," and will affect the related Criminal and Evidence Law enactments.

The bill met with stiff opposition because majority of the members who contributed to it vehemently opposed it.

The three bills in one was sponsored by Mr. E. O. Chukwu (NPP

Imo State). It seeks to abrogate the 1914 Marriage Act and treat all marriages as being equal.

The Evidence Law (Amendment) Bill seeks to abolish any discrimination between Customary, Islamic or Statutory marriages while the Criminal Law (Amendment) Bill, 1981, seeks to repeal the law relating to bigamy.

Contributing to the debate, Mrs. Abiola Babatope (UPN Lagos), said that "the marriage bill intends to destroy Christian marriage."

Mr. George Uwechue, (NPP Bendel), agreed and urged members to condemn and dismiss "the ugly bill."

He said that the bill had religious and constitutional implications, adding that the constitution did not allow anybody to

interfere with the religious beliefs of any Nigerian.

Mr. Uwechue said that the marriage law was the only law that guided the Christian marriage, and that it should not be interfered with.

Chief Ogwe Kalu Ogwe (NPP Imo), however, supported the bill saying that the bill was not against any form of marriage.

He contended that anyone who opposed the bill was merely saying that marriage by Act superseded Customary and Islamic marriages.

Dr. E. J. Sowho, (NPN Bendel), said that monogamy was "not a Nigerian culture" and that it was time Nigerians upheld their culture.

He said that any man who could conveniently accommodate more than one wife should be allowed to take on as many wives as he wished.

DOCUMENT SLANTED
Document. incliné

A UNIFORM NIGERIAN FAMILY LAW

An Act to make certain laws relating to the family uniform throughout Nigeria.

Preamble

WHEREAS it is desirable that the English, Islamic and Customary family laws existing in Nigeria be united into a uniform family law, to resolve the conflict of jurisdiction existing among the three different systems, to integrate the conflicting principles of the three different systems, and to codify the customary and Islamic family laws:

AND WHEREAS it is desirable to bring marriage in Nigeria within the reach of the common man, to prohibit marriages of minors, to end discrimination against female children in inheritance, and to protect human rights, dignity, liberty and security of person as provided by the Nigerian Constitution;

NOW THEREFORE, the President, by and with the advice and consent of the Senate and the House of Representatives of Nigeria enacts as follows:—

SHORT TITLE

Short title

1. This Act may be cited as the Uniform Nigerian Family Law.

INTERPRETATION

Definition 2. (1) In this Act,

Approved government institution "approved government institution" includes a welfare home, an orphanage, a vocational institution, an educational institution and a corrective institution;

Bride Price "bride price" includes a dowery under Islamic law;

Ceremony "ceremony" includes a presentation of a bride price to the parents of the bride, a religious or customary festivity and a physical taking of a bride to the house of a male spouse;

Child "child" includes a child born outside of wedlock and an adopted child;

Citizen "citizen" means a citizen within the meaning of Chapter III of the Constitution of the Federal Republic of Nigeria, 1979;

Day "day", means a court working day but does not include a public holiday;

Estate "estate" means real estate and personal property, but does not include persons;

Local Government Council "Local Government Council" means a council established in respect of a local government area appearing in Schedule I to this Act;

Marriage "marriage" means a marriage recognized as valid by Nigerian Law;

Marriage Arbitration Council "Marriage Arbitration Council" means marriage arbitration council appointed by the Local Government Council pursuant to section 7;

Maintenance "maintenance" includes alimony and any other allowance ordered by a court to be paid by a person to his spouse or former spouse;

Minister "Minister" means the Minister of Youth, Culture and Social Welfare;

Parent "parent" includes a guardian appointed by a court;

Witness "witness", in relation to a marriage under this Act, means a sane adult person who is present at the time of the celebration of a marriage.

Insanity

- (2) For the purposes of this Act, a person is insane where he is incapable of understanding the formalities of marriage under this Act.

CONTRACT TO MARRY

Marriage

3. No person shall enter into a marriage,
- (a) unless he or she is 18 years of age;
 - (b) without a valid consent of the other person; or
 - (c) while married under any law which does not recognize multiple marriages.

Void marriage

4. A marriage is void where,
- (a) either of the parties is under 18 years of age;
 - (b) either of the parties does not consent to the marriage;
 - (c) the consent of either of the parties is obtained;
 - (i) involuntarily,
 - (ii) by duress;
 - (iii) by deceit,
 - (iv) by fraud,
 - (v) by reason of a mistake in the identity of the other party, or
 - (vi) by reason of the insanity of that party, or
 - (d) either of the parties is already married to another person under any law that does not recognize multiple marriages.

Consent

5. (1) The consent of a party to the marriage may be verbal or written.

Illiterate

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of 1958

- (2) Where either of the parties is an illiterate, a written consent shall be in accordance with the Illiterates Protection Ordinance, Laws of the Federation of Nigeria, 1958.

Parents consent

6. A man and a woman may enter a marriage contract and marry each other whether or not their parents consent to the marriage.

MARRIAGE ARBITRATION COUNCIL

Minister

7. The Minister may make regulations empowering every Local Government Council to make by-laws
- (a) for the establishment of a Marriage Arbitration Council in its area of authority, and
 - (b) prescribing the procedure of the Marriage Arbitration Council.

Approval

8. No person shall marry under the customary or Islamic laws, while married to another person, without the approval of the Marriage Arbitration Council for the area in which the marriage is to be celebrated.

PROHIBITED DEGREES

**Prohibited
degrees**

9. No person shall marry another person if their relationship is within the prohibited degrees of consanguinity or affinity set out in Schedule II to this act, whether or not the relationship is of whole or half blood and whether or not it is traced through any person of illegitimate birth.

Permission

10. (1) Notwithstanding section 9, persons who are within the prohibited degrees of consanguinity or affinity referred to in that section, may apply

(a) in the case of a customary law marriage, to the customary court having jurisdiction in the area in which the persons live,

(b) in the case of an Islamic law marriage, to the Islamic court, and

(c) in the case of any other marriage, to the High Court for permission to marry each other.

Idem

(2) Where a ritual of expiation to sever the relationship of consanguinity or affinity is required by the custom or religion of a person who made application under subsection (1), the court may, after the performance of the ritual, grant the persons permission to marry each other.

Idem

(3) Where no ritual of expiation referred to in subsection (2) is required, the court may, after being satisfied that the persons referred to in subsection (1) are of remote prohibited degrees of consanguinity or affinity set out in Schedule II to this Act, grant the persons permission to marry each other.

Void marriage

11 A marriage is void where

(a) the spouses are within the prohibited degrees of consanguinity or affinity set out in Schedule II to this Act, and

(b) permission to marry is not obtained under section 10.

BRIDE PRICE

Minister

12 The Minister may make regulations empowering every Local Government Council to make by-laws

(a) fixing the maximum limit of bride price in its area of authority, and

(b) prescribing the manner in which the bride price may be paid.

Bride price

13. (1) Every man who intends to marry a woman shall pay a bride price directly to the woman or to her parents on her behalf before he marries her.

- Idem** (2) The bride price may take the form of money, merchandise, estate or any other thing of value.
- Refund of bride price** (3) A man is entitled to a refund of the bride price he paid to a woman where the marriage does not take place on the date fixed by the parties.
- Void marriage** 14. A marriage is void where a bride price is not paid in accordance with the by-laws made under section 12.
- Gift** 15. Where a man presents a gift to a woman before they agree to marry, such a gift shall not be deemed to be part or whole payment of the bride price.

CELEBRATION OF MARRIAGE

- Minister** 16. The Minister may make regulations empowering every Local Government Council to make by-laws applicable in its area of authority
- (a) prescribing the maximum amount of money spouses may spend in the celebration of their marriage, and
 - (b) barring persons from the celebration of a marriage.
- Celebration** 17. A marriage is void unless it is celebrated
- (a) in a Church, a Mosque, a Shrine, a Magistrate's court or any other place licensed for the celebration of

No. 5
of 1979

marriage under the Public Order Decree, Laws of the
Federation of Nigeria, 1979, and
(b) in the presence of at least two witnesses.

REGISTRATION

Registration
of marriage

18. (1) Every marriage shall be registered,
- (a) in the case of a customary law marriage, in the customary court having jurisdiction in the area in which the spouses live;
 - (b) in the case of an Islamic law marriage, in the Islamic court; and
 - (c) in the case of any other marriage, in the High Court.

Idem

- (2) The court shall register the names of the spouses in the Register of Marriages and issue a Certificate of Marriage to them.

Illiterate.
Cap. 83
of 1958

- (3) Where either of the spouses is an illiterate, the Certificate of Marriage shall be in accordance with the Illiterates Protection Ordinance, Laws of the Federation of Nigeria, 1958.

Fee

19. The court shall, upon payment of a fee to be prescribed by the court,
- (a) make available the Register of Marriages for inspection by any citizen, or

(b) issue an additional copy of the Certificate of Marriage to the spouses.

Registration
of child

20. (1) Every child shall be registered,

(a) in the customary court having jurisdiction in the area his parents live if they were married under customary law;

(b) the Islamic court if the parents were married under Islamic law; and

(c) in the High Court if the parents were married under any other law.

Idem

(2) The court shall register the name of the child in the Register of Births and issue a Certificate of Birth to the parents of the child.

Illiterate
Cap. 83
of 1958

(3) Where one of the parents of a child is an illiterate, the Certificate of Birth of the child shall be in accordance with the Illiterates Protection Ordinance, Law of the Federation of Nigeria, 1958.

Fee

21. The court shall, upon payment of a fee to be prescribed by the court,

(a) make available the Register of Birth for inspection by any citizen, or

- (b) issue an additional copy of the Certificate of Birth to the parents of the child or to the child.

DIVORCE

Proceeding
for divorce

- 22. Any married person may institute a proceeding for divorce,
 - (a) in the case of a customary law marriage, before the customary court having jurisdiction in the area in which the person lives,
 - (b) in the case of an Islamic law marriage, before the Islamic court, and
 - (c) in the case of any other marriage, before the High Court.

Idem

- 23. (1) Where a person files an application for divorce, the court
 - (a) shall notify the person's spouse by summons of the application,
 - (b) shall order the Marriage Arbitration Council in the area where the spouses live or a person with experience or training in marriage affairs to attempt to reconcile the spouses, and
 - (c) may make any suggestion the court deems desirable to encourage a reconciliation between the spouses.

Idem
No. 23
of 1963

(2) A person nominated pursuant to paragraph 1(b) shall take the oath of secrecy in accordance with the Oath and Affirmation Acts, Laws of the Federation of Nigeria, 1963.

Idem

24. Where the spouses fail to reconcile themselves and the Marriage Arbitration Council or the person nominated pursuant to paragraph 23(1)(b) certifies to the court that it or he has failed to effect a reconciliation between the spouses, the court, shall proceed to hear and determine the suit between the spouses.

Divorce

25. (1) No divorce is valid unless granted

- (a) in the case of a customary law marriage, by the customary court having jurisdiction in the area in which the former spouses live,
- (b) in the case of an Islamic law marriage, by the Islamic court, and
- (c) in the case of any other marriage, by the High Court.

Decree nisi

(2) The court shall, upon proof by the applicant of any of the grounds set out in Schedule II to this Act, grant a decree nisi of divorce to the applicant.

Decree absolute

(3) The court shall, after the expiration of ninety days of the grant of decree nisi of divorce, grant a decree absolute of

divorce to the applicant, unless the spouses have reconciled themselves.

Refund of
bride price

(4) The court shall, after the grant of a decree absolute, order a refund to the former husband of such part of the bride price as the court determines if the marriage was not consummated.

Registration
of divorce

26. (1) A court that grants a decree absolute of divorce shall register the names of the former spouses in the Register of Divorces and issue a Certificate of Divorce to both of the former spouses.

Illiterate
Cap. 83
of 1958

(2) Where one of the former spouses is an illiterate, the Certificate of Divorce shall be in accordance with the Illiterates Protection Ordinance, Laws of the Federation of Nigeria, 1958.

Fee

(3) The court shall, upon payment of a fee to be prescribed by the court,

(a) make available the Register of Divorce for inspection by any citizen, or

(b) issue an additional copy of the Certificate of Divorce to either of the former spouses.

CUSTODY AND MAINTENANCE OF CHILDREN

Period of
contenance 27. (1) In this section,
"ninety day period" means a period of ninety consecutive
calendar days.

Idem (2) For the purposes of determining the paternity of a child,
a female person shall observe a ninety day period of continence
after the dissolution of her marriage.

Deemed
paternity (3) Where a divorced female is pregnant during the ninety day
period of continence required by subsection (2), her former
husband is deemed to be the father of the child in the absence
of evidence to the contrary, and she is entitled to a reasonable
maintenance from the former husband during the pregnancy and
until the child reaches 18 years of age so long as she retains
actual custody of the child.

Idem (4) Where the former husband dies before a child deemed to be
his under subsection (3) is born or reaches 18 years of age,
payment of a maintenance allowance referred to in that
subsection shall be made out of the estate of the former
husband.

Right to the
custody of 28. The father and mother of a child have an equal right to the
custody of a child born to the spouses during the existence of

- a child their marriage or conceived between the time of their marriage and the end of the ninety day period of continence referred to in section 27(2).
- Custody of a child 29. (1) Where a marriage is dissolved under section 25 or where the spouses are living apart, the court may grant the custody of a child born to the spouses to either of them.
- Interests of child (2) The court shall take into consideration the interest of the child before granting custody to either of the former spouses.
- Investigation (3) In taking into consideration the interest of the child, the court shall investigate
- (a) the living conditions of the former spouses;
 - (b) the moral standard of the former spouses; and
 - (c) the physical and mental fitness of the former spouses.
- Maintenance 30. (1) Where either of the former spouses is granted custody of a child under section 29, such former spouse shall maintain the child in accordance with the educational, moral, physical and social standards directed by the court.
- Idem (2) The court may order both former spouses to contribute to the maintenance of the child.

Guardian or
government
institution

31. Where, in the opinion of the court, neither of the former spouses is capable of maintaining the child, the court may appoint a guardian for the child, or order the child to be admitted into an approved government institution.

DEATH OF SPOUSES

Marriage
terminated
by death

32. Where a marriage terminates by death, the marriage is deemed to be dissolved by a decree absolute, and shall have all the consequences of a marriage so dissolved.

Death of a
spouse

33. Where a married person dies, the surviving spouse or, if there is no surviving spouse, the eldest child shall lodge notification of the death,

(a) with the customary court having jurisdiction in the area in which the deceased spouse lived if the spouses were married under customary law;

(b) with the Islamic court if the spouses were married under customary law; and

(c) with the High Court if the spouses were married under any other law.

Registration
of death

- 34.(1) The court shall,

(a) register the name of the deceased spouse in the Register of Deaths;

(b) issue to the surviving spouse or the eldest child a Certificate of Death of the deceased spouse; and

(c) report in writing to the Probate Registrar of the High Court the death of the deceased spouse

within thirty days of the receipt of the notification referred to in section 33.

Illiterate
Cap. 83
of 1958

(2) Where a surviving spouse or the eldest child of the deceased spouse is an illiterate, the Certificate of Death of the deceased spouse shall be in accordance with the Illiterates Protection Ordinance, Laws of Federation of Nigeria, 1958.

Fee

(3) The court shall, upon payment of a fee to be prescribed by the court,

(a) make available the Register of Death for inspection by any citizen, or

(b) issue an additional copy of the Certificate of Death to the surviving spouse or any child of a deceased person.

SUCCESSION

Estate of a
Muslim

35. (1) Subject to this Act and the Holy Quran, every Muslim may dispose of his estate in any way before his death and by will at his death.

Estate of a
non-Muslim

(2) Subject to this Act, every person other than a Muslim may dispose of his estate in any way before his death and by will at his death.

Devise or
bequest to
a child

36. (1) Where a person devises or bequeaths the whole or a part of his estate to a child under 18 years of age,

(a) in the case of a devise or bequest made under customary law, the customary court having jurisdiction in the area in which the testator lived;

(b) in the case of a devise or bequest made under Islamic law, the Islamic court; and

(c) in the case of a devise or bequest made under any other law, the High Court,

shall be a receiver, in trust, of the devise or bequest until the appointment of a trustee, and shall appoint a trustee to hold the devise or bequest, in trust, for the child until the child reaches 18 years of age.

Trustee

(2) The trustee appointed pursuant to subsection (1), shall administer the estate for the welfare of the child in such a manner as the court may direct.

No Property
in human being

37. No person shall be the subject of succession.



Equality among children 38. The children of a person who dies intestate shall share equally the total of the amounts that would otherwise be payable to each of them under the applicable law prior to the coming into force of this section.

Intestacy

39. Where a person dies intestate,
- (a) in the case of a deceased person married under customary law, the customary court having jurisdiction in the area in which he lived;
 - (b) in the case of a deceased person married under Islamic law, the Islamic court; and
 - (c) in the case of a deceased person married under any other law, the High Court

shall notify the Probate Registrar in writing of the death of the deceased person within thirty days after learning of the death and shall administer the estate of the deceased person until the Probate Registrar grants Letters of Administration under section 40.

Duties of the Probate Registrar

40. (1) The Probate Registrar shall
- (a) advertise four times in
 - i) a national newspaper, and
 - ii) a local newspaper which circulates in the state of residence of the deceased person,

within thirty days after receiving notice of the death of the deceased person an invitation for an application for the grant of Letters of Administration, and

Letters of
Administration
Caps. II and III
of 1958

(b) grant the Letters of Administration to a person who satisfies the requirements of the Administration of Estates Act, Laws of the Federation of Nigeria, 1958 or, if no such person applies within thirty days of the last such advertisement, to the Administrator General.

Idem

41. (1) Every person who is granted Letters of Administration in respect of an estate of a deceased Muslim shall administer the estate in accordance with the Holy Quran.

Idem

(2) Every person who is granted Letters of Administration in respect of a deceased person other than a Muslim shall administer the estate in accordance with the Administration of Estates Act, Laws of the Federation of Nigeria, 1958.

PUNISHMENT

Punishment

42. Every person who violates a provision of this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both.

CIVIL REMEDY

Civil remedy 43. No proceeding taken under this Act against any person affects the right of an aggrieved person to a legal remedy to which he is otherwise entitled.

EVIDENCE

Evidence 44. In a proceeding under this Act, the court shall receive in evidence without proof of the signature or official character of the person who signed it,

- (a) a Certificate of Marriage;
- (b) a Certificate of Birth;
- (c) a Certificate of Divorce;
- (d) a Certificate of Death;
- (e) a certified copy of a recommendation of the Marriage Arbitration Council; and
- (f) a certified copy of by-laws made pursuant to this Act by a Local Government Council.

VESTED RIGHT

Vested right 45. This Act does not affect the validity of a marriage solemnized prior to the coming into force of this Act.

REGULATIONS

- Regulations** 46. The Minister may make regulations
- (a) for carrying the purposes and provisions of this Act into effect, and
 - (b) prescribing the penalty to be imposed on summary conviction for violation of any regulation or by-law made under this Act not exceeding a fine of five hundred dollars or imprisonment for a term of six months or to both.

COMING INTO FORCE

- Coming into force** 47. This Act shall come into force on the day this Act is assented to by the President of the Federal Republic of Nigeria.

SCHEDULES

- Schedule I. Local Government Areas.
- Schedule II. Prohibited Degrees of Consanguinity and Affinity.
- Schedule III. Grounds for Dissolution of Marriage.

SCHEDULE I

LOCAL GOVERNMENT AREAS.

State	Area	State	Area
ANAMBRA	Abakaliki, Aguata, Anambra, Awgu, Awka, Ezeagu, Enugu, Ezza, Idemili, Igbo-Etiti, Igbo-Eze, Ihiala, Ikwo, Ishielu, Isi-Uzo, Njikoka, Nkanu, Nnewi, Nsukka, Oji-River, Onitsha, Udi, Uzo-Uwani.	KADUNA	Katsina, Dutsin-Ma, Funtua, Daura, Mani, Malunfashi, Kanfiya, Zaria, Ikara, Saminaka, Kachia, Jema'a, Birnin-Gwari, Kaduna.
BAUCHI	Bauchi, Darazo, Toro, Alkali, Tafawa Balewa, Akko, Dukku, Gombe, Tangale-Waja, Shira, Katagum, Gamawa, Misau, Ningi, Jama'are, Dass.	KANO	Kano (Metropolitan), Dambatta, Ringim, Minjibir, Gezawa, Bichi, Dawakin-Tofa, Gwarzo, Tudun-Wada, Rano, Wudil, Dawakin-Kudu, Dutse, Jahun, Birnin-Kudu, Gaya, Hadejia, Keffin-Hausa, Gumel, Kazaure.
BENDEL	Oshimili, Oredo, Okpebho, Isoko, Ethiope, Bomadi, Burutu, Okpe, Warri, Orhionmwon, Ovia, Etsako, Ika, Agbazilo, Owan, Ughelli, Aniocha, Akoko-Edo, Ndokwa.	KWARA	Asa, Borgu, Edu, Ifelodun, Ilorin, Irepodun, Kogi, Moro, Okehi, Okene, Oyi, Oyun.
BENUE	Ankpa, Bassa, Dekina, Gboko, Gwer, Idah, Katsina-Ala, Kwande, Makurdi, Oju, Okpokwu, Otukpo, Vandeikya.	LAGOS	Lagos-Island, Lagos-Mainland, Shomolu, Mushin, Epe, Badagry, Ikorodu, Ikeja.
BORNO	Bade, Fika, Biu, Askira/Uba, Ngala, Bama, Gwoza, Geidam, Kukawa, Nguru, Konduga, Maiduguri (Metropolitan), Damaturu, Fune, Gujiba, Damboa, Monguno, Kaga.	NIGER	Abuja, Agaie, Lapai, Chanchaga, Gbako, Lavun, Mariga, Magama, Rafi.
CROSS RIVER	Calabar Municipality, Abak, Ukanafun, Akamkpa, Odukpani, Eket, Etinan, Ikom, Ikot-Abasi, Ikot-Ekpene, Itu, Ikono, Obubra, Ogoja, Obudu, Oron, Uyo.	OGUN	Abokuta, Odeda, Obafemi-Owode, Ifo-Otta, Egbado-North, Egbado-South, Ijebu-Ode, Ijebu-North, Ijebu-East, Ijebu-Remo.
GONGOLA	Yola, Gombi, Song, Mayo-Belwa, Fufore, Bali, Jalingo, Karim-Lamido, Zing, Guyuk, Numan, Michika, Mubi, Ganye, Sardauna, Takum, Wukari.	ONDO	Akoko-North, Akoko-South, Akure, Ekiti-Central, Ekiti-East, Ekiti-North, Ekiti-South, Ekiti South-West, Ekiti-West, Ero, Idanre/Ifedore, Ifesowapo, Ijero, Ikale, Ilaje-Ese-Odo, Ondo, Owo.
IMO	Aba, Aboh-Mbaise, Afikpo, Ahiazu-Mbaise, Arochukwu/Ohafia, Bende, Etihi, Ideato, Isiala-Ngwa, Mbaitoli/Ikeduru, Mbano, Nkwerre/Isu, Obioma-Ngwa, Ohaji/Egbema/Oguta, Ohazara, Isuikwuato/Okigwe, Orlu, Oru, Owerri, Ukwa, Ikwuano/Umuahia.	OYO	Irepo, Obokun, Atakunmosa, Ifelodun, Iwo, Odo-Otin, Oshogbo, Ejigbo, Akinyele, Ifedapo, Kajola, Lagelu, Irepodun, Ibarapa, Ede, Iseyin, Ibadan Municipal, Irewole, Oluyole, Ila, Ilesha, Ogbomosho, Oranmiyan, Oyo.
		PLATEAU	Akwanga, Awe, Bassa, Jos, Barikin-Ladi, Kanam, Keffi, Lafia, Langtang, Mangu, Nasarawa, Pankshin, Shendam, Wase.
		RIVERS	Port Harcourt, Bonny, Bori, Ikwerre/Etche, Degema, Brass, Ahoada, Yenagoa, Sagbama.
		SOKOTO	Argungu, Birnin-Kebbi, Bunza, Bagudo, Anka, Silame, Bodinga, Gwadabawa, Gummi, Gusau, Kaura-Namoda, Isa, Sokoto, Talata-Mafara, Wurno, Yabo, Yauri, Zuru, Jega.

SCHEDULE II

PROHIBITED DEGREES OF CONSANGUINITY AND AFFINITY

A marriage of a male spouse is void where a female spouse is or has been his

Consanguinity

ancestress
descendant
sister
fathers's sister
mother's sister
brother's daughter
sister's daughter
foster mother
foster sister

Affinity

wife's mother
wife's grandmother
wife's daughter
wife's son's daughter
wife's daughter's daughter
father's wife
son's wife
son's son's wife
daughter's son's wife

A marriage of a female spouse is void where a male spouse is or has been her

Consanguinity

ancestor
descendant
brother
father's brother
mother's brother
brother's son
sister's son
foster father
foster brother
foster son

Affinity

husband's father
husband's grandfather
husband's son
husband's son's son
husband's daughter's son
mother's husband
grandmother's husband
daughter's husband
son's daughter's husband
daughter's daughter's husband

SCHEDULE III

GROUND FOR DISSOLUTION OF MARRIAGE

1. Failure of a husband to consummate a marriage.
2. Either of the spouses has committed adultery and the other spouse finds it intolerable to live with the adulterous spouse.
3. Habitual drunkenness, commission of rape, sodomy, bestiality or any misbehaviour because of which the other spouse cannot reasonably be expected to live with the other spouse.
4. A physical or a mental defect.
5. Cruelty.
6. Failure of a husband to maintain his wife.
7. Desertion by either of the spouses for a continuous period of one year.
8. Barrenness or impotence.
9. A husband marrying another wife without the permission of the Marriage Arbitration Council.
10. Refusal to resume cohabitation within one year after a reconciliation.
11. Living apart for more than two continuous years without just cause.
12. The marriage has broken down irretrievably.