Nigerian legal system

Law, Common Law

NATIONAL OPEN UNIVERSITY OF NIGERIA COURSE CODE:-LAW 212 COURSE TITLE:- Nigerian Legal System II LAW 212 NIGERIAN LEGAL SYSTEM II Course Code Course Title Course Developer/Writer Course Editor Law 212 Nigerian Legal System II G. I. Oyakhiromen Ph. D, BL National Open University of Nigeria Professor Justus A. Sokefun National Open University of Nigeria G. I. Oyakhiromen Ph. D, BL National Open University of Nigeria Mr. Ayodeji Ige LL. B, MA, ACLS National Open University of Nigeria Programme Leader Course Coordinator NATIONAL OPEN UNIVERSITY OF NIGERIA ii LAW 212 NIGERIAN LEGAL SYSTEM II National Open University of Nigeria Headquarters 14/16 Ahmadu Bello Way Victoria Island Lagos Abuja Office 5 Dar es Salaam Street Off Aminu Kano Crescent Wuse II Abuja e-mail: centralinfo@nou. edu. ng URL: www. nou. edu. ng Published by National Open University of Nigeria Printed 2009 ISBN: 978-058-942-7 All Rights Reserved iii LAW 212 NIGERIAN LEGAL SYSTEM II CONTENTS Module 1 Unit 1 Unit 2 Unit 3 Unit 4 Module 2 Unit 1 Unit 2 Unit 3 Unit 4 Module 3 Unit 1 Unit 2 Unit 3 Unit 4 Module 4 Unit 1 Unit 2 Unit 3 PAGE 1 ..... Historical Background ..... 1 Essentials and Proof of Customary Law ..... 10 The Colonial Legal System ..... 15 Customary and Islamic Law Compared ..... 22 ..... 28 Historical Development of Judicial Institutions ..... 28 Judicial Institutions ..... 37 The Personnel of the Nigerian Legal System ..... 43 The Personnel of the Court other than Judicial Officers. 51 ..... 60 Administration of Justice: Court Structure ..... 60 Administration of Justice: Civil Process .....

66 Administration of Justice: Criminal Process ..... 74 Administration of Justice: Criminal and Civil Processes82 ..... 92 Inferior and Special Courts ..... 92 The Legal Aid ..... 104 Miscellaneous Concepts ..... 118 iv LAW 212 NIGERIAN LEGAL SYSTEM II MODULE 1 Unit 1 Unit 2 Unit 3 Unit 4 Historical Background Essentials and Proof of Customary Law The Colonial Legal System Customary and Islamic Law Compared UNIT 1 CONTENTS 1. 0 2. 0 3. 0 HISTORICAL BACKGROUND 4. 0 5. 0 6. 0 7. 0 Introduction Objectives Main Content 3. 1 Historical Background 3. 2 Customary Law, Defined 3. 3 Development of General Customs 3. 4 Characteristics of Customary Law 3. 5 Customary Law: Different Schools of Thought 3. 6 Custom as a Source of Law Conclusion Summary Tutor-Marked Assignment References/Further Readings 1. 0 INTRODUCTION In the early times, the geographical area now known as Nigeria comprised different settlements. Among these settlements were some 350 ethnic groups and 500 dialects. Each ethnic group had its own language(s), cultures and customs. Despite the ethno — linguistic differences, the various settlements were not isolated from one another. Rather, there existed some forms of political, economic, social and cultural relations. Some of the settlements were linked to one another by rivers, creeks, or land mass or a combination of two or all of them. These links provided routes which facilitated and promoted exploration, discovery, trade and commerce. They enhanced mobility of labour, migration, and other social relations and interaction. There were also inter-tribal wars. The settlements in due course, either by conquest or by other growth processes,

metamorphosed into kingdoms, empires and principalities, which by accident of history and by numerous geographical handicaps 1 LAW 212 NIGERIAN LEGAL SYSTEM II or fortunes (as the case might be), attained varying levels of political, social, cultural and economic development. Certain physical features influenced the occupational distribution of the early settlers, as well as their type of ancestral workshop. For example, northwards were savanna areas; the inhabitants were chiefly pastoral; they worshipped the god of the sky. Southwards were the forest belts; for the settlers who were mainly farmers, the object of their worship was the god of land. Still further southwards are the coastland areas; the settlers were mainly fishermen and they worshipped the goddess of the sea. With time, these groups interacted with considerable frequency and in consonance with some established and regular process. Indeed, the notion of settlement itself connotes a level of human organisation; and where there is an organization, there has to be a scheme of rules or laws and compulsion to enforce obedience if the group or society must survive and continue. Each of the ethnic- linguistic groups therefore had its own concept of law, judicial process and customary laws without which human society could not exist. These laws played a prominent role in the regulation of the affairs of members of the group. They varied with space, character and level of socio-economic development and challenges which faced the various settlements. As should be expected therefore, there were manifestation of different (and sometimes conflicting) ways and conditions as one moved from one place or age to another or one empire or kingdom to another and across the jurisdiction of different customary laws. Before delving into these conflicts, there need to be some

understanding of the development of the legal systems and the nature of customary law. 2. 0 OBJECTIVES At the end of this unit, you should be able to: - - - - - define “ customary law" account for the historical development of customary law state whether or not custom is antecedent to statute, or otherwise identify the characteristics of customary law assess custom as a source of law and its importance in early communities. 2 LAW 212 NIGERIAN LEGAL SYSTEM II 3. 0 3. 1 MAIN CONTENT Historical Background In the primitive state, men lived together in peace and happiness, having things in common. There was no private property. We may infer that there would have been no slavery and there was no coercive government. Order was of the best kind, for men followed nature without fail and the best and wisest men were their rulers. They guided and directed men for their good and were gladly obeyed as they commanded wisely and justly. As time passed, the primitive innocence disappeared; men became avaricious and dissatisfied with the common enjoyment of the good things of the world and desired to hold them in their private possession. Avarice rent the first happy society asunder, and the kingship of the wise gave place to tyranny, so that men had to create laws which should control their rulers. (Senacea). In essence, Man as a creation of God in his image, has a divine character, celestial requirements and secular social needs which necessitate machinery for regulating human action. The stoics and early Christian fathers also subscribed to this view. However, Aristotle expressed a contrary view, arguing that Man is a selfish animal from his birth whose first business is to preserve himself in the state of nature and next, to retain what is according to nature and to reject what is contrary to it. (Hence the state, law and

sovereign). In Darwin’s view, life and death; creation and destruction - certainly no fact in the history of the world and so startling as the wide and repeated extermination of its inhabitants-extermination in which man is the active agent in a civilising mission. Cicero added: The variety of laws in different states proves that these codes (laws) must be based on utility which differs in different places. By trial and error and changing nature of political conflicts, the Romans adopted various forms of government ranging from monarchy to oligarchy, democracy and even tyranny. Each had its forms of law. The different organs of government (e. g. The Senate, Courts, Tribunes, Prefects etc) evolved practices, which refined and revised the corpus juris to suit prevailing circumstances. In the traditional African system, whether the society is a monarchy or gerontocracy, one common denominator according to Elias is the 3 LAW 212 NIGERIAN LEGAL SYSTEM II constant aspiration towards the democratic principles in constitutional governance. The different autonomous ethnic groups have their own systems of justice administration. They are informal, and based largely on unwritten Customary Law (and Sharia Law which is written). These laws are not only humane and flexible but also served the purpose of justice and the society. 3. 2 Customary Law, Defined Customary laws then may be defined as follows: - Practices, which by common adoption and long unvarying habits, have come to have the force of law - Rules, which in a particular community, have from long usage obtained the force of law - A body of customs, accepted by members of the community as binding upon them - Organic or living laws of the indigenous people, which regulate their lives and transactions - Unrecorded tradition and history of the people, which has

“ grown" with the “ growth" of the people to stability and eventually become an intrinsic part of their customs - Usages or practices of the people, which by common adoption and acquiescence and by long and unvarying habits, have become compulsory and have acquired the force of law with respect to place, or the subject matter to which it relates. SELF ASSESSMENT EXERCISE 1 1. 2. 3. Account for the evolution of customary law Which of the various definitions of customary law do you prefer and why? Distinguish between a habit and a customary law 3. 3 Development of General Customs in Nigeria The empires of the North as well as the kingdoms in the Southwest were chiefly societies. Authority was exercised along vertical lines, authoritarian and despotic in nature. Their legal system was centralized; exercise of judicial power was territorially delimited, and coercive. At the same time, there were features of democracy. For example, the monarchs held consultations with their council of chiefs, queen mothers, court’s, priestly officials, secret cults, etc. Powers were decentralized particularly in the Northern empires where Emirs, Serikis and others exercised delegated authorities. There were also checks and balances. 4 LAW 212 NIGERIAN LEGAL SYSTEM II Akin Oyebode noted that in the old Oyo empire, for example, the king makers or subordinate chiefs could demand that a tyrannical Alafin (the Monarch) should “ open the calabash" or in other words to commit suicide. Elsewhere junior chiefs were empowered to secede from the commonwealth of a cruel king or in the alternative depose or banish him. The East of the Niger was made up of chiefless societies and these societies were less integrated. Authority was organized along horizontal lines. Relatively, they were democratic and egalitarian. They relied more on

synonym bonds, lineage and kinship within the clans and other social groups. The legal system was decentralized and judicial power was based primarily on the attainment of a specific rank, age or status within the social unit. In both the chiefly societies of the North and the West and the chiefless society of the East, the members of the communities had no cause whatsoever to entertain any fear that the monarch or other rulers would be absolutist or tyrannical. There were broad similarities among the customs and cultures transcending ethnic boundaries as there were conflicting ones. The broad similarities served as bonds between the different communities and the people. They also served to regulate the relationship among the members of the communities. In effect, there was conformity with the social norms: and this was reinforced by the strong belief in myths, dogmas, and ancestral spirits. Everywhere — be it chiefly or chiefless, the legal system was the same — the enterprise of subjecting human conduct to the governance of rules. The law was no respecter of persons or ethnic group; the legal system served as an instrument for abridging the gaps between them. SELF ASSESSMENT EXERCISE 2 Discuss the adequacy or inadequacy of the customary law in coping with law and order in pre-colonial Nigeria. 3. 4 1. 2. 3. 4. 5. Characteristics of Customary Law A mirror of accepted usage or culture of the people that observe it Flexible (elastic), organic (not static), regulatory and a living law of the indigenous people subject to it Largely unwritten — either wholly or partly unrecorded Long and unvarying habits and in existence at the material time, not dead ashes or customs of by gone days Accepted as a custom of universal application and enjoying the assent of the community, etc. 5 LAW 212 NIGERIAN LEGAL SYSTEM II A customary

law itself is subject to motives of expediency, adaptable to time, socio-economic change and altered circumstances; it reflects what is acceptable to the society without entirely losing its individualistic character; it is the custom, tradition and history of the subject people, and the people recognize it as binding and enforceable; it has been applied from ancient days, passing as such from hand to hand and from one generation to another. In fact what gives a customary law any validity is the assent and recognition of the community. 3. 5 Customary Law: Different Schools of Thought Note two areas of controversy: i. ii. Whether or not custom is a source of law The degree of importance, if at all, of the role played by the customary law in the early communities. 3. 6 Custom as a Source of Law Is custom a source of law and did it play any significant role in early history? 3. 6. 1 Ancient Notions 1. 2. 3. Maine, in his Ancient Law, states: " Custom is a conception to that of themistes or judgments". Royal rules predate customs. Gray's view was that customs evolved from the rules laid down by judges. Anthropological researches have indicated that primitive folk were not living in a " custom — bound trance" as many would have us believe. They had neither the judiciary, legislature nor the police. They did have an appreciation of shades of legal liability greater than has been conceived. (Robson). 3. 6. 2 The Socialist Perspective 1. Karl Marx conceived of law as an embodiment of class interests. The concept of " a rule of class interests" may exclude the customary law as law. Customary law is law independently of its being recognized by the legislature. Customary law does not derive its legitimacy from the state. " Class interest" is an unfamiliar term in Nigeria. 6 LAW 212 NIGERIAN LEGAL SYSTEM II 2. A contrary view has been expressed by

Vinogradoff, who has argued that law is a “ set of rules imposed and enforced by society with regard to the attribution and exercise of power over persons and things. This notion accommodates customary law. 3. 6. 3 Positive Law The Positivist idea of law rejected custom as a source of law, arguing that: 1. 2. It falls short of “ the command of the sovereign (Austin) Law is a gapless system of rules and customary law lacks secondary rules (i. e rules as to how and by whom it is enacted, recognized, modified, extinguished — procedural rules (H. L. A. Hart) Law is law as it is; it excludes metaphysic and consideration of any of its historical development. 3. Ironically, Positivists have argued also in favour of custom as a source of law by reason of the very important role it played in the early communities. They have argued that; - Law is not a gapless system. The courts exist to fill the gaps. (Dworkins) Judges may over rule past precedents; annul or confirm an enactment, etc. - Law is not just a model of rules, but an instrument of human interaction, which customary law is (Fuller) - Customary law owes its force to the fact that it has found direct expression, in the conduct of men and women towards one another. - Law is an abstraction, influenced by capitalism, socialism, feudalism and traditions or other ideologies in their respective spheres but nearly all emphasizing the idea of social control, orderly process and justice(Lloyd) - There are two binding forces of law: - i. Fear of sanction (Austin and Benthan) ii. Acceptance by the community (Hart) a) In his comments on the judgment or themestes of the early kings, Maine himself in his Early Law and Custom states: They are doubtless drawn from pre-existing customs or usage conceived by the king spontaneously or through divine prompting (Pollock). Isn’t Maine, blowing “ hot" and “ cold" at

the same time? 7 LAW 212 NIGERIAN LEGAL SYSTEM II b) Early history is at variance with the claim that all early customary law had its claim in royal dooms. For example the dispositional methods of “ blood- feuds" and “ self help" which were recognized among the Tuetonic races, could only be customary in origin. The XII Tables of Roman Law (about 449 BC) preserved and regulated “ self help" as a dispositional method. It also gave statutory expression to other customary law that was in force during the regal period of Roman history. These signify that the recognition and enactment into law of method of self help was a conception posterior to the customary practice. Archeological finds have shown that the code of Hammurabi (about 2000BC) enacted customary laws which were antecedent to the Code and were in force in early Babylon. English land law furnishes us with a custom — Borough English or ultimogeniture — whereby upon the death of ones parents, the land owned by the deceased devolved on the youngest son. The customary rule has been recognized over the ages, and enforced until the Law of Property Act, 1926 abolished it. The historical school of jurists confirms that law developed from evolution of customs, which become adopted by the society. Customary law is distilled from the customs of the people in the particular ethnic group. Customary law contains the ground of its validity itself. It is law by virtue of its own nature as an expression of the general consciousness of right, not by virtue of the sanction, express or tacit, of any legislation" (Arndt) Exponents of natural law have admitted that customary law possesses certain qualities of the natural law. Both connote the idea of a higher law with its objective of social solidarity, search for justice, and balance of interests and by reference to certain minimum

conditions we cannot do without if life is to be decent. c) d) e) f) g) h) (i) (Recall also the development of Common Law in England) 4. 0 CONCLUSION Prior to the establishment of a formal system of laws, there had been a moral order. The purpose of law then was to maintain that order. From this premise customs evolved from which customary law was distilled. 8 LAW 212 NIGERIAN LEGAL SYSTEM II The Positivists were divided on whether custom is a valid source of law and on the importance of its role. Dworkin explains this difference in terms of the fundamental tests of pedigree of the rules. The dominant view is that the rules and regulations of early societies were customary; an expression of the volksgeist, to use Savigny’s terminology, and that custom is a material source of law. Western writers have described the customary law as “ barbaric". It is not clear what the term “ barbaric" means. When the white man discovered Africa (including Nigeria), what he met were not cave dwellers or people not quite distant from apes. Rather he found “ the cradle of civilization". He met an orderly society with its own peculiar forms of rulers, judges and laws. 5. 0 SUMMARY We have, in this unit discussed the historical background of customary law and the nature of law viewed from different perspectives. The influence of custom on law was considerable in the early history of the legal system. There were also inherent conflicts to which we shall direct attention in the next units. 6. 0 1. 2. TUTOR-MARKED ASSIGNMENT Consider the reasons for and against the statement that “ custom is a source of law". “ Custom is a conception posterior to that of themistes or judgment" (Maine). Discuss 7. 0 REFERENCES/FURTHER READINGS Smith, S. (1976). Welfare and Diplomacy in Pre-colonial West Africa (2nd ed). The University of Wisconsin Press. 9 LAW

212 NIGERIAN LEGAL SYSTEM II UNIT 2 CONTENTS 1. 0 2. 0 3. 0 THE ESSENTIALS CUSTOMARY LAW AND PROOF OF 4. 0 5. 0 6. 0 7. 0 Introduction Objectives Main Content 3. 1 Customs: Local and General 3. 2 Problems 3. 3 Proof of Customary Law Conclusion Summary Tutor-Marked Assignment References/Further Readings 1. 0 INTRODUCTION Unit 1, taught you about customs and customary law and how they evolved. We distinguished them from other phenomena and concluded that customary law is a code of conduct, mores or laws, which men set for themselves voluntarily and obey under pain of censure or coercion. It is consistent with the principles of: 1. Natural Law It had general acceptance; it professed principles of natural justice, and moral ideal of what is right and wrong. 2. The Realist School It was a means of meeting desirable social ends. 3. The Environmentalists It was a system of social control and orderly process for social change and adaptability 4. The Historical School It developed from customs which became accepted by the society 10 LAW 212 NIGERIAN LEGAL SYSTEM II At the same time, it was to some extent at variance with: 1. The Positivist School The test of enforcement and command and nothing else was inadequate. Conversely, the analytical positivists' claim that the law evolved logically from general principles would appear to suffice. 2. Social Perspective Customary law is not a product of inherent contradiction or conflict of class interest, neither is it an instrument of oppression instituted for the purpose of facilitating the exploitation of one class by another. Every customary law was once a custom. It met specific conditions and where customary law is disputed, it must be proved. The essentials and proof of customary law are the subject matter of this unit. 2. 0 OBJECTIVES When you

have studied this unit, you should be able to: - state the essentials of a custom to qualify as a customary law - prove the existence of a custom. 3. 0 3. 1 MAIN CONTENT Customs (Local and General) There are customs which are local and are not part of the customary law. Such customs do not meet the essentials of the customary Law. Some customs are restricted but are enforced. Examples are Trade Customs in the Law of Contract. There are other customs that are widespread and are accepted by the court as customary law, because they possess certain fundamental features. Here are some of the fundamental features of customary law: 1. 2. 3. 4. 5. 6. It must be in existence at the material time It must be an existing native law and custom; not that of by gone days It must be flexible It must be of universal application in a given community It must enjoy acceptability as a custom It must be unwritten (or partly written and partly unwritten). Thus a custom, if it is to be a customary law, must be reasonable and obligatory, convenient, and neither arbitrary, discretionary, 11 LAW 212 NIGERIAN LEGAL SYSTEM II objectionable nor unjust, and of continuous usage from time immemorial. Customary law is not static, its flexibility and capacity for adaptation to change and socio-economic development underlines the resilience of customary law. A clear example of flexibility of customary law is the change from traditional concept of inalienability of family land to the modern concept of alienability. It is important that the community must recognize, assent to, and accept the custom as binding or as a mirror of accepted usage. 3. 2 Problems The major problems of the customary law are: 1. It is not codified. For this reason it is uncertain and vague; and only in the minds of those who administer it or those who are subjects to it especially the

custodian of traditions and customs. It is a question of facts and difficult to apply by reason of its multiplicity, diversity, cultural apathy, ideological conflicts, influence of civilization etc. See Taiwo v. Dosumu (1965) 1 ANLR. 399 at Page 404. 2. In Lewis v. Bankole (1908) INLR 81 at 100, Osborne, CJ said Obiter: Now, native customary law is always a difficult law to apply. It is unwritten and the so called experts are usually forthcoming to bear testimony that corresponds exactly with the views put forward by the side on whose behalf they appear. Real experts are few and those who have made it special study and it is not a rule until some matters arise in which the facts are either somewhat peculiar or involved and one of the parties is dissatisfied with the ruling of the native authorities on the facts that the intervention of the courts is asked. 3. Even where a custom is reasonable, and certain and has fulfilled all the specified essentials, the court may still refuse to enforce it for the following reasons: It is repugnant to natural justice, equity and good conscience It is incompatible with any law at the time being in force or other currently binding customs It is contrary to public policy It is injurious to public interest. (a) (b) (c) (d) 12 LAW 212 NIGERIAN LEGAL SYSTEM II One question may be asked: Is a rule of customary law repugnant to natural justice, equity and good conscience merely because it is inconsistent with or contrary to the English Law? Obilade notes that many customary laws are inconsistent with English Law and prescribing an incompatibility test by reference to English Law would result in a virtual abolition of customary law. 3. 3 Proof of Customary Law These problems which Osborne S. J pointed out one hundred years ago (1908) in Lewis v. Bankole still afflict the customary law today. In deed, it is increasingly more

complicated as the society transforms from a simple socio-economic and homogenous life upon which most of the rules evolved into a complex heterogeneous modern living. Furthermore, it is more difficult to determine the circumstances in which the custom in one area may bind another area. Proof may grow more difficult because custom, as a question of fact, does not depend on judicial reasoning and activism. It must be proved by strong evidence. The burden of proof lies on those who assert that a particular customary law exists. The role of the court is simply to accept or reject it. A customary law must be proved by strong evidence in any of the following ways. 1. Expert evidence and opinion e. g. evidence of Kabiyesi, Offor, or Oba, Emir or native chiefs who possess special knowledge of the subject matter. Evidence of credible witnesses e. g. evidence of persons who are sufficiently acquainted with the custom. Assessors: Persons with local knowledge and duly appointed assessors may assist with their knowledge. Writers: Text books, manuscripts that are recognized by the subject people may be used in evidence. Judicial Notice. The evidence Act provides that custom may be established as judicially noticed or evidence may be called to establish what a custom is and the existence of such a custom and to show that persons or a class of persons concerned in the particular case regard the custom as binding upon them. 2. 3. 4. 5. 13 LAW 212 NIGERIAN LEGAL SYSTEM II It is thus clear that the court would not exercise any creative function in the development of customary law. A custom must be proved by strong evidence; it also may be judicially noticed. In that event the court must apply it unless: i. ii. iii. It is repugnant to natural justice, equity and good conscience. It is incompatible with any law for the time being in force.

It is contrary to public policy as where it is injurious to public interest. 4. 0 CONCLUSION Customary law consists of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a art of a social and economic system that they are treated as if they were laws. It is not enacted but grows or develops with time. It expresses itself not in a succession of words, but in a course of conduct. It has no definite authors; there is no person or defined human agency one can praise or bless for its being good or bad (L. Fuller, 1968). Every customary law was once a custom; it is not every custom that is customary law. The reason is that customary law has certain unique features. They also have their problems. It is a mater of fact to be proved by strong evidence unless it is already judicially noticed. 5. 0 SUMMARY Customary law means different things to different schools of thought. Even the Positivists are divided on the subject. Customary law is distilled from customs. It has its own characteristics, and methods of proving its evidence in court. 6. 0 1. 2. TUTOR-MARKED ASSIGNMENT Customary law is flexible and adaptable to change and socioeconomic development. Discuss with reference to decided cases. Even where a custom is reasonable and certain and has fulfilled all the specified essentials, the court may yet refuse to enforce it. Comment with reference to decided cases. 7. 0 REFERENCES/FURTHER READINGS Blacks Law Dictionary (1990) (7th ed). West Publishing Co. Fuller Lon Anatomy of the Law, 71 (1968). 14 LAW 212 NIGERIAN LEGAL SYSTEM II UNIT 3 CONTENTS 1. 0 2. 0 3. 0 THE COLONIAL LEGAL SYSTEM 4. 0 5. 0 6. 0 7. 0 Introduction Objectives Main Content 3. 1 Background 3. 2 English Law 3. 3 Customary Law Conclusion Summary Tutor-Marked Assignment

References/Further Readings 1. 0 INTRODUCTION In the traditional communities, the rulers exercised both executive and judicial powers. With the introduction of Islam, some form of separation of power came into existence among the Hausa communities. The established legal systems worked well. No person was above the law; presumption of innocence obtained; there was belief in oracle and in the supernatural. Every evidence including hearsay was admissible if it was relevant. Under the system, administration of justice was quick, cheap and simple, restitutive and reconciliatory. The colonial legal system had some similarities and dissimilarities with the traditional legal system as we shall see shortly. 2. 0 OBJECTIVES When you have completed this unit, you should be able to: - distinguish the traditional system of arbitration from the modern judicial system - explain why the traditional approach is still common in Nigeria despite modernization and development 3. 0 3. 1 MAIN CONTENT Background Pre-colonial Nigeria possessed informal legal systems, and the machinery through which justice was dispensed in the different communities, which formed part of the hall mark of human civilization. Substantive law was recognizable, binding and obligatory although it 15 LAW 212 NIGERIAN LEGAL SYSTEM II was unwritten. There were arrest and trial procedures. The trial process was quick, cheap, effective, open and participatory. The court room was known often under a big tree in the village squares. What to do with a convict was defined. Penal measures were non-custodial, and restitutive, the philosophy was reconciliatory (present day reformation and rehabilitation) and restoration of distorted equilibrium to the society. The personnel of the legal systems ranged from kings, chiefs, and elders to

linguists, orderlies, messengers, town criers, age-grade and secret cults, diviners, oraclists and witch doctors. If there were differences at all between the legal systems existing in pre-colonial Nigeria and those in the societies of Western Europe, such differences were more of degree than of kind. But alien incursion and interests brought about conflicts. The general policy of the British colonial administration was to adopt the United Kingdom as a model. It attempted to replicate in the colonies, the historical development of the English Legal System in a period appropriate to each particular colony. Hence every feature in the colonial and post colonial Nigerian Legal System (with a few exceptions) has its counterpart in the imperial legal system and practice. Consistently with this policy, there was a conscious or subconscious omission to take cognizance of " outside features". Everything that was not Western was " outside" and uncivilized. Thus the range of enormous pre-colonial human experiences as well as the native institutional facts that distinguished Africa and Africans as the " the cradle of civilization", were given scant recognition, if at all. Rather the imperialists were according to Sheikh Anta Diop, committed to making " the Blackman believe that he has never been responsible for anything, at all, of worth, not even for what is to be found right in his own house and home. In this way, it is easy to bring about the abandonment and renunciation of all national aspirations on the part of those who are wavering, and the reflexes of subordination are reinforced in those who have already been alienated. 3. 2 English Law and Customary Law Remember that the early settlements were homogenous. The custom, a local law was simple. As the settlements expanded into kingdoms and empires, they became heterogeneous. As people moved from

one cultural group to another, conflicts were inevitable. This was further advanced by migrants, explorers, traders, missionaries and war. For example, Sunni Ali and Askia Muhammad over ran the Hausa States of Gobir, Kano, Katsina and Zaria and annexed them to the Songhai kingdom. The phoenicians of the tribe of Nimrod migrated from Upper Egypt to Ile-Ife and advanced the Yoruba Kingdom eastwards to 16 LAW 212 NIGERIAN LEGAL SYSTEM II Dahomey and Benin. (1000 AD). The Portuguese Traders (1452) the British (1553) and the Dutch (1593) had by trade, treaties, diplomacy and military campaigns gained some foothold in different parts until the partition of Africa following the Berlin conference. Thereafter, the British consolidated her dominance, constituting the kingdoms and empires into the Protectorate of Northern Nigeria (1900), and the Colony and Protectorate of Southern Nigeria (1906), both of which amalgamated to form Nigeria in January 1, 1914. As people moved from homogeneity to heterogeneity and from one cultural grouping to another, conflicts inevitably arose. See Koney v Union Trading Co. (1934;, Okolie v Ibe (1958), Olowu v Olowu etc. In the early times, judges in England executed justice “ according to the law and custom of England" and translated the custom into law. So also the British imperialists by Ordinance No. 3 of 1863 formally established in the Lagos Colony, English type of courts which executed laws and custom in the colony. The Ordinance No. 4 of 1876 expressly empowered the courts to execute i.) ii.) iii) iv) v) The common law of England The doctrines of equity as applicable in England Statute of General Application as at 1st July 1874 (later varied to 1st January 1900) Local enactments Customary laws that were not repugnant to natural law, equity and good conscience or

incompatible with the law for the time being in force. Aside from theory, local customs or practices of a particular area were not recognized. Even where custom has continuously prevailed from time immemorial and it is generally reasonable and accepted it was still required to pass the English man’s test of repugnancy and incompatibility, using the English standards. The administration of English law side by side with customary law sometimes conflicted. The result was a delimitation of the relative spheres of operation of the rules and principles of the one or the other and generally, as to the determination of questions bordering on primacy or parity as between the received English law and the indigenous customary law. The experience of Nigeria is that in constituting Nigeria into a federation (1951-4), and subdividing it into 3 region and subsequently into 4 regions (1963) and still later into 12, 19, 21, and 36 states and a 17 LAW 212 NIGERIAN LEGAL SYSTEM II Federal Capital Territory (1967-99), similarity of cultures, ethnicity and language received little consideration if at all. The British type of political arrangement still prevailed, generating its good aspects as well as conflicts among the tiers of government. See Military Governor (Ondo State) v Adewunmi, Doherty v Balewa (1981), Archbishop Okogie and Ors v Governor of Lagos State (1981) , Iffie v AG Bendel State (1987), AG Bendel State v Aideyan (1989), AG Bendel State v AG (Fed) and 22 Ors (1982). Thus, with a plurality of laws in a typically urban area, there would be the following: i) ii) iii) iv) v) vi) The Indigenous native custom The customary laws accepted as such The foreign laws and custom; each migrant group, invaders, traders, missionaries, explorers etc carried along, their political organization, religion, learning, laws and customs. Traditional religions Islam and its variant.

Christianity and its variant See: Koney v Union Trading Co. (1934), Okorie v Ibo (1958), Olowu v Olowu Plurality of laws permits a situation where one system applies to one transaction and another system to another. For example different laws and incidences apply to Christian and customary law marriages, as well as to devolution of property upon intestacy. See: Cole v Cole 1898, Olowu v Olowu, R v Princewell A customary law may also apply to a transaction and dispute may arise as to whether or not that law applies to the parties in the transaction. Cases involving a native and a non-native often give rise to such a problem. The approach of the court has been that the customary law would apply where statutes so provide. In other cases the test is which law serves justice better: See Lewis v Bankole (1908), Edet v Essien (1932), Nelson v Nelson (1951), and Agidigbi v Agidigbi (1992). However, these rules are not absolute. They may be displaced where: (a) The parties expressly agree that the customary law shall not apply. Sometimes the yardstick for applying customary law may differ. For example in the Northern States and Lagos State, the test for the application of a customary law is “ Nativity Test". In the Eastern States, the test is “ Nigerian descent test". In the 18 LAW 212 NIGERIAN LEGAL SYSTEM II Western States, the High Court laws provide expressly where customary should apply. (b) (c) In every case, application of a customary law is displaced where the nature of the transaction does not admit customary law Where the transaction is unknown to the customs of the people, customary law would not apply . Typical examples of these are statutory marriage cases. Koney v UTC Ltd (1934), Queen v Owo (1936) Salam v Aderibigbe and Okocha v. Ibo (1958). See: The general rule is that the customary law applies if: a) b) c) There is a

native law and custom applicable to the matter in controversy Such law and custom is not repugnant to natural justice, equity and good conscience or incompatible with the local ordinance, and If it shall not appear, that it was intended by the parties that the obligation under that transaction should be regulated by statute. In essence, customary law applies where the nature of transaction is subject to customary law, or the statute provides that customary law shall apply. It is ousted where parties expressly so agree or deemed to have agreed, the nature of transaction is unknown to customary or laws or the nature of the transaction dictates that it is to the regulated by law other than customary. Whether parties have agreed or deemed to have agreed on which law is applicable is, however, not easy to answer with any precision. Nonetheless, courts have been guided by considerations of: a. Interest of Justice Where a transaction is governed by the customary law and the parties are natives, it is in the interest of justice that the customary law applies. Statute law is excluded if substantial injustice would be done to either party. Even where parties are natives and non-natives, customary law may yet apply provided it would not occasion substantial injustice. 19 LAW 212 NIGERIAN LEGAL SYSTEM II b. Conduct of Parties Courts assume that in the absence of evidence to the contrary, parties for example to an Islamic marriage intend to be governed by the provisions of the Holy Qu’ran, just like parties of a Christian marriage intend to be governed by statute and British standards. c. i) ii) Other Considerations are: Social welfare principles Life style principles Aguda noted that any legislation which is expected to alter materially the social habits and values, even though meant to effect social justice can hardly be expected to succeed unless the masses are made to

see the necessity for it. The reason is that cultures, tradition, social habits and values die hard, and it must be a mistake to attempt to alter, modify or abrogate any of them without sufficiently preparing the minds of the people for the change to come. At the same time, the law in Friedmans' view, must, especially in contemporary conditions, articulate law making by legislators, courts and others, respond to social change if it is to fulfill its function as a paramount instrument of social order. It would appear also that the dichotomy between Engene Erlichs " formal law" and " living Law" is now more pronounced. People (and there are instances of such trends) react unfavorably to abrupt change of norms, which do not reflect the volgeist This, in part, explains why the Northern states of Nigeria jettisoned the Criminal Code and the Criminal Procedure Act in 1959. Instead, they opted for the Penal Code and the Criminal Procedure Code like those of Sudan and India and of the Maliki School. Hence also the recent agitation for Sharia Law. 4. 0 CONCLUSION The traditional communities or settlements which made up Nigeria had their legal systems. But the Muslim invaders and the British imperialists superimposed their own legal systems. The latter was not as quick, cheap, or easy. It was technical. This in part explains the disrespect which people have for the modern legal system. 20 LAW 212 NIGERIAN LEGAL SYSTEM II 5. 0 SUMMARY Traditional and modern approaches to the administration of justice sometimes correspond, and at other times differ. Both still operate side by side despite modernization and development 6. 0 TUTOR -MARKED ASSIGNMENT The traditional legal system is " archaic". Do you agree? 7. 0 REFERENCES/FURTHER READINGS Obilade, O., Nigerian Legal System. Sweet & Maxwell. Smith, S. (1976). Welfare and Diplomacy in

Pre-colonial West Africa. University of Wisconin Press. Slapper, G. (2004). The English Legal System. Cavendish. 21 LAW 212 NIGERIAN LEGAL SYSTEM II UNIT 4 CONTENTS CUSTOMARY COMPARED AND ISLAMIC LAWS 1. 0 Introduction 2. 0 Objectives 3. 0 Main Content 3. 1 Sources of Law 3. 2 Islamic Law and Customary Law 3. 3 Personnel 3. 4 Trial Procedure 3. 5 Dispositional Methods 3. 6 Other Features 3. 7 Constitutional Position 4. 0 Conclusion 5. 0 Summary 6. 0 Tutor-Marked Assignment 7. 0 References/Further Readings 1. 0 INTRODUCTION Nigeria is composed of different ethnic groups. Each had (still has) its own customs. Some of these customs are local. Others have developed into customary law. The Moslems, Christians, and Europeans brought also their local customs and laws. The Moslems, Christians and Europeans were not just one creed or stock. There were varieties of them. In some cases, there was an amalgam of two or more. To these were added local statutes and statutes of general application and then the Constitutions, 1922-99 all operating simultaneously within the same geographic area. A situation such as that would generate some worrisome conflicts and confusions, to which this unit is directed. This unit is an attempt at such a description. 2. 0 OBJECTIVES When you have read this unit, you should be able to - distinguish between the following: 22 local custom customary law common law Islamic law statute law the Constitution LAW 212 NIGERIAN LEGAL SYSTEM II 3. 0 MAIN CONTENT Sources of Law 3. 1 The word source may mean - Origin; beginning - Starting point - Documents (E. g. books, reports, anthropological works, commissions of enquiry, official papers etc.) which serve as materials for study - The mainspring of authority as well as its material provenance - Fountain of authority of a rule of law of a

special body, a dictator, will of the people. - Customary judges, through the judicial law making process, custom (i. e. norms, values, folk tales, proverbs, conduct) and/or traditions. - Members of the various African societies. 3. 2 Islamic Law and Customary Law Islamic Law The sources of Islamic Law include: The Holy Qu’ran — Given by God Sunnahi Hadith — sayings and deeds of Prophet Mohammed Ijma: Unanimous agreement of learned Islamic scholars Qiyas — Analogical deductions Istihad — Legal presumptions, customs, public interest. Islam is the dominant religion in the Northern states of Nigeria, (the Middle belt area and Tivland, excempted). Before Islam however, there were customs and customary laws in these areas. There are still pockets of these customs and customary laws existing side by side with Islamic and other laws. Customary Law A custom or taboo becomes law if it is: In existence from time immemorial (i. e. or as at 1189) Exercised continuously within that period Exercised peaceably without opposition Obligatory Capable of precise definition Consistent with other customs Reasonable. Comparative Features 23 LAW 212 NIGERIAN LEGAL SYSTEM II Islam is regarded as a way of life. It determined the nature and character of the operating legal system, especially the Maliki School brand. Islamic law is written. The customary law of the different tribes is written only to the extent that it is incorporated in the Qu’ran. Law and Procedure The Qu’ran has features of substantive, procedural and penal laws as well as its principles of general liability. For example, insanity, self — defence, mistake and non-age may serve as total or partial defences. Intoxication is a partial defence at common law and under the Criminal Code and the customary law. In Islamic law, intoxication is not a defence; rather it is a crime per se. 3. 3 Personnel

Personnel of the judicial system under the Islamic law include Islamic legal scholars and imams. Presumption of innocence is not prominent; standard of proof is not uniform as some crimes demand a very high standard. Examples are brigandage, adultery, fornication, theft, apostasy and other crimes of the kind of Huddud which require at least evidence of three competent male witnesses whose testimonies are similar and corroborative. 3. 4 Trial Procedure The trial processes under the Islamic and customary laws are more involved. Monarchs, chiefs or emirs, diviners, witch doctors or oralists, imams, elders get involved in establishing guilt. Offence is proved upon strong suspicious. Confession may be obtained by threat; trial may be by ordeal. Process is cheap, quick, convenient and convincing. 3. 5 Dispositional Methods Justice reflects the values, beliefs, and aspiration of the subject people. At common law and the Islamic Law, the philosophy is that the offender is punished. The tariff system of punishment obtains. For example, Huddud are serious crimes and mandatory sentences are attached. Thus the sentence for rebellion is death. It is stoning to death for adultery, flogging for drinking alcohol, loss of limbs for theft. Western writers have condemned these sanctions as barbaric and savagery, or repugnant to natural justice. But the Islamic scholars have argued that they are penalties prescribed by Allah and should not be judged by human reasoning and standards. This was the crux of the Sharia crises in Nigeria in 2000 — 2001. The punishment for less serious offences (Taa 24 LAW 212 NIGERIAN LEGAL SYSTEM II zor) is discretionary. They range from admonition, fines, seizure of property, threat, reprimand, flogging to exile or death. The penal measures provided by the customary law were less punitive. They include flogging, self help,

banishment or death. At common law, parties to a crime are the state and the offender. The victim is a mere witness. In Islamic law especially in Qiya’s offences, the victims or relations of the deceased may exert vengeance; or opt for “ blood money". Under the customary law, substituted punishment may be imposed on an offender, compelling him to farm for his victim. The philosophy is restitutive. 3. 6 Other Features The Islamic legal system provides for observance of principles of separation of powers. Ijma exercises legislative power. The executive and judicial powers devolve on the Imam and the Kadi respectively. The head of the Islamic Caliphate is the Caliph, the Sultan of Sokoto. In the Islamic communities, the Holy Qu’ran is the supreme law, and final authority; it prevails in all issues to which Islamic law applies. It applies over all persons subject to it. For instance, it applies to Muslims; it applies also to transactions where Islamic law or statute so declares. Islamic Law applies if it is the personal law of the parties or the predominant law. For example, where the law of the court is the law prevailing in the area but a different law binds the parties, (as where two Ibos are parties in a Moslem court in an area where Moslem law prevails) the Native Court will, in the interest of justice, be reluctant to administer the law prevailing in the area. If it tries the case at all, it will, in the interest of justice, choose to administer the law, which is binding between parties. Generally, conflicts of law, which arise in miscellaneous civil matters are resolved by courts by reference to the: a) b) c) d) Nature of the civil matter Express agreement by parties as to applicable law Personal law binding the parties Predominant law (lex situs) In every case, the overriding consideration is the interest of justice. 3. 7 Constitutional Position 25 LAW

212 NIGERIAN LEGAL SYSTEM II It is not to be forgotten that the Constitution is supreme in a democratic dispensation. The provisions of the Constitution: - Bind all authorities, institutions and persons throughout the Federation - Override every contrary decision and conduct - Prevail over every other law that is inconsistent to its provisions - Form the bases of force and authority for other laws Conflicts sometimes arise between the Constitution and the Acts of the National Assembly or laws of a State Assembly or subordinate legislations and customary or Islamic laws. The National Assembly legislates on the matters in the exclusive legislative list. Both the National and State Assemblies may legislate on matters in the concurrent legislative list. Wherever a state law or any other law is inconsistent with the Federal Law, that other law will not be enforced. It is null and void to the extent of such inconsistency. So also is any conflict between the Constitution and any other law. Identical legislation on the same matter is not necessarily an inconsistency. In Attorney General (Ogun State) v Attorney General (Federation) 1982, Fatayi Williams, CJN said: When identical legislations on the same subject matter are validly passed by virtue of their Constitutional powers to make laws by the National and State Assemblies, it would be inappropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of the particular subject matter. To say that law is ‘ inconsistent" in such a situation would not in my view, sufficiently portray clarity or precision of language. That explains what is usually referred to as the doctrine of covering the field. 4. 0 CONCLUSION The origins or bases from which law is drawn or developed in Nigeria have been the customs (or

customary law), local statutes, and received English law. To be accepted as valid and enforceable, a custom must satisfy some laid down criteria. One of the characteristics of customary law which accounts for its resilience is its flexibility and capacity for adaptation to accord with changing social conditions. (Kimdey & Ors v. Military Government of Gongola State & Ors). 5. 0 SUMMARY 26 LAW 212 NIGERIAN LEGAL SYSTEM II We have tried to x-ray the community, see the criss-cross of customary laws in operation at the same time within the same space. It is interesting that the customary laws are not static laws. Thus they can and do change with the times in response to the rapid development and social and economic conditions. 6. 0 TUTOR-MARKED ASSIGNMENT Explain with reference to a decided case, the doctrine of covering the field 7. 0 REFERENCES/FURTHER READINGS Oyaro, A. T. and Osanwole S. A.(1999). Reading on African Studies. Ibadan: IATOR Publishing Co. MODULE 2 27 LAW 212 NIGERIAN LEGAL SYSTEM II Unit 1 Unit 2 Unit 3 Unit 4 Historical Development of Judicial Institutions Judicial Institutions Personnel of the Nigerian Legal System Personnel of the Court other than Judicial Officers UNIT 1 CONTENTS 1. 0 2. 0 3. 0 HISTORICAL DEVELOPMENT OF JUDICIAL INSTITUTIONS 4. 0 5. 0 6. 0 7. 0 Introduction Objectives Main Content 3. 1 Pre-Independence Judicial System 3. 2 Modern Judicial Institutions 3. 3 Role of the Judiciary 3. 4 Independence of the Judiciary Conclusion Summary Tutor Marked Assignment References/Further Readings 1. 0 INTRODUCTION Judicial institutions refer to the established organization and processes of law of a public character which people can use for the purpose of resolving their disputes. They are institutions and processes that guarantee access to courts, and facilities for legal actions as well as rules,

principles or practices relating to or by courts. In this module, we shall be talking about judicial institutions in colonial and modern Nigeria. 2. 0 OBJECTIVES When you have read through this unit, you should be able to: - identify the different courts in modern Nigeria - explain the instruments which brought the different existence - distinguish between inferior and superior courts, and - explain the scope of judicial independence. courts into 3. 0 28 MAIN CONTENT LAW 212 NIGERIAN LEGAL SYSTEM II 3. 1 Pre-Independence Judicial System Before the advent of the Europeans, Islam and Christian missionaries, there had existed certain forms of judicial institutions in the communities constituting the present day Nigeria. These indigenous judicial institutions played a critical role in creating and sustaining order and stability. On arrival, these foreign bodies and organizations or aliens superimposed, among other things, their own legal system and judicial institutions on the indigenous legal machinery. You will find it rewarding to read once again the pre-colonial legal systems in the preceding module. Our present focus is the colonial and post-colonial legal systems and judicial institutions. The British assumed a direct, full, and absolute dominion of the colony of Lagos following the Treaty of Clesion in 1861. An Ordinance No. 3 was promulgated in 1863, setting up a Consular Court, Equity Court and the Supreme Court for the colony. The Supreme Court was to regulate trade. It was replaced in 1866 by the Court of Civil and Criminal Justice. The West African court of Appeal with headquarters in Sierra Leone served as Court of Appeal for the colony. Trial was by Jury. From this court, appeals lay to the Judicial Committee of the Privy Council in London. In 1876, a supreme court was re-established for Lagos and surrounding territories over which Britain

exercised control. The court executed the common law of England, doctrines of equity and statutes of general application that were in force in England on 24 July 1874. (Later varied to 1st January, 1900). The court also applied local laws and customs which were not repugnant to natural justice, equity and good conscience or incompatible with any local statute. Certain chartered companies also administered justice in territories over which they exercised trading rights from 1886 to 1889 when the charters were revoked. Some were empowered among other things, to make laws for their areas and protect their commerce. Such laws applied to British subjects- all persons, (other than Portuguese and other Europeans) and natives, who enjoyed Her Majesty’s protection. These powers in the main were acquisitionist, protectionist, and expansionist in intent and purpose. Appeals from them lay to the Supreme Court. The native courts administered customary or native laws. Following the proclamation of the protectorate of Northern Nigeria on 1st January 1900, new courts were formed; namely: the Supreme Court of the North, Provisional Courts (one for each province), customary courts and native courts. A Native Court Proclamation Ordinance, 1906, also permitted native courts to exercise judicial functions under the direction of the Chief Justice or other Justice of the Supreme Court. 29 LAW 212 NIGERIAN LEGAL SYSTEM II They were to execute local laws and customs that were “ not opposed to natural morality and humanity". The Protectorate Court Ordinance, 1933 carried out sweeping reforms in the court system. The Ordinance set up additional courts — the High Court and the Magistrate Court. The High Court exercised the same jurisdiction as the Supreme Court except that the matters of probate, divorce, matrimonial cause and

admiralty matters remained within the exclusive competence of the Supreme Court. The magistrate courts exercised both criminal and civil jurisdictions. The native courts exercised jurisdiction over title to or interest in land, but the Native Court Ordinance 1933 empowered the Governor-in-Council to transfer such matters to another court. This ordinance also provided for appeals from decisions of native courts to the magistrate court and from the magistrate to the High Court, then from the High Court and Supreme Court to the West African Court of Appeal and finally from the West African Court of Appeal to the Judicial Committee of the Privy Council. Legal practitioners appeared in magistrate and the higher courts. In 1943, the government passed a number of ordinances, which also affected the courts sub-systems. Examples were the Native Courts Colony Ordinance, the Supreme Court Ordinance and the West African Court of Appeal Ordinance etc. Each ordinance carried out one form of reform or another. For example, magistrate courts were established throughout the Federation. One Supreme Court now served the whole country. Following the regionalization of the Federation, in October 1954, a Federal Supreme Court was established. A High Court was also established for the territory of Lagos and for each of the three regions. The magistrate courts remained. A Moslem Court of Appeal was also set up in 1956. This court exercised original criminal and civil jurisdiction. It was also an appellate court. At independence (1960), the Sharia Court of Appeal replaced the Moslem Court of Appeal. The Sharia Court of Appeal had civil jurisdiction only, and in cases governed by personal Moslem law. It had power to entertain contempt cases. The magistrate exercised civil and criminal jurisdiction in the South. Towards independence,

the magistrate courts in the North were restricted to criminal causes. The district courts were established for the purpose of exercising civil jurisdiction. Also at the eve of independence, a Court of Resolution was set up in the North to resolve whatever issue may have arisen between the High Court and the Sharia Court of Appeal. It determined which cases should go to the High Court and which to go to the Sharia Court of Appeal. 3. 2 30 Modern Judicial Institutions LAW 212 NIGERIAN LEGAL SYSTEM II At independence, (October, 1960) existing courts were reconstituted namely: The Judicial Committee of Privy Council, the Federal Supreme Court, High Court of Lagos and of each region, magistrate courts, native courts (North) and customary courts (West and East). The courts in the regions were extended to the Mid-West when it was created in August, 1963. Appeals to the Judicial Committee of the Privy Council were abolished with effect from 1st October, 1963. A Supreme Court of Nigeria was reconstituted as the apex court. The Federal Court of Appeal Act 1976 established a Federal Court of Appeal. Now however, the Constitution of the Federal Republic of Nigeria 1999 provides that there shall be established for Nigeria the following Federal Courts: The Supreme Court of Nigeria. (sections 230 — 236) The Court of Appeal (sections 237 — 254) The Federal High Court (sections 249 — 254) The High Court of the Federal Capital Territory (sections 255 — 259) The Sharia Court of Appeal of the Federal Capital Territory (sections 260 — 264) The Customary Court of Appeal of the Federal Capital Territory (sections 265 — 269 and 288). The National Assembly Election Tribunal (Section 285) The Constitution similarly created for each state of the Federation, the following courts: The High Court of the State (sections 270 — 274) The Sharia Court of

Appeal of the state (sections 275 — 279) The Customary Court of Appeal of the State (sections 280 — 284) Governorship and Legislative Houses Election Tribunal (section 285) We shall discuss a number of these courts in greater detail in subsequent units of this module. Meanwhile let us look at the powers and the role of the judiciary. 3. 4 Powers of the Judiciary 31 LAW 212 NIGERIAN LEGAL SYSTEM II The judicial powers of the Federation are vested in the courts established for the Federation. In the same way, the judicial powers of a state are vested in the courts established for a state, subject as provided by the Constitution. Judicial powers extend to the following: 3. 4. 1 Inherent Powers and Sanctions Inherent powers and sanctions refer to those powers and sanctions that necessarily derive from an office, position or status (Blacks Dictionary, 7th ed.) All matters between persons, or between governments or authorities and to any person(s) in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person. Note the restrictions on judicial powers. For example, the following are beyond judicial powers: any issue or question as to whether or not any act or omission, law or judicial decision, is in conformity with the Fundamental Objectives and Directive Principles of State Policy as set out in chapter II of the Constitution any action or proceedings relating to any existing law made on or after 15 January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law. - 3. 5 The Role of the Judiciary The judiciary is the branch of governance invested with judicial power, the system of courts in a country, the body of judges (the bench); it is that branch of government which is intended to interpret, construe and apply the

law. Its role may be summarized as follows: (i) Interpretation of Statute Interpretation and application of the laws through the courts system serve as a check on the exercise of legislative and executive powers. Hence the judiciary can be described as the guardian of the Constitution. In fact, the Constitution is what the court says it is. (See 1963, 1(3), 259) Isn’t this also a subordinate role? 32 LAW 212 NIGERIAN LEGAL SYSTEM II In determining and interpreting the statute, the court adopts the passive operation of judicial procedure. (ii) Enforcement of Individual Fundamental Rights Any person who alleges that any of