The Nigerian Legal System — Foundations

Volume I of the Nigerian Legal System teaching books

A TEACHING VERSION

Prepared for

VANGUARD SOLICITORS

Barristers' Chamber · Makurdi · Nigeria

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Imprint

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Authorities named in this book include the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Legal Practitioners Act, the Evidence Act 2011, and the Arbitration and Mediation Act 2023 — named by name; the reader who needs the law itself must read those instruments in their official texts.

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The measure of this book is the world standard; local law is honoured as local fact where it is named.

The Place — Nigeria

Nigeria is a federation of thirty-six states and the Federal Capital Territory, Abuja, on the Gulf of Guinea in West Africa. Its law is the subject of this book; its map stands here so the reader always knows the ground the law governs. Makurdi, where the chambers stand, is marked beside Abuja, the federal capital.



Map of Nigeria — drawn by the house from public-domain Natural Earth boundary data. Abuja and Makurdi are marked at their positions; the map is a geographic outline, not a survey.

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Chapter 1

One Country, One Constitution

Nigeria is a federation: a union of thirty-six states and the Federal Capital Territory, Abuja, governed under one written Constitution — the Constitution of the Federal Republic of Nigeria 1999, as amended. The Constitution is not one law among many. By its own first section it is supreme, and any other law that contradicts it is void to the extent of the contradiction. Every court, every legislature, every official in Nigeria works under it, and the first question in any Nigerian legal problem is therefore a constitutional question: what does the Constitution permit, require, or forbid here?

The Constitution divides the work of government among three arms. Legislative power — the power to make laws — is vested in the National Assembly for the federation and in a House of Assembly for each state. Executive power is vested in the President for the federation and in a Governor for each state. Judicial power — the power to decide disputes according to law — is vested in the courts the Constitution establishes. No arm may lawfully do the work of another, and the courts exist, in part, to say so when one tries.

Below the states stand the local governments — the third tier, closest to daily life, listed in the Constitution itself. The federation is thus built in three storeys: federal, state, and local. A lawyer who does not know which storey a question belongs to will knock on the wrong door, however well he argues once inside.

The Constitution also carries two chapters every citizen should know exist. Chapter II states the Fundamental Objectives and Directive Principles of State Policy — the nation's promises about its economy, education, and welfare; these guide government but, as the

Constitution itself provides, are not by themselves enforceable in court. Chapter IV states the Fundamental Rights — life, dignity, liberty, fair hearing, expression, and the rest — and these are enforceable: a person whose right is threatened may go to a High Court and ask for redress. The difference between a promise and a right is one of the first things this book teaches you to see.

Worked example

A state government passes a law that punishes speech the Constitution protects. A trader, fined under the law, comes to chambers. The teaching answer is not first about the fine but about the order of laws: the Constitution stands above the state law; if the state law contradicts the protected right in Chapter IV, a court may declare it void to that extent. The lawyer's first tool is not argument — it is hierarchy.

Chapter summary

Nigeria is a federation of thirty-six states and the Federal Capital Territory under one supreme written Constitution. Government is divided among legislative, executive, and judicial arms at federal and state levels, with local government as the third tier. Chapter II of the Constitution guides but does not bind the courts; Chapter IV's fundamental rights bind and can be enforced.

Discussion questions

1. What does it mean, in practice, that the Constitution is supreme over every other law?

2. Why does the Constitution divide power among three arms instead of gathering it in one?

3. What is the difference between the promises of Chapter II and the rights of Chapter IV, and why does it matter to a client?

Practice problems — with guided outlines

Problem 1. A local government bye-law orders all shops in a town to close on a day the state law leaves open, and a shopkeeper is prosecuted under the bye-law. Set out the questions you would ask, in order, before advising him.

Guided outline. Begin with hierarchy: is there a conflict between the bye-law and the state law, and which yields? Then ask whether the local government had power to make the bye-law at all (its functions are constitutionally listed). Only then reach the facts of the prosecution.

Problem 2. A ministry official tells a client, 'the Constitution promises free education, so the court must order it for my child.' Advise, in teaching words, what is right and what is wrong in the official's sentence.

Guided outline. The promise he quotes stands in Chapter II — directive principles that guide policy but are not directly enforceable. The enforceable rights stand in Chapter IV. Distinguish moral and political claims from claims a court can grant, without dismissing the promise itself.

Chapter 2

The Sources of Nigerian Law

Nigerian law flows from several springs, and a trained eye names the spring before drinking. The first is the Constitution itself, supreme over all. The second is legislation: Acts of the National Assembly and Laws of the State Houses of Assembly, together with the subsidiary legislation — regulations, rules, and orders — made under them by those they authorise. Legislation is the loudest voice in a modern system: most questions a lawyer meets are answered by a written enactment, and the skill of reading one exactly is the skill of the profession.

The third spring is the received English law. Nigeria's legal history carried into its courts the common law of England, the doctrines of equity, and the English statutes of general application that were in force on the first day of January 1900 — received through Nigerian legislation and applied so far as local circumstances permit. This is why Nigerian lawyers still read old English cases: not because England governs Nigeria — it does not — but because a defined body of English law was made part of Nigerian law by Nigeria's own choice, and remains so until Nigerian legislation or a Nigerian court, within its power, changes it.

The fourth spring is customary law: the living law of Nigeria's peoples, applied by the courts where it governs the parties and the matter, provided it is not repugnant to natural justice, equity, and good conscience, nor incompatible with written law. Beside it, in the northern states, stands Islamic law, applied in the matters the Constitution and state laws assign to the Sharia courts. A Nigerian lawyer therefore works in a plural house: enacted law, received law, customary law, and Islamic law — and must always ask which room of

the house his client's matter stands in.

The fifth spring is judicial precedent: the decisions of the courts themselves. A decided case does not merely settle its own dispute; its reasoning binds or persuades later courts according to the hierarchy of the courts. Volume II teaches how precedent moves. Here, hold the simple point: in Nigeria, law is found in books of statutes, in the customs of peoples, and in the judgments of courts — and the Constitution stands over them all.

Worked example

Two brothers dispute their late father's land in a village where customary succession differs from the English rules. The land was family land held under custom, never converted to a statutory right of occupancy. The teaching answer: do not reach first for English land law. Ask which law governs this land and this family — here, customary law speaks first, tested against the written law and the repugnancy standard.

Chapter summary

Nigerian law has five great sources: the supreme Constitution; legislation and its subsidiary instruments; the received English law (common law, equity, and statutes of general application in force on 1 January 1900); customary law and, in its sphere, Islamic law; and judicial precedent. The lawyer's first discipline is to identify which source governs the matter in hand.

Discussion questions

1. Why does a Nigerian lawyer still read English cases decided before 1900 — and why is he not governed by English cases decided last year?

2. What two tests must customary law pass before a court applies it?

3. A regulation made by a minister contradicts the Act under which it was made. Which prevails, and why?

Practice problems — with guided outlines

Problem 1. A client's marriage was celebrated under customary law; years later she asks whether her children inherit under the Administration of Estates Law of her state or under custom. Identify the questions that decide which source governs.

Guided outline. The character of the marriage usually determines the law of succession to much of the estate; ask how the marriage was contracted, whether any later statutory marriage occurred, and what property is in issue. The source follows the facts, not the client's preference.

Problem 2. A company relies on a ministry circular that contradicts a section of an Act of the National Assembly. Advise the company.

Guided outline. A circular is not legislation; subsidiary instruments stand below the Act and fall where they contradict it. The Act prevails. Advise compliance with the Act and, if needed, a court declaration.

Chapter 3

The Federation at Work — Who May Make What Law

A federation survives by lists. The Constitution's Second Schedule divides subjects between the federation and the states. The Exclusive Legislative List names matters only the National Assembly may legislate on — defence, foreign affairs, currency, and the like: the subjects that must speak with one national voice. The Concurrent Legislative List names matters both the National Assembly and the State Houses of Assembly may legislate on — and where a valid federal law and a state law on a concurrent matter truly conflict, the federal law prevails and the state law is void to the extent of the inconsistency. Everything left over — the residue — belongs to the states alone.

This doctrine of lists decides real cases. A state that legislates on an exclusive federal matter acts beyond its power, and its law is void however popular it may be. A state that legislates on a residual matter acts within its own house, and the National Assembly cannot enter. The lawyer's craft here is classification: strip a law down to its true subject — its pith and substance, as the cases say — and then find that subject on the lists.

Money follows the same map. The Constitution establishes the Federation Account and governs how revenue is shared among the three tiers; taxation powers are themselves divided — some taxes federal, some state, some local. Many famous disputes between Abuja and the states are, at bottom, arguments about this map, and they are decided by the Supreme Court, the federation's own umpire.

Local governments, the third tier, exercise the functions the Constitution's Fourth Schedule assigns — markets, motor parks, primary services, and the like — under state law. Their closeness to daily life makes their limits easy to forget and important to remember: a local government may only do what the Constitution and state law give it.

Worked example

A state assembly passes a law purporting to license and tax companies engaged in interstate aviation. Aviation stands on the Exclusive List. The teaching answer: the law, in its true subject, invades the federal field; it is beyond the state's power and void — the popularity of the tax cannot cure the want of power.

Chapter summary

Legislative power is divided by lists: exclusive (federal only), concurrent (both, federal law prevailing on true conflict), and residual (states alone). Classification of a law's true subject decides its validity. Revenue and taxation follow the same federal map, and the Supreme Court umpires disputes between the tiers.

Discussion questions

1. A state law and a federal law on a concurrent matter conflict. What happens, and what must first be shown?

2. Why does the doctrine of 'pith and substance' matter when a law is challenged?

3. Name the three tiers of government in Nigeria and one power proper to each.

Practice problems — with guided outlines

Problem 1. A state creates a levy on goods 'in transit across the state to other states'. A transport company asks whether the levy is lawful. Set out your analysis.

Guided outline. Classify the levy's true subject: is it, in substance, a tax on inter-state trade and movement — a federal field — dressed as a local charge? Then test it against the lists and the Constitution's protection of free movement; conclude on power before reaching fairness.

Problem 2. Both the National Assembly and a State House of Assembly have legislated on electricity in an area the federal grid does not reach. Explain, in teaching words, how a court approaches the two laws.

Guided outline. Electricity stands concurrent, with the federal power framed around the national grid. Test each law against the list's own words; a state law within its concurrent share stands unless it truly conflicts with a valid federal law covering the same ground.

Chapter 4

The Rights of the Citizen

Chapter IV of the Constitution writes down the fundamental rights of every person in Nigeria: the right to life; to dignity of the human person; to personal liberty; to a fair hearing in public within a reasonable time by a court established by law; to private and family life; to freedom of thought, conscience, and religion; to freedom of expression; to peaceful assembly and association; to freedom of movement; to freedom from discrimination; and to acquire and own property, with protection against compulsory acquisition without compensation. These are not favours. They bind the government and, in the measure the Constitution states, they structure the whole legal order.

Rights are strong but not all absolute. The Constitution itself permits certain limits — laws reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health, and for the protection of the rights of others. The lawyer's work lives in that tension: the right stated broadly, the limit stated narrowly, and the court asking whether the limit truly fits the words the Constitution allows.

Enforcement has its own road. A person who alleges that a fundamental right has been, is being, or is likely to be contravened may apply to a High Court for redress, under the Constitution and the Fundamental Rights (Enforcement Procedure) Rules, which are designed for speed: the application is meant to be heard expeditiously, without the technical delays that defeat urgent liberty. The courts have also opened the door wide on standing for public-interest rights litigation, so that grave violations are not left unchallenged merely because the person most harmed is poor, detained, or afraid.

Learn the habit of the rights lawyer: first name the right in the Constitution's own words; then find the act said to violate it; then ask what limit, if any, the Constitution itself permits; and only then choose the remedy — release, compensation, an injunction, or a declaration. Rights work done in that order is advocacy. Done in any other order it is noise.

Worked example

A man is held by the police for nine days without being charged or brought before a court. His wife reaches chambers. The teaching answer: personal liberty under Chapter IV is engaged; the Constitution requires a person arrested to be brought before a court within a reasonable time; the road is an urgent fundamental-rights application to the High Court for his release and redress — not a letter-writing campaign.

Chapter summary

Chapter IV guarantees enforceable fundamental rights — life, dignity, liberty, fair hearing, privacy, conscience, expression, assembly, movement, non-discrimination, and property. Some rights admit constitutionally stated limits. Enforcement runs through the High Court under the Fundamental Rights (Enforcement Procedure) Rules, built for speed, with a generous approach to standing in public-interest cases.

Discussion questions

1. Which rights in Chapter IV protect a person in police custody, step by step?

2. What limits does the Constitution itself place on the rights, and who bears the burden of justifying a limit?

3. Why do the enforcement rules prize speed, and what is lost when a rights case moves slowly?

Practice problems — with guided outlines

Problem 1. A state agency demolishes a trader's shop without notice, saying the land is needed for a road. Advise the trader on the constitutional questions raised.

Guided outline. Property and compulsory acquisition: the Constitution requires prompt compensation and access to a court for the determination of the claim. Add fair hearing — was he heard? Frame the claims under Chapter IV and the acquisition law of the state.

Problem 2. A school expels a student for a publication criticising its management, without any hearing. Identify the rights engaged and the first step you would take.

Guided outline. Expression and fair hearing stand at the front. The first step is a demand and, if unmet, a fundamental-rights application; the teaching point is that fair hearing is owed before punishment, not after.

Chapter 5

How Laws Are Made — and How They Are Read

A law begins as a bill. In the National Assembly a bill must pass both chambers — the Senate and the House of Representatives — and receive the President's assent; if assent is withheld, the Assembly may pass it again by the special majority the Constitution prescribes, and it becomes law without assent. In a state, the House of Assembly passes the bill and the Governor assents, with a similar override. Money bills and appropriation follow their own stricter road. Until the last step is complete, a bill is only a proposal: courts enforce laws, not intentions.

Below the Acts and Laws stands delegated legislation: regulations, rules, bye-laws, and orders made by ministers, agencies, courts, and local governments under powers an enactment grants. Delegated legislation is valid only within the four corners of its grant — the doctrine lawyers call ultra vires. A rule that exceeds its parent Act is not a small law; it is no law at all.

Reading a statute is a craft with rules of its own. The court begins with the words enacted, in their ordinary meaning, read in context — the whole Act, its headings and long title as guides, its purpose in view. Where words are ambiguous, the courts reach for the mischief the Act was made to cure and the interpretation that makes the law work rather than fail. Penal statutes are read strictly in favour of the citizen; taxing statutes are read strictly against the taxing authority that cannot point to clear words. These are not slogans; they are the working tools of every opinion you will ever write.

Finally: a law speaks from its commencement, and the presumption is that it does not reach backwards unless it says so in clear words —

most strongly where it would create an offence or take away a vested right. When a client asks 'does this new law affect what I did last year?', the honest first answer is: let us read its commencement and transitional words before we say anything at all.

Worked example

An agency fines a transporter under a regulation made in 2024, for conduct in 2022, under an Act passed in 2023 that nowhere says it reaches backwards. The teaching answer stacks three shields: the Act does not operate retrospectively without clear words; the regulation cannot exceed the Act; and a penalty-creating instrument is read strictly. The fine falls at the first shield already.

Chapter summary

Laws are made by passage through the legislature and assent, with a constitutional override. Delegated legislation is valid only within its grant. Statutes are read by their words in context, with settled rules for penal and taxing laws and a presumption against retrospectivity.

Discussion questions

1. Trace a bill's road from introduction to law at the federal level, naming each gate.

2. What does ultra vires mean for a minister's regulation, and how would you challenge one?

3. Why are penal statutes read strictly, and in whose favour does the strictness run?

Practice problems — with guided outlines

Problem 1. A client's contract was lawful when made; a new Act now forbids its performance, with a commencement clause saying the Act

'applies to all contracts whenever made'. Advise on the argument available to the client and its limits.

Guided outline. Here the legislature has used clear retrospective words — the presumption is displaced. Shift to other grounds: fair hearing, property, and the constitutional limits on what even clear words may do; advise candidly that the retrospectivity argument itself is weak.

Problem 2. A court rule made under a Practice Directions power purports to abolish a right of appeal the parent Act grants. A colleague says 'rules are rules'. Correct him, in teaching words.

Guided outline. Appeal rights are substantive and stand in the Act; a rule-making power governs practice and procedure, not substance. The rule is ultra vires to that extent and void.

Chapter 6

Precedent — How Judgments Become Law

When a court decides a case, it does two things: it settles the dispute before it, and it speaks to the future. The part of a judgment that speaks to the future is the ratio decidendi — the principle of law on which the decision rests. Everything else — observations by the way, however brilliant — is obiter dictum: persuasive at most, binding never. Learning to separate ratio from obiter is the single most valuable reading skill a young lawyer can build.

Precedent binds downward. The Supreme Court of Nigeria stands at the top: its decisions bind every other court, and it binds itself unless it departs from an earlier decision in the manner its own practice allows — a grave step, taken rarely and openly. The Court of Appeal binds the High Courts and all below it; a High Court's decisions bind the inferior courts within their sphere and persuade other High Courts, which do not bind each other. A judge who dislikes a binding precedent must still follow it; his remedy is to say so, decide as bound, and let the appeal carry the question upward. That discipline is not weakness — it is what makes law predictable enough to plan a life by.

Precedent lives in law reports. Nigeria's reports — the official and the long-standing private series — are the profession's memory, and the modern lawyer adds the electronic databases to the shelf. A case is authority only for what it decided on its facts; the same words in a judgment mean different things on different facts, which is why the first task in using any authority is to state its facts honestly before quoting its law.

When two precedents pull against each other, the craft is distinction and hierarchy: distinguish on the facts where the facts truly differ;

follow the higher court where they do not; and where decisions of the same level conflict, later and fuller reasoning persuades, but only the court above can settle the matter. Volume II returns to precedent inside the courts' daily work; hold here the map: ratio binds, obiter persuades, higher binds lower, and reports are the road by which all of it travels.

Worked example

A magistrate is shown a High Court decision she thinks is wrong in principle, on facts identical to hers. The teaching answer: she is bound. She applies it, records her reasoning faithfully, and the losing party's remedy is appeal — where the argument against the precedent properly belongs. A magistrate who 'distinguishes' identical facts to escape a binding case has not been brave; she has been lawless.

Chapter summary

The ratio decidendi of a judgment binds; obiter dicta persuade. Precedent binds downward through the court hierarchy, with the Supreme Court at its head. Law reports carry precedent to the profession, and a case is authority only for what its facts required it to decide.

Discussion questions

1. State the difference between ratio decidendi and obiter dictum, and why the difference is power.

2. A High Court judge is confronted with two conflicting Court of Appeal decisions. What are her honest options?

3. Why must a lower court follow a precedent it believes to be wrong?

Practice problems — with guided outlines

Problem 1. Opposing counsel quotes a famous sentence from a Supreme Court judgment. The sentence was not necessary to that court's decision. Build your reply.

Guided outline. Identify the sentence as obiter: show the decision's actual ground, the facts it turned on, and why the quoted sentence was a by-observation. Offer the true ratio and the binding authority that governs your facts.

Problem 2. Your client's facts differ from a binding precedent in one respect: the precedent's contract was in writing; your client's was oral, under a statute that treats both alike. Can you distinguish? Argue both sides.

Guided outline. Distinguishing requires a difference that matters to the principle. If the statute equalises the two forms, the difference is immaterial and the precedent binds; if the precedent's reasoning turned on writing itself, the distinction is real. The outline is the argument.

Closing word

You now hold the ground plan of the whole system: one supreme Constitution, a federation of thirty-six states and a federal capital, laws drawn from several sources yet ordered under one roof, and rights that stand written for every citizen. Volume II walks you through the courts that give this plan its daily life. Keep this volume beside you — every later question in Nigerian law returns, sooner or later, to the ground you have just covered.

— End of the volume —
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