OBILADE:
THE NIGERIAN LEGAL SYSTEM

SWEET & MAXWELL

THE
NIGERIAN LEGAL SYSTEM

by

AKINTUNDE OLUSEGUN OBILADE
LL.B. (Hons.) (Lagos), LL.M. (Harvard),
Legal Practitioner, Senior Lecturer in Law
at the University of Lagos

LONDON
SWEET & MAXWELL
1979

Published by
Sweet & Maxwell Limited of
11 New Fetter Lane, London.
Photoset by Inforum Ltd. of
Portsmouth and printed in
Great Britain by
Page Bros (Norwich) Ltd.

First Edition 1979
Second Impression 1981
Third Impression 1981

ISBN Hardback 0 421 23920 4
Paperback 0 421 23930 1

THE NIGERIAN LEGAL SYSTEM

AUSTRALIA
The Law Book Company Ltd.
Sydney : Melbourne : Brisbane

CANADA AND U.S.A.
The Carswell Company Ltd.
Agincourt, Ontario

INDIA
N. M. Tripathi Private Ltd.
Bombay
and
Eastern Law House Private Ltd.
Calcutta
M.P.P. House
Bangalore

ISRAEL
Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

MALAYSIA : SINGAPORE : BRUNEI
Malayan Law Journal (Pte.) Ltd.
Singapore

NEW ZEALAND
Sweet and Maxwell (N.Z.) Ltd.
Wellington

PAKISTAN
Pakistan Law House
Karachi

PREFACE

THE primary purpose of this book is to satisfy the basic needs of students of the Nigerian Legal System (or any other subject relating primarily to legal institutions and administration of justice in Nigeria, by whatever name it is called) in universities and similar institutions.

The latest comprehensive textbooks on the entire subject were published in 1963. They are T.O. Elias, *The Nigerian Legal System* (2nd ed., 1963) and B.O. Nwabueze, *The Machinery of Justice in Nigeria* (1963). The latest comprehensive works of aspects of the subject are A.E.W. Park, *The Sources of Nigerian Law* (1963) and E.A. Keay and S.S. Richardson, *The Native and Customary Courts in Nigeria* (1966). Since 1966, important reforms in the legal system have occurred. For example, the native courts of the northern part of the country have been replaced by a new type of court known as area courts, and customary courts in parts of the southern portion of the country have been abolished. In addition, there have been constitutional changes facilitated by the military revolutions of January, 1966, July, 1966 and July, 1975. Such changes including the creation of States have had important effects on legal development in the country. Owing to the multiplicity of enactments now being made with comparable ease in this military era and also to lack of textbooks relating to legal development effected during the era, the student of Nigerian law does not find it easy to trace the development of the law in the several jurisdictions in present-day Nigeria. Thus, the need for a new textbook is greatly felt.

It is hoped that this book will be useful not only to the student of Nigerian law and the law teacher but also to the legal practitioner as well as the curious general reader interested in having more than a smattering knowledge of the administration of justice in Nigeria.

In many parts of the book detailed factual information is given in order to enable the reader — in particular, the student — to understand the law fully, to trace readily the materials needed for legal research and to provide him with the basic tools of constructive criticism of the law. But notwithstanding the usefulness of the detailed information, it is hoped that the law student will be encouraged to pay greater attention to those parts of the book containing a critical analysis of the law and that the information will be used principally as essential raw material of legal research and criticism. Such

encouragement may be reflected in university examination question papers in the Nigerian Legal System consisting mainly of questions requiring the opinion of the student rather than mere factual information; for in my view proper law study does not consist in memorising a large mass of factual information.

Treating in detail all the various aspects of legal institutions and administration of justice within the confines of a textbook of this size is a stupendous feat which I have not achieved. Accordingly, I have treated some topics in outline only — particularly, civil and criminal procedure, the chapters on which are almost entirely expository.

In general, for the purpose of clarity, the jurisdiction of origin of legislation cited in this book is indicated in the footnotes. But where such jurisdiction itself indicates its origin, mention is seldom made of the jurisdiction of origin in the footnotes. In citing cases, I have tried to follow the method of citation prescribed or suggested by the law report publisher, but where the method is not uniform with respect to the same series of law reports, I have tried to adopt a uniform system of citation.

In general, the law is stated as at May 1, 1977 but a few of the changes in the law which occurred after that date have been mentioned briefly.

I am grateful to the following persons for the encouragement which they gave me during the preparation of this book: three of my colleagues in the Faculty of Law of the University of Lagos, E.E. Uvieghara, Esq., Dr. M.B. Oyebanji and C.O. Olawoye, Esq., Dr. J.O. Ogunlade of the Continuing Education Centre of the University of Lagos; D.V.F. Olateru-Olagbegi, Esq., of the Nigerian Law School; F.S. Ogundana, Esq., of the Nigerian Bank for Commerce and Industries; my sister, Miss Yemisi Obilade of the Faculty of Arts of the University of Ife; and my wife. I am also grateful to Professor L.C.B. Gower, formerly Dean of Law of the University of Lagos, now Vice-Chancellor of the University of Southampton, for his criticism of the first draft of this work; officials of the various Ministries of Justice in Nigeria who gave me useful information and to several other people who responded favourably to my request for interview with them on aspects of the legal system. I hereby express my thanks for secretarial assistance to members of the secretarial staff of the Faculty of Law of the University of Lagos, in particular, E.A. Saiki, Esq., who typed most parts of the first draft of the manuscript.

I am also grateful to the University of Lagos for a research grant it gave me in connection with this work; to my little daughter, Titi, who occasionally broke my solitude while I was trying to untie the Gordian knot in the course of my preparing this book, in order to remind me that I needed some recreation; to my former teachers

both at the Faculty of Law of the University of Lagos and at the Harvard Law School for encouraging critical analysis of the law and thus contributing indirectly to my inclination to write this book; to my parents, S.O. Obilade, Esq., and Mrs. Folasade Obilade, both of whom contributed immensely to the success of my early education and thus, like my teachers, contributed indirectly to my inclination to write this book; and to all others who have contributed directly or indirectly to the success of the preparation of this book.

Faculty of Law,
University of Lagos,
Nigeria.
June 29, 1977.

AKINTUNDE O. OBILADE

TABLE OF CASES

CONTENTS

Part 1

INTRODUCTION

CHAPTER 1

INTRODUCTION

A. THE NATURE OF LAW

IN a wide sense, the term "law" may be defined as a rule of action. In this sense, one may talk of laws of science, for example, Ohm's Law of Electricity. This book does not deal with law in that sense. It deals with law in the strict sense, a narrow sense — law in relation to human actions. In such sense, law is a complex phenomenon. A good definition of it must, therefore, be complex. Although there is no universally-accepted definition of "law," it is clear that law consists of a body of rules of human conduct. Every society, primitive or civilised, is governed by a body of rules which the members of the society regard as the standard of behaviour. It is only when rules involve the idea of obligation that they become law. When they merely represent the notions of good and bad behaviour they are rules of morality. But law is most effective when it conforms to the moral feelings of the members of the community. Mere coincidence of patterns of behaviour does not indicate the existence of law. Mere habits are, thus, to be distinguished from obligatory rules.

Although, practically, obedience to law is usually secured by sanction there are people who obey the law merely because they believe that it is in the best interest of society to do so. Sanctions, however, serve the purpose of protecting the general community against persons of defiant behaviour. Without sanctions, the continued existence of society would be in danger and society would ultimately disintegrate.

In primitive societies, the obligatory rules of human conduct usually consist solely of customs — rules of behaviour accepted by members of the community as binding among them. Customs are usually unwritten. In a primitive society, there is no centralised system for the enforcement of rules; self-help is usually resorted to. Notwithstanding, the obligatory rules constitute law.

Some people consider law as a command. Although there are examples of rules of law couched in terms of a command given by an authority and directed to an individual, most legal rules are not in that form. For instance, rules relating to the making of wills do not command any person to make a will. A command involves an order like that given by a traffic warden or policeman to a motorist to stop.

There are people who think of law as only what the officials do. They argue that what is stated to be law by the legislator is not the law because it is subject to interpretation and that it is the interpreta-

tion given by the judges that constitutes the law. Admittedly, there are sometimes in written rules vague words the practical meaning of which may depend on the opinion of the judge. But most rules of law are seldom the subject of litigation. Moreover, it is impossible to identify judges except by reference to law. Therefore, if law is simply what the judges say, it would be impossible to know it.

Some people say that law is normative in character. They contend that law states what people ought to do, that it prescribes norms of conduct. Others argue that law is imperative in character — that it states what people must do and what they must not do. On the other hand, some others see law as a fact. Clearly, the existence of law may be considered as a fact and law cannot be understood except by reference to facts. But law is applied to facts and can, thus, be distinguished from fact.

The opinion one holds about law may depend on the angle from which one views it. For instance, the ordinary citizen may think of law simply as a body of rules which must be obeyed because he sees it from an external point of view and the judge may consider law simply as a guide towards conduct because he sees it from an internal point of view. Neither of them has a complete view of law. Thus, law is indeed a complex phenomenon.

B. Characteristics of the Nigerian Legal System

One of the notable characteristics of the Nigerian legal system is the tremendous influence of English law upon its growth. The historical link of the country with England has left a seemingly indelible mark upon the system: English law forms a substantial part of Nigerian law. Another characteristic feature of the legal system is its complexity. Nigeria consists of a federal capital territory and 19 States.[1] Each State has a legal system. The capital territory, too, has its own legal system. In addition, there is a general federal legal system applicable throughout the country. The complexity of legal systems is further revealed by the application of local customs as law in each State. A small town in a State may have a system of customary law different in some respects from the customary law system of a neighbouring town even if all the indigenous inhabitants of both towns belong to the same tribal group. Thus, within the legal system of a State, there may be a multiplicity of legal systems. There is such multiplicity in the southern parts of the country — in Anambra, Bendel, Cross

[1] The States are Anambra, Bauchi, Bendel, Benue, Borno, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers and Sokoto States.

River, Imo, Lagos, Ogun, Ondo, Oyo and Rivers States.[2] It is therefore clear that there are several legal systems within the complex legal system of Nigeria.

In spite of the diversity of legal systems, history has contributed to a measure of uniformity of Nigerian legislation. On some matters the laws of the various States are almost identical. The main reason is that Nigeria had a unitary government from 1914 to 1951 and some legislative measures passed during that period continue to apply in the various territories in so far as they are not repealed by the appropriate legislative authorities.

Mention should also be made of the legal profession. As a general rule, every legal practitioner is eligible to practise as barrister and solicitor. But a person who has been appointed to the dignified rank of Senior Advocate of Nigeria is not permitted to practise as a solicitor. Moreover, in special circumstances, a person who is not enrolled as a legal practitioner in Nigeria may be permitted by the Chief Justice of Nigeria to practise as a barrister, but not as a solicitor.

C. The Divisions of Nigerian Law

Criminal Law and Civil Law

Criminal law is the law of crime. A crime or an offence is an act or omission punishable by the State.[3] Civil law is the law governing conduct which is generally not punishable by the State. No clear distinction can be drawn between a crime and a civil wrong in terms of the quality of an act. An act may be a crime as well as a civil wrong. Thus, a motorist who, as a result of his negligent driving, injures a pedestrian, has done an act which may constitute a crime as well as a civil wrong. Criminal proceedings are instituted principally for the purpose of punishing wrongdoers. Civil proceedings are taken mainly to enable individuals to enforce their rights and receive compensation for injuries caused to them by others. Criminal proceedings are controlled by the State although private persons may sometimes institute such proceedings. Civil proceedings are usually taken by individuals but the State may be a party to a civil proceeding. As a general rule, an act or omission is not a criminal offence unless its definition and the punishment for it are contained in a written law. The

[2] In some States in the northern part of the country, the diversity of legal systems is minimal because Moslem law of the Maliki School constitutes the only body of local customs there. At present, the States in the northern part of the country, that is, the northern States, are Bauchi, Benue, Borno, Gongola, Kaduna, Kano, Kwara, Niger, Plateau and Sokoto States.

[3] See for example Criminal Code (Lagos Laws 1973, Cap. 31), s. 2; Penal Code (N.N. Laws 1963, Cap. 89), s. 2; Criminal Code (Fed. and Lagos Laws 1958, Cap. 42), s. 2.