

**UNIVERSITY OF LAGOS**  
**FACULTY OF LAW**  
**INTRODUCTION TO LAW (JIL 001) LECTURE NOTES**

**HISTORY OF THE NIGERIAN JUDICIAL SYSTEM**

In previous classes, we learnt about the meaning, nature and function of law, and we agreed that one way of understanding the nature of law is by identifying its functions. The government of any society usually resorts to laws as a means of addressing different functions, which range from economic to political to social organization. Since the government consists of different bodies or arms charged with different functions in relation to the law, it is important to understand the nature of the system empowered to interpret and apply the law, since, in many ways, it is this system that determines not only what the law means, but, in many cases, what it is. This class will help the student to

- a. Understand the role of the judiciary in modern society
- b. Have a firm understanding of the concept of jurisdiction
- c. Become familiar with the history of the Nigerian judicial system

The focus on the judiciary is particularly important for the law student because this is the area of governance within which the lawyer is most active. It is within the judiciary that law-related conflicts are resolved, so one must familiarize oneself with the foundational structures of the system. These lectures will first address the **Role and Function of the Judiciary**, with particular reference to the Nigerian judiciary. Then, we will explore **History of the Nigerian Judicial System**, dating back to the pre-colonial/amalgamation era and up to contemporary times and practices.

**Role and Function of the Judiciary**

In very simple terms, the judiciary is usually described as the arm of government responsible for interpreting the law. At first glance, it may not be exactly certain what this means, since laws are expected to be in clear, plain language, but the law student understands, after the first few classes, that the letter of the law may not always leave one clear as to the spirit of the law. It is to this end that the judiciary is tasked with the important function of ensuring that the law is interpreted and applied in the way that it was intended by lawmakers.

Since the law regulates social relations between members of a particular society, it goes without saying that the judiciary, in interpreting and applying the law, addresses and seeks to resolve areas

of conflict between members of the society. Therefore, the function of the judiciary, though seemingly narrow on the face of it, is relatively wide, as it includes within its scope all the areas that the laws in that society cover.

It is important to note the distinction between judicial functions and judicial powers. While the former encompasses the role of the judiciary in resolving conflicts through resort to established rules, which can be exercised by non-judicial or quasi-judicial institutions, the latter is restricted to recognized judicial institutions, and is usually much wider than the general functions.<sup>1</sup>

In Nigeria, for instance, the powers of the judiciary are contained in section 6(6) of the 1999 Constitution, as follows:

The **judicial powers** vested in accordance with the foregoing provisions of this section -

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law

(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;

(c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;

(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.

Note that the language of the Constitution is both permissive and restrictive. While paragraphs (a) and (b) state situations under which judicial power may be exercised, paragraphs (c) and (d) provide for instances where such power may not be exercised. It is from this section that all the judicial institutions in the country derive their power to act in that capacity. Quasi judicial institutions, such as administrative tribunals, only possess such powers as are conferred on them by law, which is usually not as wide. When we speak of the judiciary, therefore, we speak of institutions with judicial powers, but not necessarily all institutions that exercise judicial functions.

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<sup>1</sup> See generally Osita Nnamani Ogbu, *Modern Nigerian Legal System* (CIDJAP Press, Enugu, 2007) 200-202

It is also important to note the distinction between judicial powers or functions and jurisdiction. While the former refers to the judicial capacity of an institution, the latter refers to the capacity of an institution to exercise its powers in relation to a particular subject matter or person. Hence, while an institution may have judicial powers, it may not have the jurisdiction to hear a particular case. For instance, section 232(1) of the 1999 Nigerian Constitution confers on the Supreme Court original jurisdiction in “any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”; so, in such matters, the High Court will not have jurisdiction, although it has the same judicial powers as the Supreme Court, conferred on it by section 6 of the same Constitution.

The jurisdiction of the court would usually dictate the situations under which such a court can lawfully exercise its judicial powers, and this may depend on several different factors, such as whether a court has original or appellate jurisdiction in a particular matter; whether or not a court has criminal or civil jurisdiction; or perhaps whether a court has exclusive jurisdiction or shares jurisdiction concurrently with other courts on a particular issue. Jurisdiction therefore differs from circumstance to circumstance, and dictates the conditions under which judicial power may be exercised.

Judicial institutions remain a very important part of the government machinery, as they help resolve conflicts, and ensure the effective running of the other government bodies and institutions by keeping them in check. This is particularly true where there is separation of powers among the different arms of government.<sup>2</sup>

In summary, the role and functions of the judiciary include, but are not limited to:

1. Interpreting and applying the law
2. Resolving conflict between persons, both natural and juridical
3. Resolving conflict between government institutions and citizens, and between government institutions and organs
4. Ensuring the constitutionality and legality of government activity
5. Protecting the rights of citizens against abuse

The judiciary usually consists of judges who are the officers of the court, and the courts are usually established by law to serve as the locus of judicial activity. While courts are tribunals of a sort, not

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<sup>2</sup> Ibid., 199.

all tribunals are courts. Some tribunals exercise quasi-judicial functions, and do not possess the full judicial powers of a court.<sup>3</sup> Having said that, it is important to note that, not all courts have the same functions or the same capacity or jurisdiction.

### **History of the Nigerian Judicial System**

This section of the lecture will cover the historical development of the judicial system in Nigeria based on a time-line structure that covers the major political developments of the country, beginning from pre-colonial Nigeria. The three major timelines will be: the pre-colonial judicial administration; colonial judicial administration; and post-colonial judicial administration.

#### Pre-Colonial Judicial Administration

The judicial system in Nigeria has evolved and metamorphosed over the decades depending on the type of government structures in place, and the system of governance. Prior to the colonization exercise in many parts of Africa, traditional societies had their own systems of adjudication responsible for the administration of justice in those societies. Nevertheless, the entry of European commercial actors into these societies led to the development of judicial systems that laid the foundation for the future of contemporary adjudication in African societies. For instance, in the nineteenth century, before the annexation of Lagos in 1861, the different societies that now form Nigeria and other African countries operated their own political systems with their own methods of administration of justice. There were traditional “courts” where traditional rules were applied against parties, irrespective of whether they were indigenes or foreigners. In Igboland for instance, there was an acephalous society, which is a society without central leadership. Leadership was distributed among members of the community, who sat in council to exercise executive, legislative and judicial powers.<sup>4</sup> The system of justice administration in the pre-colonial Hausa communities in Northern Nigeria was the closest to the modern court system that we have today in different parts of the world. There was a court system in which subordinate chiefs or Alkalis headed courts in the different districts or zones and the Emir had appellate jurisdiction or original jurisdiction in very serious cases.<sup>5</sup>

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<sup>3</sup> Ibid., 202.

<sup>4</sup> See Peter Okoro Nwankwo, *Criminal Justice in the Pre-Colonial, Colonial and Post-Colonial Eras: An Application of the Colonial Model to Changes to the Severity of Punishment in Nigerian Law* (Maryland, University Press of America 2010)

<sup>5</sup> See Ogbu, op cit, 214-5

The administration of justice in traditional societies was based largely on unwritten customary rules, interpreted by the institutions and individuals that exercised judicial powers. Social punishments such as ostracisation were very common, as well as corporal punishment. In some instances, influential individuals were allowed to mete out punishment to those who offended them, as was the case in Yorubaland.<sup>6</sup> The judicial system of many of these societies applied against natives and non-natives, even when the latter did not understand the context or the rules. With the increasing growth in European trade in the region, British traders became involved in the politics of the region, and in judicial administration.

The traditional system of judicial administration posed a problem for foreigners, particularly European foreigners who were unfamiliar with the traditional laws in many of the African societies. This led to the introduction of **Consul Courts** by the British government, which appointed consuls, to handle disputes between indigenes and foreign traders, while the **traditional courts** continued to administer cases involving only indigenes. An example is the Oil River Protectorate which later became the Niger Coast Protectorate, for which Consuls were appointed by the British government to observe treaties and handle the governance of British subjects in the area.<sup>7</sup> In the area that would become known as the Protectorate of Southern Nigeria, **courts of equity** had been introduced in the mid-nineteenth century, with the main function of administering the commercial relations between British subjects and between British subjects and non-British subjects. They were different from the Consul courts in that they were less technical, and related more to the administration of commercial relations, than governance and justice issues.<sup>8</sup> This was the beginning of the bifurcation of the legal systems of many of the British territories, including what would eventually become Nigeria.

### Colonial Justice Administration

This period can be further classified into the pre-amalgamation and post-amalgamation period. The pre-amalgamation period covers the period between 1861 and 1914, when different parts of what is now known as Nigeria were administered by the British government or its subjects. The post-amalgamation period would refer to the period after the amalgamation of the Colony and Protectorate of Southern Nigeria with the Protectorate of Northern Nigeria to form what is today recognized as Nigeria.

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<sup>6</sup> Nwankwo, op cit, 175

<sup>7</sup> Obilade, Op Cit, 21.

<sup>8</sup> See Ogbu, Op Cit, 153-4.

After the cession of Lagos to the British Crown in 1861, the **Supreme Court Ordinance 1863** established the Supreme Court in the territory of Lagos, and this was subsequently replaced by the Court of Civil and Criminal Justice, which was the highest court in the land, appeals from which lay to the West African Court of Appeal situated in Sierra Leone. Further appeal from the WACA lay to the Judicial Committee of the Privy Council. In 1874, the Gold Coast Colony was established, comprising Lagos and the Gold Coast, and the **Supreme Court Ordinance 1876** provided for a Supreme Court for the Colony, which would apply Common Law, Doctrines of Equity and Statutes of General Application in force on July 24 1874.

The three tier court system had a hierarchy, consisting of the **District Commissioner's Courts, the Divisional Court and the Full Court**, and the appeals ran in that order. By **1886**, Lagos ceased to be part of the Gold Coast Colony, and the Colony and Protectorate of Lagos, comprising Lagos and surrounding protectorates, had a Supreme Court established under a new **Supreme Court Ordinance**, with similar provisions to the 1876 Ordinance. During this whole time, the indigenous court system also continued to flourish, although it was limited to cases involving indigenes, some of whom had imbibed the English way of life and subjected themselves to English Law. It should be noted that what began as a wholly commercial relationship between British traders and indigenous Africans later became a complex political relationship in which the British Crown dominated the political scene in Africa. This can be seen in the experience of the **Royal Niger Company**, which began as the National African Company, a company doing business in the territories along the River Niger. The Company was empowered to administer justice in the territories where it operated, and it established courts for this purpose.

It should be noted that the pre-amalgamation judicial experience of the protectorates of Northern and Southern Nigeria is similar to that described above of Lagos. However, a significant difference was that, while proclamations were introduced to establish English courts to administer English law, native law was administered by Native Courts, established by separate proclamations. Thus, both English and native law were administered by English-style courts established under English law, unlike the system in Lagos where the native system was left significantly untouched by the English system. However, after the amalgamation of the Colony and Protectorate of Lagos with the Colony of Southern Nigeria in 1906, the native court system extended to Lagos, by virtue of the **Native Courts Ordinance 1906**. It should be noted that the Native Courts had both civil and criminal jurisdiction. Obilade notes that the absence of native oversight and control in the Southern protectorate weakened the native court system, while the Chiefs in the Northern Protectorate were

involved in the appointment of members of the native courts, which added to the efficacy of the system.<sup>9</sup>

After the 1914 amalgamation, the bifurcation continued, and there were proclamations establishing **a Supreme Court, a Provincial Court system, and a Native Court system** respectively. The Native Courts were empowered to exercise jurisdiction in civil and criminal cases concerning natives, but certain classes of natives were subject to the jurisdiction of the Courts only if they or the Resident consented (civil cases) or if they or the Lieutenant Governor consented (criminal cases), and they were:

- a. Government servants
- b. Natives not ordinarily subject to the jurisdiction of the court and who did not live permanently in the area where the court had jurisdiction

In 1933, there was further judicial reform to establish a High Court and magistrate courts under the **Protectorate Courts Ordinance 1933**, which repealed the Provincial Court Ordinance, while the Supreme Court continued to exist for the Colony. Jurisdiction in matters relating to English Law was shared between these courts which had original and appellate jurisdiction. Appeals lay from the magistrate courts to the High Court, and from the native courts to the Magistrate Court or the High Court, while appeals from the High Court and the Supreme Court lay to the West African Court of Appeal. Other relevant Ordinances were the **Native Courts Ordinance and the West African Court of Appeal Ordinance, both of 1933**. Jurisdiction still remained bifurcated between the native and English system such that in certain matters, for example land matters under customary law, the English courts did not have jurisdiction.<sup>10</sup>

By **1943**, a universal court system was adopted countrywide, and this led to the establishment of magistrate courts in all parts of the country, and a Supreme Court of Nigeria for the whole country. The Native Courts continued to have exclusive original jurisdiction in matters relating to marriage, family status, guardianship of children, inheritance, and administration of estate.<sup>11</sup>

Upon the adoption of a federal system of government in 1954, the court system also adopted a federal stance, as High Courts were established for Lagos and each of the three regions, while there

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<sup>9</sup> Obilade, Op Cit, 27.

<sup>10</sup> See generally, Obilade, Op Cit, 29-31.

<sup>11</sup> Ibid., 32

was a Federal Supreme Court, and Magistrate Courts for different parts of the country. These courts applied and administered English Law, while the Native Courts in the North and the Customary Courts in the Southern parts of the country applied and administered customary law. The laws establishing the native courts were enacted by the different regions.<sup>12</sup> It should be noted that in the Northern region, where Islamic Sharia Law was the recognised customary law, a Sharia Court of Appeal was established to hear appeals from the native courts, and in the event of conflict between the Sharia Court of Appeal and the High Court, a Court of Resolution was established for resolving such conflict.<sup>13</sup>

### Post-Colonial Judicial Administration

After the attainment of independence in 1960, the political climate in Nigeria completely changed, but the judicial structure remained significantly the same, with the different regions having their High Courts, magistrate courts and customary or native courts, while there was a Federal Supreme Court, and the Judicial Committee of the Privy Council remained the highest court of the land. The most significant change brought about by the 1960 independence constitution was the abolition of criminal jurisdiction under customary law, as the Constitution provided that no one could be convicted of an offence not provided for under any written law, with the exception of contempt of court. This position remains the same to date. There was no other significant change in the judicial system until 1963, when Nigeria became a republic, with complete independence from the British government. Under the **1963 Constitution**, the Supreme Court of Nigeria became the highest Court of the Land. In 1963, there was also an additional region culled from the former Western region, known as the Mid-Western region. The native courts in the Northern region became known as area courts.

The judicial system was severely affected by a military coup in January 1966, and another in July of the same year. The following year, the country was divided into **12 States under a States (Creation and Transitional Provisions) Decree No. 17 of 1967**. This was the beginning of a series of military coups with a short-lived return to civilian rule in 1979, and during the period from 1967 to date the country has been restructured several times, so that there are now 36 states and a Federal Capital Territory. The justice system remains decentralized up to the Court of Appeal

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<sup>12</sup> In the Northern region, there was the Native Courts Law, No. 6 of 1956; in the Western region, there was the Customary Courts Law, Cap 31, Western Region of Nigeria Laws 1959; in the Eastern region, there was the Customary Courts Law, No. 21 of 1956.

<sup>13</sup> The Court was established by the Court of Resolution Law No. 17 of 1960. See Obilade, Op Cit, 35.

which has divisions in the different states, and the Supreme Court which is situated in the Federal Capital Territory.

Post-independence, the different developments in the judicial system have had to do mostly with the appointment of judges during a military regime, as well as the role of tribunals and commissions of inquiry. As stated in previous classes, during a military regime, the role of the judiciary, which is usually stated clearly in the constitution, is limited considerably, especially as the constitution is usually suspended.

This class has provided a brief history of the judicial system from pre-colonial to post-independence times, with a view to revealing the bifurcation of jurisdiction, based not only on geography but also on cultural alignment. The administration of justice in Nigeria has, since its early inception, sought to make a distinction between customary and non-customary jurisdiction, and the extent of that distinction has been modified over time, but the greatest change has occurred in the arrangement of the non-customary system, which has become more sophisticated over time, and whose coverage has widened while that of the customary system could be said to have become more limited.