AMERICAN LAW AND NIGERIAN LAW COMPARED

A Teaching Version — Prof Samba Online University of Nigeria

Under the supervision of Prof Samba
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IMPRINT

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Formats: this book stands as a PDF on the university's Law Library page, with DOCX and Markdown masters held in the university's records.

How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — Two Written Constitutions

America and Nigeria are the written constitution's two students — one with the oldest text, one with a detailed modern one. This chapter compares their constitutionalism: supremacy, federalism, rights, and amendment.

Supremacy shared, texts contrasted

Both systems enthrone a written constitution and arm courts to void inconsistent laws — the great similarity, against Britain's sovereignty. The texts differ in kind: America's is brief, eighteenth-century, and framework-like, leaving vast fields to interpretation; Nigeria's is long, detailed, and code-like, prescribing electoral timetables and local-government structures in its own pages. Brevity trusts judges; detail distrusts them — each text encodes its founders' fears.

Judicial review in America was asserted by the Supreme Court in the republic's youth; in Nigeria it is the written constitution's plain gift. The Nigerian judge's power is the more textually secure, the American's the more historically venerable.

Federalism compared

Both are federations, but the traffic runs opposite ways: America's states are the primary lawmakers of ordinary life, the Union enumerated and limited; Nigeria's federation is the stronger centre, its exclusive list long, its states' residue real but narrower, and its local governments constitutionally recognised in a third tier America does not entrench. America's states have their own constitutions and supreme courts; Nigeria's states legislate under one national constitution and appeal into one national hierarchy.

The fiscal comparison follows the legal: American states tax broadly and borrow; Nigerian states depend heavily on federation allocations — a difference that decides what federalism feels like in a governor's office.

Rights and amendment

Both entrench rights against the state; America's Bill of Rights, carried against the states by the Fourteenth Amendment, and Nigeria's Chapter IV are cousins in content — life, liberty, fair hearing, expression, association — and in the litigation cultures they breed. Amendment is the starkest contrast: America's door — two-thirds and three-fourths — has admitted twenty-seven amendments in over two centuries; Nigeria's, though solemn, has been used repeatedly within a generation. A constitution easily amended is a different kind of higher law from one barely amendable at all.

Worked example

An American schoolchild can recite her constitution's structure in a page; a Nigerian law student carries a volume. Yet a judge in each country, striking down a legislature's Act, performs the identical office with the identical justification: the people's higher law forbids it. The comparison's lesson is that constitutionalism is one idea wearing a short coat and a long one.

Discussion questions

• How do the two texts differ in kind, and what does each encode?

• Which federation's traffic runs which way?

• Why is amendment the starkest contrast?

Chapter summary

In this chapter you have studied the following ground. America and Nigeria are the written constitution's two students — one with the oldest text, one with a detailed modern one. On supremacy shared, texts contrasted: Both systems enthrone a written constitution and arm courts to void inconsistent laws — the great similarity, against Britain's sovereignty. On federalism compared: Both are federations, but the traffic runs opposite ways: America's states are the primary lawmakers of ordinary life, the Union enumerated and limited; Nigeria's federation is the stronger centre, its exclusive list long, its states' residue real but narrower, and its local governments constitutionally recognised in a third tier America does not entrench. On rights and amendment: Both entrench rights against the state; America's Bill of Rights, carried against the states by the Fourteenth Amendment, and Nigeria's Chapter IV are cousins in content — life, liberty, fair hearing, expression, association — and in the litigation cultures they breed. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Courts and Criminal Law Compared

This chapter compares the dual American court system with Nigeria's single hierarchy, and the two criminal laws — plea bargaining, juries, and capital punishment among the contrasts.

Two pyramids or one

America runs federal and state courts in parallel, with two supreme stations — the state supreme court final on state law, the US Supreme Court final on federal questions. Nigeria runs one pyramid to one Supreme Court. The American arrangement multiplies forums and the jurisdiction questions between them — diversity, federal questions, removal — into a procedural field of its own; the Nigerian arrangement spends its procedural energy elsewhere, on delay and its remedies.

Judicial selection divides them further: American federal judges appointed for life, many state judges elected; Nigerian judges appointed through the judicial council's process, never elected. Each system has chosen its poison between independence and accountability, and argues about the dose.

Criminal law's contrasts

Both systems codify crime — America state by state under the Model Penal Code's influence, Nigeria in its two codes — and both require proof beyond reasonable doubt. The contrasts are institutional: America keeps the jury in serious crime and resolves most cases by plea bargaining; Nigeria tries by judge alone and knows no plea bargain in the American sense, though plea discussions and charge reductions exist at its margins. America's sentencing includes, in retaining states, a death penalty administered under elaborate

constitutional procedure; Nigeria retains the death penalty in its codes with its own appellate safeguards, its executions rare in recent practice.

The Fourth and Fifth Amendments' jurisprudence — search, seizure, silence, counsel — is America's gift to comparative criminal procedure: Nigeria's constitution carries the same protections in its rights chapter, and its courts read the American cases as the world's fullest commentary on shared words.

Adversary extremes

America's adversary system is party-driven to the edge: broad discovery, party experts, cross-examination as the engine. Nigeria's is adversary in form with a judge more active in the trial's management. The comparison is a spectrum along which every common-law system sits, and the student's place on it should be chosen knowingly, not inherited blindly.

Worked example

In Houston, a case ends in a negotiated plea in a corridor. In Makurdi, the same case would run its full trial before a judge. The American scholar calls the corridor efficient and worries at its coercion; the Nigerian scholar calls the trial principled and worries at its delay. Each system's worry is the other's warning — comparison as mutual audit.

Discussion questions

• What procedural field does America's dual system create?

• Name three criminal-law contrasts and one similarity.

• Along what spectrum do the two trial systems sit?

Chapter summary

In this chapter you have studied the following ground. This chapter compares the dual American court system with Nigeria's single hierarchy, and the two criminal laws — plea bargaining, juries, and capital punishment among the contrasts. On two pyramids or one: America runs federal and state courts in parallel, with two supreme stations — the state supreme court final on state law, the US Supreme Court final on federal questions. On criminal law's contrasts: Both systems codify crime — America state by state under the Model Penal Code's influence, Nigeria in its two codes — and both require proof beyond reasonable doubt. On adversary extremes: America's adversary system is party-driven to the edge: broad discovery, party experts, cross-examination as the engine. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Reform, Borrowing, and the Two Futures

The closing comparison asks what the two written-constitution federations may borrow from each other, and on what terms borrowing is honest.

The borrowing ledger

Nigeria's constitution itself borrowed the American presidential architecture and adapted it to a parliamentary inheritance — the federation's great act of comparative law, performed by its founders. The borrowing ledger since runs both ways in smaller print: Nigeria's rights jurisprudence reads America's; America's federalism scholarship reads Nigeria's fiscal and state-creation experience as caution and data.

Honest borrowing tests function in the borrower's weather: America's plea bargaining presupposes its prosecution resources and its jury's cost; Nigeria's import would need its own foundations dug first.

The futures

America's constitutional future is argued in its courts, amendment being nearly closed; Nigeria's is argued in its amendment politics and its courts together. America's profession faces its education's cost; Nigeria's faces its numbers and its access gap. Each future is the other's seminar: the questions — how a federation holds, how rights are afforded, how courts keep trust — are shared, and the answers will be compared by the students of both countries for as long as both constitutions live.

This wing closes where the library began: all books of law, under one supervision, in one student's hands — Nigeria's law first, and the

world's law beside it for light.

Worked example

Two students, one in Makurdi and one in Michigan, read the same judgment of the other's supreme court in the same week, each mining it for a problem at home. Neither system sent the other a missionary; the judgments travelled because the questions matched. That is comparative law's future, and it is already ordinary — this book is written for the student who will live in it.

Discussion questions

• What was Nigeria's founders' great act of comparative law?

• What does honest borrowing test?

• Why do the two systems' judgments travel?

Chapter summary

In this chapter you have studied the following ground. The closing comparison asks what the two written-constitution federations may borrow from each other, and on what terms borrowing is honest. On the borrowing ledger: Nigeria's constitution itself borrowed the American presidential architecture and adapted it to a parliamentary inheritance — the federation's great act of comparative law, performed by its founders. On the futures: America's constitutional future is argued in its courts, amendment being nearly closed; Nigeria's is argued in its amendment politics and its courts together. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Contract, Land, and the Profession Compared

The final chapter compares contract's codified American form, land's recording philosophy against the Land Use Act, and the two fused professions' different educations.

Contract — code and restatement

Both systems share the common law of contract's core. America adds two institutions Nigeria lacks: the Uniform Commercial Code, governing goods sales uniformly across states, and the Restatements, which systematise the common law without enacting it. Nigeria's contract law remains case law upon received doctrine, with sale-of-goods statutes of British descent. The comparison teaches that codification is a spectrum — America's contract law is half-codified by commerce's demand; Nigeria's awaits its commercial codifiers.

Good faith in performance, promissory estoppel's wider American reach, and the parol evidence rule's shared discipline complete a field where the systems argue in one language with different statutes of limitation on their patience for case law.

Land — recording against trust

America's land system trusts the market and insures its risks: private title, county recording, priority by notice, title insurance for the gaps, zoning for land use. Nigeria's trusts the public hand: radical title in the governor, occupancy rights, consent at the gate, compensation for improvements. The American system's characteristic failure is the fraudulent deed in a sleepy registry; the Nigerian system's is the consent delayed and the allocation politicised. Each failure is its philosophy's shadow.

Eminent domain in America — public use with just compensation, constitutionally guaranteed — and Nigeria's revocation for overriding public interest with compensation for improvements are the same power in two measures of generosity, and the comparison of the measures is a debate about what land is: the citizen's wealth, or the people's patrimony in the citizen's keeping.

The profession — two fusions

Both professions are fused; the difference is formation. America educates its lawyers as graduates — a first degree in anything, then the JD and the case method — and admits them state by state. Nigeria educates in law from the first degree, vocationally at one national Law School, and enrols once for the whole federation. America's lawyer is a graduate professional among graduate professions; Nigeria's is a specialist from youth. The comparison's last word is the wing's first: the questions are identical — who may practise, trained how, disciplined by whom — and the answers are each country's history, still being written.

Worked example

A Chicago title insurer and a Makurdi land registry clerk insure, between them, the same human fear: that the land a man buys is not the seller's to sell. One answers with a policy, the other with a governor's consent and a search. Comparative law's deepest lesson stands in their two desks: institutions are fears, organised.

Discussion questions

• What two contract institutions does America have that Nigeria lacks?

• What is each land system's characteristic failure, and why is it its philosophy's shadow?

• How do the two fused professions differ in formation?

Chapter summary

In this chapter you have studied the following ground. The final chapter compares contract's codified American form, land's recording philosophy against the Land Use Act, and the two fused professions' different educations. On contract — code and restatement: Both systems share the common law of contract's core. On land — recording against trust: America's land system trusts the market and insures its risks: private title, county recording, priority by notice, title insurance for the gaps, zoning for land use. On the profession — two fusions: Both professions are fused; the difference is formation. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — Two Written Constitutions

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Supremacy shared, texts contrasted; Federalism compared; Rights and amendment. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "An American schoolchild can recite her constitution's structure in a page; a Nigerian law student carries a volume. Yet a judge in each country, striking down a legislature's Act, ..."

Problem 2 — Courts and Criminal Law Compared

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Two pyramids or one; Criminal law's contrasts; Adversary extremes. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "In Houston, a case ends in a negotiated plea in a corridor. In Makurdi, the same case would run its full trial before a judge. The American scholar calls the corridor efficient and..."

Problem 3 — Reform, Borrowing, and the Two Futures

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The borrowing ledger; The futures. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "Two students, one in Makurdi and one in Michigan, read the same judgment of the other's supreme court in the same week, each mining it for a problem at home. Neither system sent th..."

Problem 4 — Contract, Land, and the Profession Compared

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Contract — code and restatement; Land — recording against trust; The profession — two fusions. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A Chicago title insurer and a Makurdi land registry clerk insure, between them, the same human fear: that the land a man buys is not the seller's to sell. One answers with a policy..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

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