BRITISH LAW AND NIGERIAN LAW COMPARED

A Teaching Version — Prof Samba Online University of Nigeria

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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 — The Common Root, Stated Honestly

Nigeria's law grew with British law: the common law was received, the codes were modelled on British drafts, the profession was patterned on the Inns and the solicitors' branch together. This chapter states the root honestly — as history, not as allegiance — before the comparisons begin.

What was received

By the reception legislation, the common law of England, the doctrines of equity, and statutes of general application in force at the reception date became Nigerian law, so far as local circumstances and legislation allowed. Everything after that date in England is persuasive only. The reception is a historical fact with a legal edge: it explains why Donoghue's neighbour and Carlill's smoke ball are Nigerian law's ancestors, argued in Makurdi as in Manchester.

The codes — criminal and penal, evidence, and the procedure codes — were drafted in the British imperial tradition, several through the great nineteenth-century codifiers' models, and adapted to Nigeria's conditions, including the Penal Code's accommodation of the north's Islamic legal culture.

What grew apart

Independence made the systems strangers in authority while keeping them cousins in doctrine: Nigeria wrote a supreme constitution where Britain kept a sovereign Parliament; Nigeria abolished the jury where Britain kept it; Nigeria vested radical land title in governors where Britain registered private title; Nigeria fused the profession where Britain divides it. The comparisons in this book are organised by the

owner's appointed fields: constitutions, courts, criminal law, contract, land, and the profession.

Comparison's method is the Legal Method volume's analogy discipline applied to systems: compare functions, not labels; ask what problem each institution solves, and at what price; and never grade one system by the other's purposes without saying so.

Why compare at all

Comparison is the Nigerian lawyer's inheritance and tool: his courts cite British authority daily as persuasion; his reformers borrow British statutes; his students sit examinations that assume the parent system's knowledge. To compare is to understand one's own law twice — once in itself, and once in the mirror.

Worked example

A Nigerian judge, citing an English decision, writes 'with respect, I adopt the reasoning' — not 'I am bound'. In that phrase the whole comparison lives: the root is honoured, the independence is exercised. The student who learns when his courts adopt, adapt, or decline British reasoning has learned comparative law's practical core.

Discussion questions

• What exactly was received, and what is post-reception English law in Nigeria?

• Name four fields where the systems grew apart.

• What is comparison's method in one sentence?

Chapter summary

In this chapter you have studied the following ground. Nigeria's law grew with British law: the common law was received, the codes were modelled on British drafts, the profession was patterned on the Inns and the solicitors' branch together. On what was received: By the reception legislation, the common law of England, the doctrines of equity, and statutes of general application in force at the reception date became Nigerian law, so far as local circumstances and legislation allowed. On what grew apart: Independence made the systems strangers in authority while keeping them cousins in doctrine: Nigeria wrote a supreme constitution where Britain kept a sovereign Parliament; Nigeria abolished the jury where Britain kept it; Nigeria vested radical land title in governors where Britain registered private title; Nigeria fused the profession where Britain divides it. On why compare at all: Comparison is the Nigerian lawyer's inheritance and tool: his courts cite British authority daily as persuasion; his reformers borrow British statutes; his students sit examinations that assume the parent system's knowledge. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Constitutions Compared

Britain's unwritten constitution and Nigeria's written supremacy are the common-law world's two poles. This chapter compares them across sovereignty, rights, and the executive.

Where final authority sits

In Britain, Parliament is sovereign: no court invalidates its Act. In Nigeria, the constitution is supreme: courts invalidate legislation inconsistent with it, and do. The practical difference appears in hard cases: the British claimant argues interpretation and the declaration of incompatibility under the human-rights legislation; the Nigerian claimant argues invalidity. One system trusts the legislature's self-correction; the other arms the judiciary against it.

Each arrangement has its pathology: Britain's is the elective dictatorship of a disciplined majority; Nigeria's is the temptation of courts to become a third chamber. The comparison teaches vigilance in both directions.

Rights' protection

Britain protects rights through the common law, the European Convention as incorporated by its human-rights Act — with courts empowered to interpret compatibly and to declare incompatibility, but not to strike down — and political culture. Nigeria protects them through an entrenched chapter, directly enforceable by a fast procedure, against legislature and executive alike.

The British scheme keeps Parliament's last word; the Nigerian scheme gives the court's. Which better protects the unpopular claimant is the student's essay — and it has no answer that survives all cases.

Executive and legislature

Britain fuses: the government is Parliament's committee, falling when confidence falls. Nigeria separates: fixed terms, a president or governor who does not sit in the legislature, impeachment as the only mid-term removal. Fusion buys accountability's daily pressure and government's fragility; separation buys stability and the risk of gridlock between fixed powers. Federalism compounds the Nigerian design: two levels of separated powers, where Britain's devolution is a delegation from a sovereign centre that may resume what it gave.

Worked example

In London, a statute survives its condemnation by every editorial in the kingdom because Parliament willed it. In Abuja, a statute falls because nine justices found it outside the constitution. Neither scene shows the other's defect; together they show the choice every constitution makes about where to place its trust — and its fear.

Discussion questions

• State the two pathologies: Britain's and Nigeria's.

• How do the two systems' rights remedies differ in the last word?

• What does fusion buy, and what does separation buy?

Chapter summary

In this chapter you have studied the following ground. Britain's unwritten constitution and Nigeria's written supremacy are the common-law world's two poles. On where final authority sits: In Britain, Parliament is sovereign: no court invalidates its Act. On rights' protection: Britain protects rights through the common law, the European Convention as incorporated by its human-rights Act — with

courts empowered to interpret compatibly and to declare incompatibility, but not to strike down — and political culture. On executive and legislature: Britain fuses: the government is Parliament's committee, falling when confidence falls. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Courts and Criminal Law Compared

This chapter compares the two systems' courts — juries against judge-alone trial, precedent in both — and their criminal law — code against common law and statute.

Courts and fact-finding

Britain tries serious crime by jury; Nigeria, having abolished the jury in the colonial period's aftermath, tries by judge alone, who must give reasons for fact and law together. The jury buys lay legitimacy and a shield against state prosecution; it costs reasons — a verdict explains nothing — and consistency. The judge-alone trial buys reasoned, appealable fact-finding; it costs the citizen's direct share in criminal justice and concentrates trust in the bench's integrity.

Precedent binds both systems in the same hierarchy of principle, with each supreme court the final expositor of its own law — the Nigerian Supreme Court's word now being Nigeria's law in a sense no London decision can be.

Criminal law's form

Nigeria codified: the Criminal Code in the south, the Penal Code in the north — the latter's existence itself a comparative fact, one country running two codes where England runs none. England's criminal law is common law overlaid with statutes, its general part in the cases. Codification buys accessibility and democratic authorship; the common law buys flexibility at the price of the citizen's ability to read his duties in one book.

The doctrines coincide more than the forms: actus reus and mens rea, the defences, attempts and parties — the Nigerian codes state in sections what the English cases state in judgments, frequently in the same concepts because the codes' drafters learned them there.

Prosecution and process

England separates investigation and prosecution in the Crown Prosecution Service; Nigeria prosecutes through the police and the attorneys-general's departments, with the constitutional powers of takeover and discontinuance. England's police powers are codified in a single great Act with codes of practice; Nigeria's are gathered in the criminal-justice reforms of the last decade, travelling the same road a generation later — comparison here is not mirror but timeline.

Worked example

Two theft trials, one in Leeds and one in Lagos, open the same week. In Leeds twelve citizens will decide; in Lagos one judge, with reasons. The elements read to each tribunal are recognisably the same elements. The forms have diverged for a century; the offence's anatomy has not — because both systems punish the same human act, defined by the same inherited analysis.

Discussion questions

• What does the jury buy, and what does it cost?

• Why does Nigeria run two criminal codes where England runs none?

• In what sense is the prosecution comparison a timeline, not a mirror?

Chapter summary

In this chapter you have studied the following ground. This chapter compares the two systems' courts — juries against judge-alone trial,

precedent in both — and their criminal law — code against common law and statute. On courts and fact-finding: Britain tries serious crime by jury; Nigeria, having abolished the jury in the colonial period's aftermath, tries by judge alone, who must give reasons for fact and law together. On criminal law's form: Nigeria codified: the Criminal Code in the south, the Penal Code in the north — the latter's existence itself a comparative fact, one country running two codes where England runs none. On prosecution and process: England separates investigation and prosecution in the Crown Prosecution Service; Nigeria prosecutes through the police and the attorneys-general's departments, with the constitutional powers of takeover and discontinuance. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Law Reform and the Two Futures

The final comparison looks forward: how each system reforms its law, and what each is positioned to learn from the other.

Reform machinery

Britain reforms through a permanent Law Commission whose draft bills Parliament enacts at a high rate, and through the courts' incremental development. Nigeria reforms through its Law Reform Commission, the legislatures, the administration-of-justice statutes, and constitutional amendment. Britain's machinery is steadier; Nigeria's agenda is longer, for its received law still awaits localisation in field after field.

The comparison's practical use: a Nigerian reformer drafting on a British model must translate institutions, not transplant them — the jury lesson, the prosecution-service lesson, and the land lesson of this book are all translations that succeeded or failed by their translators' honesty.

What each may learn

Nigeria may study Britain's prosecution separation, its sentencing guidelines' consistency, and its tribunals' accessibility. Britain may study Nigeria's entrenched rights enforcement — its own human-rights debates repeatedly reach for the stronger medicine Nigeria's constitution already administers — and its Law School's unified professional formation.

Comparison ends in humility both ways: each system is a people's answer, in its own weather, to the permanent questions — and the

student's mastery is to argue any reform from both systems' experience at once.

Worked example

A Nigerian committee, drafting a sentencing reform, reads the British guidelines, the Nigerian appellate cases, and the local prison statistics together, and produces a scheme that is neither a copy nor an invention: guidelines in structure, Nigerian in ranges, reviewed by Nigerian data. That is comparative law graduating from study to statecraft — the note on which this wing's British half closes.

Discussion questions

• How do the two systems' reform machineries compare?

• Why must models be translated, not transplanted?

• Name two lessons each system may learn from the other.

Chapter summary

In this chapter you have studied the following ground. The final comparison looks forward: how each system reforms its law, and what each is positioned to learn from the other. On reform machinery: Britain reforms through a permanent Law Commission whose draft bills Parliament enacts at a high rate, and through the courts' incremental development. On what each may learn: Nigeria may study Britain's prosecution separation, its sentencing guidelines' consistency, and its tribunals' accessibility. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — Contract, Land, and the Profession Compared

The final chapter compares the remaining fields: contract's near-identity, land's deep divergence, and the profession's two shapes.

Contract — the cousinhood

Contract is the fields' closest: the doctrines are shared, the leading cases are common ancestors, and the differences are statutory and recent — Britain's consolidated consumer Act against Nigeria's sale-of-goods and consumer provisions in their older arrangement. The Nigerian student's contract learning is British doctrine naturalised; his examination could be set in London with the statutes changed.

Where they differ instructively is consideration's softening and third-party rights, where British statute has moved and Nigerian doctrine debates following — comparison as a preview of reform's menu.

Land — the parting

Land is the deepest parting. Britain's 1925 settlement made land marketable: few legal estates, registration of title, overreaching. Nigeria's 1978 settlement made land public in root: radical title in the governor in trust, rights of occupancy in the citizen, consent at the gate. The philosophies are opposite answers to opposite fears — Britain feared the dead hand of settlement and the conveyancer's chaos; Nigeria feared speculation, rack-renting, and the stranger's accumulation.

Customary tenure, which Britain's system never had to carry, is the third term of the Nigerian equation: the comparison is not two systems

but two-and-a-half, and the half is the oldest.

The profession — divided and fused

Britain divides advocates from solicitors; Nigeria fuses both in one practitioner, trained in one Law School. Division buys advocacy's specialisation and an independent Bar's collective strength; fusion buys the client's single door and the small practice's viability in a vast country. Neither is the other's future; each is the other's explanation of what it values.

Revision: the whole comparison in one sentence — one root, two constitutions, two land philosophies, two professions, and a shared doctrinal language in which the differences can be argued: that shared language is the root's living gift.

Worked example

Set a London and a Lagos practitioner to draft the same contract, and their drafts will rhyme. Set them to transfer the same land, and their files will not resemble each other at all. Contract is where the systems embrace; land is where they part; and the map of embrace and parting is this book's whole teaching.

Discussion questions

• Why is contract the closest field and land the deepest parting?

• What fears produced Britain's 1925 and Nigeria's 1978 settlements?

• What does each profession's shape buy?

Chapter summary

In this chapter you have studied the following ground. The final chapter compares the remaining fields: contract's near-identity, land's

deep divergence, and the profession's two shapes. On contract — the cousinhood: Contract is the fields' closest: the doctrines are shared, the leading cases are common ancestors, and the differences are statutory and recent — Britain's consolidated consumer Act against Nigeria's sale-of-goods and consumer provisions in their older arrangement. On land — the parting: Land is the deepest parting. Britain's 1925 settlement made land marketable: few legal estates, registration of title, overreaching. Nigeria's 1978 settlement made land public in root: radical title in the governor in trust, rights of occupancy in the citizen, consent at the gate. The philosophies are opposite answers to opposite fears — Britain feared the dead hand of settlement and the conveyancer's chaos; Nigeria feared speculation, rack-renting, and the stranger's accumulation. On the profession — divided and fused: Britain divides advocates from solicitors; Nigeria fuses both in one practitioner, trained in one Law School. 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 — The Common Root, Stated Honestly

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: What was received; What grew apart; Why compare at all. 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 Nigerian judge, citing an English decision, writes 'with respect, I adopt the reasoning' — not 'I am bound'. In that phrase the whole comparison lives: the root is honoured, the ..."

Problem 2 — Constitutions Compared

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Where final authority sits; Rights' protection; Executive and legislature. 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 London, a statute survives its condemnation by every editorial in the kingdom because Parliament willed it. In Abuja, a statute falls because nine justices found it outside the ..."

Problem 3 — Courts and Criminal Law Compared

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Courts and fact-finding; Criminal law's form; Prosecution and process. 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 theft trials, one in Leeds and one in Lagos, open the same week. In Leeds twelve citizens will decide; in Lagos one judge, with reasons. The elements read to each tribunal are ..."

Problem 4 — Law Reform and the Two Futures

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Reform machinery; What each may learn. 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 Nigerian committee, drafting a sentencing reform, reads the British guidelines, the Nigerian appellate cases, and the local prison statistics together, and produces a scheme that..."

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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