THE LAWS OF AMERICA — A TEACHING VERSION

A Teaching Version — Prof Samba Online University of Nigeria

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IMPRINT

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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 American Constitution's Structure

The United States Constitution of 1787 is the world's oldest working written constitution. This chapter teaches its structure and principles in general words: federalism, separation, checks, rights, and amendment.

A written constitution, supreme

America's constitution is written, entrenched, and supreme — the closest cousin of Nigeria's in form. Its first articles build the organs: a Congress of two Houses, a President, and a federal judiciary; its amendments carry the rights. Judicial review — the courts' power to strike down legislation — was established by the Supreme Court's own landmark reasoning in the republic's youth and is the system's keystone.

Where Britain trusts Parliament, America and Nigeria trust a text guarded by courts. The American text is far shorter and far harder to amend than Nigeria's — brevity and rigidity are its character.

Federalism doubled

American federalism divides power between the Union and fifty states, each with its own constitution, legislature, courts, and criminal law. Most ordinary law — crime, contract, property, family — is state law; the federal government's powers are enumerated, the residue reserved to the states or the people by the Tenth Amendment's declaration.

The supremacy clause makes valid federal law prevail over state law — the covering-the-field doctrine of the Nigerian student, in its American original.

Rights and amendment

The Bill of Rights — the first ten amendments — binds the federal government, and the Fourteenth Amendment has carried most of its guarantees against the states: speech, religion, arms in the modern reading, security against unreasonable search, due process, equal protection. Rights litigation is the American courts' daily bread, and the Supreme Court's rights cases are the world's most argued jurisprudence.

Amendment requires two-thirds of Congress and three-fourths of the states — a door so heavy that the constitution changes more by interpretation than by amendment, which is why its interpreters are so powerful.

Worked example

An American state law restricting a federally protected right falls in court, struck down under a constitution older than the republic's expansion westward. The Nigerian judge striking down a state law under his own constitution performs the same office with a younger text. The kinship is real — and the differences, of age, brevity, and amendment's weight, are the comparison volume's material.

Discussion questions

• What are America's three constitutional characters beside Nigeria's?

• What does the Tenth Amendment declare?

• Why does amendment's difficulty empower interpreters?

Chapter summary

In this chapter you have studied the following ground. The United States Constitution of 1787 is the world's oldest working written constitution. On a written constitution, supreme: America's constitution

is written, entrenched, and supreme — the closest cousin of Nigeria's in form. On federalism doubled: American federalism divides power between the Union and fifty states, each with its own constitution, legislature, courts, and criminal law. On rights and amendment: The Bill of Rights — the first ten amendments — binds the federal government, and the Fourteenth Amendment has carried most of its guarantees against the states: speech, religion, arms in the modern reading, security against unreasonable search, due process, equal protection. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — American Courts — Federal and State

America runs two court systems side by side. This chapter teaches the federal pyramid, the state systems, and the jurisdiction questions their coexistence breeds.

The federal pyramid

District courts try federal cases; circuit courts of appeals — thirteen circuits — hear appeals; the Supreme Court of the United States crowns the system, choosing its cases by certiorari, hearing a small number each year and deciding the law for all. Federal judges are appointed by the President with the Senate's consent, for life — independence protected by tenure to a degree beyond the British or Nigerian pattern.

Federal jurisdiction is limited: federal questions and diversity of citizenship between states are its great heads. A case outside them belongs to the state courts, however important it feels.

The state systems

Each state runs its own courts — trial courts of general jurisdiction, intermediate appeals in most states, and a state supreme court final on state law. State judges are often elected — a feature that startles the Commonwealth student and anchors the American debate about judicial independence and accountability.

The two systems interlock: state courts decide federal questions daily, reviewable by the US Supreme Court only on the federal point; federal courts apply state law in diversity cases, predicting the state supreme court's answer.

Juries and adversaries

The jury — civil as well as criminal in many courts — is constitutionally entrenched, and the adversary system reaches its fullest form: party-controlled evidence, plea bargaining resolving most criminal cases without trial, and discovery of a breadth unknown to Nigerian practice. The comparison volume weighs the adversary extreme against Nigeria's judge-led balance.

Worked example

A contract dispute between a New Yorker and a Californian, over a federal threshold sum, is filed in federal court under diversity — a state-law case in a federal courtroom, decided by state contract doctrine that the federal judge must predict from the state supreme court's cases. The scene is impossible in Nigeria's single hierarchy, and it is America's ordinary Tuesday.

Discussion questions

• Name the federal pyramid's three levels.

• What are federal jurisdiction's two great heads?

• Why do state judicial elections startle the Commonwealth student?

Chapter summary

In this chapter you have studied the following ground. America runs two court systems side by side. On the federal pyramid: District courts try federal cases; circuit courts of appeals — thirteen circuits — hear appeals; the Supreme Court of the United States crowns the system, choosing its cases by certiorari, hearing a small number each year and deciding the law for all. On the state systems: Each state runs its own courts — trial courts of general jurisdiction, intermediate appeals in

most states, and a state supreme court final on state law. On juries and adversaries: The jury — civil as well as criminal in many courts — is constitutionally entrenched, and the adversary system reaches its fullest form: party-controlled evidence, plea bargaining resolving most criminal cases without trial, and discovery of a breadth unknown to Nigerian practice. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — American Criminal Law in Outline

Crime in America is mostly state law, codified state by state, with a federal criminal law beside it. This chapter teaches its general principles and its distinctive institutions.

Codes and the Model Penal Code

Each state has its penal code; the Model Penal Code — a scholars' model of the 1960s — reshaped most of them, grading culpability into purpose, knowledge, recklessness, and negligence with a precision the Nigerian codes' intention-and-knowledge language approaches from another tradition. Federal criminal law covers the federal fields — interstate crime, federal property, national offences — and has grown vast.

The elements doctrine matches the student's own: act, culpability, causation, and the defences — self-defence, insanity in its federal and state forms, duress — with the burden on the prosecution beyond reasonable doubt under the constitution's due process.

Distinctive institutions

Plea bargaining disposes of the great majority of prosecutions: the accused pleads guilty to a lesser charge or a recommended sentence, waiving trial. Its efficiency and its coercion are debated in the same breath by its own scholars. The grand jury screens federal indictments; the preliminary hearing and the arraignment structure the road to trial.

Capital punishment survives in a shrinking number of states and federally, under a constitutionality settled — for now — by the Supreme Court with elaborate procedural conditions; many states have

abolished it, and the map of its survival is a map of America's federalism in moral form.

Sentencing

Sentencing runs from probation through imprisonment to, in the retaining states, death; guidelines systems — advisory federally since the Court's ruling — structure discretion; mandatory minimums withdraw it for defined offences. The American incarceration rate is the system's most criticised statistic, and its reform debate is a standing lesson in sentencing policy's consequences.

Worked example

A prosecutor offers an accused a plea to two years against a trial exposure of fifteen. The accused, maintaining innocence, takes the plea. American scholars argue over the scene in their journals: the system's engine and its injustice in one transaction. The Nigerian student, whose system barely knows the institution, should study it as the adversary system's logical fruit — efficiency enthroned, with a price list attached.

Discussion questions

• What four culpability grades does the Model Penal Code teach?

• What share of prosecutions does plea bargaining resolve, and what is the debate?

• Why is the death penalty's map a map of federalism?

Chapter summary

In this chapter you have studied the following ground. Crime in America is mostly state law, codified state by state, with a federal criminal law beside it. On codes and the Model Penal Code: Each state

has its penal code; the Model Penal Code — a scholars' model of the 1960s — reshaped most of them, grading culpability into purpose, knowledge, recklessness, and negligence with a precision the Nigerian codes' intention-and-knowledge language approaches from another tradition. On distinctive institutions: Plea bargaining disposes of the great majority of prosecutions: the accused pleads guilty to a lesser charge or a recommended sentence, waiving trial. On sentencing: Sentencing runs from probation through imprisonment to, in the retaining states, death; guidelines systems — advisory federally since the Court's ruling — structure discretion; mandatory minimums withdraw it for defined offences. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — American Contract and Land in Outline

American contract law is state common law disciplined by a famous code for goods; its land law is a recording system built for a continent of buyers. This chapter teaches both in outline.

Contract and the Uniform Commercial Code

General contract doctrine — offer, acceptance, consideration, the Statute of Frauds — matches the Commonwealth pattern, with American accents: promissory estoppel stands taller, good faith is codified as an obligation in performance, and the mailbox rule and the battle of the forms are governed for goods by the Uniform Commercial Code's Article 2 — a model code enacted, with variations, in nearly every state.

The Restatements — the American Law Institute's systematic statements of common law — are America's substitute for a code in contract and torts: not enacted, but cited by courts as near-authority, an institution with no Commonwealth twin.

Land and recording

American land law knows the same estates — fee simple, life estate, leasehold — carried west from England. Its distinctiveness is the recording system: deeds are recorded in county registries, and priority turns on record notice under race, notice, and race-notice statutes varying by state. Title insurance — a private industry insuring the register's gaps — is the system's commercial signature.

Zoning — the municipal division of land into use districts, upheld by the Supreme Court in the 1920s — is America's great land-use

institution, where Nigeria's answer is the Land Use Act's public trust. The comparison could not be sharper: one system zones private land; the other vested radical title in the state.

Torts in passing

American tort law — negligence, strict products liability in its boldest form, mass torts, and damages at levels that astonish foreign observers, including punitive damages of constitutional dimension — deserves the student's study as the common law's most experimental laboratory, whose results other systems adopt selectively and at their own pace.

Worked example

A buyer in Texas insures his title rather than investigating it for thirty years; a buyer in Makurdi investigates and perfects. Each system spends the buyer's money where its own weakness lies — America's on the register's unreliability, Nigeria's on the consent gate. Land systems, like bridges, reveal their engineers' fears.

Discussion questions

• What is a Restatement, and what authority does it carry?

• How do American recording statutes decide priority?

• Contrast zoning with the Land Use Act as land-use philosophies.

Chapter summary

In this chapter you have studied the following ground. American contract law is state common law disciplined by a famous code for goods; its land law is a recording system built for a continent of buyers. On contract and the Uniform Commercial Code: General contract doctrine — offer, acceptance, consideration, the Statute of Frauds — matches the Commonwealth pattern, with American accents:

promissory estoppel stands taller, good faith is codified as an obligation in performance, and the mailbox rule and the battle of the forms are governed for goods by the Uniform Commercial Code's Article 2 — a model code enacted, with variations, in nearly every state. On land and recording: American land law knows the same estates — fee simple, life estate, leasehold — carried west from England. On torts in passing: American tort law — negligence, strict products liability in its boldest form, mass torts, and damages at levels that astonish foreign observers, including punitive damages of constitutional dimension — deserves the student's study as the common law's most experimental laboratory, whose results other systems adopt selectively and at their own pace. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — The American Legal Profession

America's profession is fused, numerous, and educated through graduate law schools. This chapter teaches its shape: education, admission, practice, and judges.

Education and admission

The American lawyer first takes a bachelor's degree in anything, then a three-year Juris Doctor at a law school accredited by the American Bar Association, then passes a state bar examination — admission is state by state, and the lawyer is, in form, an officer of one state's courts, practising federally and across states by the admission rules' courtesies.

The case method — students interrogated on appellate opinions, the Langdell inheritance — dominates the first year, making the American classroom the common law's purest teaching machine and, its critics add, its narrowest.

Practice's shape

The profession is fused — every lawyer may advise and advocate — and vast: great firms of thousands, solo practitioners, public defenders and prosecutors in salaried service, and a contingent-fee system in personal injury that finances access by sharing recovery. Advertising, once forbidden, is constitutionally protected commercial speech within regulation — a First Amendment signature on the profession's economics.

Judges reach the bench by appointment in the federal system and, in many states, by election — the profession's democratic experiment, debated in the terms the Courts chapter raised.

Ethics

State bars discipline under rules modelled on the Association's Model Rules: confidentiality, conflicts, candour to the tribunal — the same triad as Nigeria's Rules, in another dialect. The student comparing professions will find the duties constant and the structures divergent: that is comparative law's usual finding, and its comfort.

Worked example

An American law student spends her first semester being questioned, Socratically, on nothing but appellate cases — no code, no textbook as authority. A Nigerian student spends his on statutes and codes with cases upon them. Each is being taught where his system's law truly lives: hers in the courts' reasons, his in the enacted text as the courts apply it. Pedagogy is jurisprudence in disguise.

Discussion questions

• Trace the American road to admission.

• What is the case method?

• In what sense is pedagogy jurisprudence in disguise?

Chapter summary

In this chapter you have studied the following ground. America's profession is fused, numerous, and educated through graduate law schools. On education and admission: The American lawyer first takes a bachelor's degree in anything, then a three-year Juris Doctor at a law school accredited by the American Bar Association, then passes a state bar examination — admission is state by state, and the lawyer is, in form, an officer of one state's courts, practising federally and across states by the admission rules' courtesies. On practice's shape: The profession is fused — every lawyer may advise and advocate — and

vast: great firms of thousands, solo practitioners, public defenders and prosecutors in salaried service, and a contingent-fee system in personal injury that finances access by sharing recovery. On ethics: State bars discipline under rules modelled on the Association's Model Rules: confidentiality, conflicts, candour to the tribunal — the same triad as Nigeria's Rules, in another dialect. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Rights in the American Courts

American rights law is the world's most developed constitutional litigation. This chapter teaches its working doctrines in general words: scrutiny, incorporation, and the great rights' modern shapes.

Levels of scrutiny

American courts test rights limitations by tiers: rational-basis review for ordinary legislation, which almost everything survives; strict scrutiny for fundamental rights and suspect classifications — compelling interest, narrow tailoring — which almost nothing survives; and intermediate scrutiny between. The tier chosen is usually the case decided, and American advocacy is largely the art of the tier.

Nigeria's rights adjudication, working from its constitution's limitation clauses, reasons more openly in proportionality's terms — the comparison of the two techniques is a study in how doctrine hides and reveals judgment.

Incorporation

The Bill of Rights originally bound only the federal government; the Fourteenth Amendment's due process clause has carried — incorporated — most of its guarantees against the states, right by right across the twentieth century. Incorporation is the process by which America nationalised its rights floor while leaving its ordinary law to the states.

Speech, religion, criminal procedure, and arms are the incorporated heartland; the unincorporated remainder is a short and famous list.

The rights in modern shape

Free speech doctrine — content-based restrictions presumptively void, the public forum, the incitement test requiring imminent lawless action — is the world's most speech-protective jurisprudence and the comparison every expression case invites. Criminal-procedure rights — search warrants, the exclusionary rule, Miranda's warnings, the right to counsel — are enforced by remedies, notably exclusion of evidence, that Nigerian law achieves by different balances.

The rights revolution of the mid-twentieth century and the contests since are America's continuing constitutional convention, held in its courtrooms.

Worked example

Police search a home without a warrant and find the evidence that convicts. The American court excludes it — not because it is unreliable, but because the exclusionary rule prices the constitutional breach. A Nigerian court, weighing the same scene, has historically admitted reliable evidence and disciplined the breach by other roads. Two systems, one constitutionally protected home, two remedial philosophies: the comparison is the doctrine.

Discussion questions

• Name the three tiers of scrutiny and their usual outcomes.

• What did incorporation carry, and through which clause?

• How do the two systems remedy an unlawful search differently?

Chapter summary

In this chapter you have studied the following ground. American rights law is the world's most developed constitutional litigation. On levels of scrutiny: American courts test rights limitations by tiers: rational-basis

review for ordinary legislation, which almost everything survives; strict scrutiny for fundamental rights and suspect classifications — compelling interest, narrow tailoring — which almost nothing survives; and intermediate scrutiny between. On incorporation: The Bill of Rights originally bound only the federal government; the Fourteenth Amendment's due process clause has carried — incorporated — most of its guarantees against the states, right by right across the twentieth century. On the rights in modern shape: Free speech doctrine — content-based restrictions presumptively void, the public forum, the incitement test requiring imminent lawless action — is the world's most speech-protective jurisprudence and the comparison every expression case invites. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 7 — Revision: The American Map

The closing chapter rebuilds the American system: a brief supreme constitution, dual courts, state crime, a commercial code, a fused graduate profession.

The whole in one view

America: the oldest written constitution, harder to amend than any; two court systems in daily interlock; criminal law in fifty codes; contract disciplined by a uniform code for goods; land by recording and insurance; a fused profession admitted state by state after graduate study; juries, plea bargaining, and elected judges as its distinctive institutions. It is the common law's other great experiment — grown from the same root as Nigeria's law, in opposite institutional weather.

The wing's road now turns to the comparison studies, where Britain and America are each set beside Nigeria across the six fields the owner appointed: constitutions, courts, criminal law, contract, land, and the profession.

Worked example

Stand the three systems in one line — Britain's sovereign Parliament, America's entrenched brevity, Nigeria's detailed supremacy — and the world's constitutional choices arrange themselves as variations on a single problem: how a people binds its governors. The comparisons that follow are that problem, worked field by field.

Discussion questions

• Recite the American map's elements.

• What single problem do the three constitutions vary?

• Why is America called the common law's other great experiment?

Chapter summary

In this chapter you have studied the following ground. The closing chapter rebuilds the American system: a brief supreme constitution, dual courts, state crime, a commercial code, a fused graduate profession. On the whole in one view: America: the oldest written constitution, harder to amend than any; two court systems in daily interlock; criminal law in fifty codes; contract disciplined by a uniform code for goods; land by recording and insurance; a fused profession admitted state by state after graduate study; juries, plea bargaining, and elected judges as its distinctive institutions. 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 American Constitution's Structure

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: A written constitution, supreme; Federalism doubled; 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 state law restricting a federally protected right falls in court, struck down under a constitution older than the republic's expansion westward. The Nigerian judge stri..."

Problem 2 — American Courts — Federal and State

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The federal pyramid; The state systems; Juries and adversaries. 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 contract dispute between a New Yorker and a Californian, over a federal threshold sum, is filed in federal court under diversity — a state-law case in a federal courtroom, decide..."

Problem 3 — American Criminal Law in Outline

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Codes and the Model Penal Code; Distinctive institutions; Sentencing. 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 prosecutor offers an accused a plea to two years against a trial exposure of fifteen. The accused, maintaining innocence, takes the plea. American scholars argue over the scene i..."

Problem 4 — American Contract and Land in Outline

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Contract and the Uniform Commercial Code; Land and recording; Torts in passing. 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 buyer in Texas insures his title rather than investigating it for thirty years; a buyer in Makurdi investigates and perfects. Each system spends the buyer's money where its own w..."

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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