

# **INTRODUCTION TO LEGAL LITERACY IN NIGERIA**



**(Understanding the Nigerian Legal System)**

**Edited by\***

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**\*Based upon the original work *A Guide to Legal Literacy, Understanding the U.S. Legal System, 2001* and reprinted by permission of The State Bar of California, State of California, United States of America**

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## Foreword

I am particularly honoured to have been invited to write the forward to the first of many books that will ultimately be written by Emeka Maduewesi, a United States of America based attorney. I have known Emeka Maduewesi for twenty-two years. In the Faculty of Law, University of Nigeria, where we met in 1982 as classmates, we prophetically called him “Maduwest” (a man of the west) which his present sojourn in the U.S. has actualised.

Reflecting on our days on the last floor of WH wing of Adelabu Hall, I am certainly not surprised with the incisive writings and intellectual outpouring of Emeka Maduewesi. His scholarly qualities were manifest even then, in the quality of his arguments and contributions to legal debates. His articles in ThisDay Newspaper and many other journals follow the same path of distinction.

This present work is a further demonstration of the passion of Mr. Maduewesi in contributing to the body of knowledge. The power of knowledge is inestimable and he who adds to the body of knowledge enhances the power of knowledge. Introduction to Legal Literacy in Nigeria (Understanding The Nigeria Legal System) clearly explains, in very simple style and language, the legal process in both the criminal and civil proceedings, including the mechanism and institutions from which laws are introduced.

Everyone in every society will have no option but to contend with laws and the legal system. It is therefore necessary to provide an insight to the public on how this essential aspect of everyday life operates. In the words of Roscoe Pound, Dean Emeritus of Harvard law school, in his treatise The Lawyer from Antiquity to Modern Times published in 1953 American Bar Association’s survey of the legal profession:

“Throughout the history of civilisation there have been abortive attempts to set up or to maintain a polity without law. Every utopia that has been pictured has been designed to dispense with lawyers. This has been manifest particularly in the ideal schemes imagined after Revolutions. The organised legal profession was abolished following the French revolution and again after the Russian revolution. In each case the attempt proved vain”.

If the reality is that we must operate in a society where laws are indispensable, now is the time to put everyone in the know of concepts and processes of law in a work devoid of technicalities and citations.

In my first discussion with Mr. Maduewesi about his book, he hinted to me that when published, the book will not be sold, but will be distributed free to schools, colleges, and civil society organisations. What patriotism is greater than that?

I respectfully recommend this book to those who will receive copies. Non lawyers will find this work an invaluable companion. To first year law students it will be a major foundation, and to practising lawyers, a refresher document.

**Senator Ike Ekweremadu**  
**Chairman Senate Committee on Housing and Urban Development**  
**National Assembly Abuja -Nigeria**  
**February 2004.**

## Introduction

Majority of Nigerians, like most people all over the world, encounters the legal system only when they are experiencing a serious problem. Perhaps a person or a loved one has been arrested. A person may be sued for money, such as when there are unpaid debts or a breach of contract. Maybe there is a divorce or a fight over child custody or paternity. Sometimes it is a death and the need for probate to have a will approved, or the property of the deceased distributed by a court, if there was no will. A serious injury, maybe on the job or in a car accident, often prompts a lawsuit.

Thus, people often deal with the legal system when they are experiencing great stress and are least able to deal with a complex bureaucracy, with a language of its own and procedures that are foreign to the non-professional.

The purpose of this publication is to provide a description of the legal system in clear language for non-lawyers. The focus is on answering basic questions: where do laws come from; how is the legal system structured; how do cases come to court and what happens there; who are the participants in the legal system and what is their role; how are legal proceedings conducted?

I have also included a collection of most of the commonly used Latin phrases and maxims. The purpose is to demystify legal documents, including official court records, making it easy for any non-lawyer to read, even when the document contain such phrases or maxims.

I sincerely hope that this publication will make it easier for non-lawyers to appreciate the legal system more and prepare them for whatever legal problems life may throw into their path.

Please note that this publication is not a substitute for a lawyer. Always seek legal advice from a lawyer admitted to practice and active in your jurisdiction.

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## Chapter 1.

### WHERE NIGERIAN LAWS COME FROM

#### The Constitution

The Constitution of the Federal Republic of Nigeria is the ultimate source of authority for all laws. The current Constitution, which was adopted in 1999, creates the government and divides power among three separate and equal branches: the Executive (the President and State Governors), the Legislature (the National and States Assembly), and the Judiciary (the Federal and State courts).

Through this separation of powers, the framers of the Constitution sought to prevent any one branch from becoming too strong and abusing its power. The Constitution also established a national federal government, governments in each state, and local governments for each local government area. This arrangement of dividing power among levels of government is termed federalism.

The Constitution enumerates the broad areas where the federal government can legislate, with the remaining matters left to state and local control. Therefore, although the federal government has the authority to act in numerous areas, most laws are adopted by state and local governments.

State and local laws range from prohibiting crimes such as murder and rape to regulating land use through local zoning ordinances and issuing Certificates of Occupancy. The Nigerian Constitution and the federal laws are the "supreme law of the land," meaning that no state or local laws may violate or be inconsistent with them.

#### Legislatures

Federal laws are created when a bill is passed by both federal houses (the Senate and the House of Representatives is the National Assembly) and must be presented to the President (the head of the executive branch), for signature or veto. If a bill is vetoed, the National Assembly can override the President by a 2/3 vote of both houses. Laws adopted through this process are called "Acts" or statutes, and Federal Acts cover an almost infinite variety of subjects, ranging from payment of custom duties and taxes, to establishing airports and schools, protecting the environment, prohibiting illegal drug importation or distribution.

Each state has its own legislative and executive branch, which respectively make and implement laws within that state. Laws made by one state do not apply to another state, but many states have identical laws.

Most laws in Nigeria were adopted from the British common law or enacted by the military as Decrees and Edicts for the federation and states respectively. All un-repealed Decrees are now Acts of the National Assembly while all un-repealed Edicts are laws of the respective states that enacted them. These un-repealed decrees and edicts, which were in existence before the coming into effect of the 1999 Constitution, are also called "existing laws".

## **Customary Law and Islamic Law**

Customary Law as well as Islamic Law (Sharia) is also applicable in Nigeria, especially in matters of land ownership, marriage, succession, and inheritance. Customary law consists of customs accepted by members of a community as binding among them. Customary laws were as varied as there were ethnic groups and there was no uniformity in the content of the laws across the country. Customary law required proof of its existence before it could be admitted as customary law and enforced. After proof of existence, customary law must undergo and pass what became known as the “repugnancy” test. To be enforceable, customary law must not be repugnant to natural justice, equity, and good conscience.

Sharia is the body of religious law governing Islam. Islam draws no distinction between religious and secular life, and hence Sharia covers not only religious rituals and the administration of the faith, but every aspect of day-to-day life. Sharia has been part of the laws in the Northern part of Nigeria since the Fulani Jihad.

## **Regulatory Agencies**

There are federal agencies, such as the National Agency for Food and Drug Administration (NAFDAC), the Federal Environmental Protection Agency (FEPA), the Nigerian Drug Laws Enforcement Agency (NDLEA), Federal Airports Authority of Nigeria (FAAN) that are a part of the executive branch and make rules that have the effect of laws. Federal statutes give power to these agencies to make rules because of the difficulty of having detailed and technical matters handled by a non-expert, overburdened National Assembly.

Although established by the legislature, regulatory agencies are part of the executive branch. They make regulations to enforce laws passed by the legislature. These regulations have the force of law and have the same authority as laws created by the legislature. For instance, NAFDAC regulates the importation, manufacturing and distribution of drugs and medical devices to protect the public's safety and health, the FAA regulates the use of airports, and the Federal Road Safety Commission (FRSC) administers the automobile registration system and licensing of drivers.

State legislatures also have created state agencies that can make rules regulating areas such as health and the environment.

## **Courts and the Power of Judicial Review**

The judicial powers of the federation are vested on the courts established for the federation while the judicial powers of a State are vested on the courts established for the State, as provided by the Constitution. Courts established by the Constitution for the Federation, the states and the Federal Capital Territory are the only Courts of record in Nigeria. These courts are:

1. The Supreme Court;
2. The Court of Appeal;
3. The Federal High Court;
4. The High Court of a State and of the Federal Capital Territory

5. The Sharia or the Customary Court of Appeal of the Federal Capital Territory
6. The Sharia or the Customary Court of Appeal of a State.

The Supreme Court has held that federal or state high courts with requisite jurisdiction on an issue may declare unconstitutional and invalidate federal or state laws that are inconsistent with the Constitution. The power of judicial review is one of the most important powers of the judicial branch of government. For example, if the National or State Assembly enacts a law prohibiting religious worship, the federal or state high court could declare this unconstitutional as violating the constitutionally protected free exercise of religion.

Laws adopted by state and local governments also must not violate the Nigerian Constitution, nor can they be inconsistent with federal law. The Constitution and all laws and treaties made pursuant to it are the supreme law of the land and if there is a conflict between federal and state law, federal law prevails. This rule does not apply if the Federal law pertains to a matter with respect to which the State Assembly alone has power to make laws.

Any exercise of power by the federal or State executive must not violate the constitution. The court may declare the exercise of power by the President or Governor as unconstitutional if such action violates the Constitution.

Some law is entirely created by courts. For example, much of the law concerning contracts, legal agreements among people, and torts (the ability of people to recover from others for injuries), is judge-made. This judge-made law originated from England and sometimes called "common law" evolves on a case-by-case basis through the growth of precedent. Common law of England is part of our British heritage and forms part of our law. Legislatures by statute can change judge-made law or common law when they deem reform appropriate.

## **Chapter 2.**

### **HOW CASES COME TO COURT**

#### **Function of Courts**

Courts are an independent branch of government that exist to interpret laws, to enforce the laws, to resolve disputes, and to protect the rights people have as citizen of the Federal Republic of Nigeria. All levels of government, federal, state, and local, make laws that prohibit certain behaviour and order punishment such as imprisonment for violations. If a person violates such a law, for example by committing an unlawful killing, the person is prosecuted in court for murder. An important function of the court is to determine if the person is guilty and, if so, to impose the appropriate punishment.

Another crucial responsibility of courts is to settle disputes or render judgment between people. Disagreements are inevitable in any society. A peaceful forum for resolving disputes is essential to prevent violence and insure fairness. There are countless types of disagreements, which might develop; some are financial, while others are a result of injuries inflicted accidentally or intentionally. Society relies on the courts to serve as a neutral decision-maker to resolve conflicts.

Courts also play a very important role in preventing the government from abusing its power. The Constitution guarantees every person basic rights, such as freedom of speech and religion. History shows that governments frequently act out of their own self-interest and violate individual rights. Courts exist to check government power by halting infringements of liberty and compensating those who have been injured by government wrongdoing.

#### **Initiation of Proceedings (Differences between Criminal and Civil Cases)**

Lawsuits brought by the federal or state government to prosecute a person for violating a law are termed criminal cases. Although people can file complaints with the police, only the government can investigate that complaint. In addition, only the government can initiate a criminal case in court, unless an attorney is granted fiat for that purpose by the Attorney-General.

Government officials, called prosecutors, decide to file criminal charges in court against a person or corporation. Prosecutors at the federal level generally work in the Federal Attorney-General's office, which is a part of the Federal Ministry of Justice. At the state level, prosecutors are usually part of the state Attorney-General's office. In either case, prosecutors are under the supervision of the Director of Public Prosecution (DPP). In some states, police prosecutors are allowed to initiate and prosecute some cases in magistrate or area courts.

The term civil suits refer to cases brought by people against other people, or businesses, or even against the government to recover compensation for injuries or to halt injurious practices. If a person sues a doctor for making a mistake (called a malpractice suit), a civil suit is filed. Legal actions to assert title to land or to obtain a

divorce are civil suits, too. Whenever people sue each other for money or for an injunction (a court order commanding certain behaviour to stop) a civil suit is used.

Cases come before a court when an application for summons is filed. Any person can file a civil suit in court. Even the government can file a civil suit against individuals or businesses such as when it wants to collect money it believes it is owed. Any tier of the government may bring a civil suit against the other in the appropriate court to resolve a constitutional issue like revenue allocation or for boundary adjustment.

To file a lawsuit, a filing fee must be paid. Waivers may be granted for the indigent in proceeding in forma pauperis. Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as the court may seem right. Any person admitted to sue or defend in forma pauperis shall not be liable to pay or be entitled to receive any costs unless the court otherwise orders

### **Asserting Constitutional Rights**

People can assert their constitutional rights in both criminal and civil cases. For example, a person being prosecuted for a crime can argue in defence that the government acted in violation of the Constitution, for instance, by conducting a search without a search warrant. The Supreme Court has held that evidence obtained as the result of an illegal police search usually cannot be used as evidence. An accused in a criminal case can raise his or her constitutional rights by asking the court to exclude evidence that was obtained unconstitutionally.

Alternatively, people can sue the government for violating their rights and stop the government's action or receive compensation for their injuries. This is called Fundamental Rights enforcement Proceedings. For instance, if the government adopts a law preventing political demonstrations in a park, people might go to court challenging the government's action as violating the constitutionally guaranteed freedom of assembly and speech.

## **Chapter 3.**

### **TYPES OF COURTS**

#### **Federal and State Courts**

There are two types of courts in Nigeria: federal and state. If a court is created by the Constitution, it is called a constitutional or superior court. The Constitution and other laws provide the details of what types of cases can be filed in each type of court. Federal courts are specialized court and only very limited types of matters can be brought in federal court. The Federal High Court, as a court of first instance hears some cases against individuals or corporations that violate federal laws. Most federal laws exist in areas where the Federal Government has special interest like banking, bankruptcy, customs, maritime, immigration, etc. The Court of Appeal and the Supreme Court hears only appeals and very limited inter-state cases at first instance.

On the other hand, State High Courts hear most types of cases unless the Constitution or other federal law expressly provide otherwise. State High Courts are sometimes granted jurisdiction to hear federal criminal matters. The High Court of the Federal Capital Territory is the federal equivalent of a state high court.

Magistrates' Customary and Area (Sharia) courts are places where people file claims for disputes involving relatively small sums of money or touching on the customs of the people or Islamic personal laws respectively. In many states, these courts also hear non-homicidal criminal cases as limited by the constitution or the laws establishing them.

#### **Administrative Proceedings**

Some disputes are resolved not by courts, but rather by government administrative agencies that have the responsibility for administering particular laws. Administrative agencies exist at all level of government -- federal, state, and local. At the federal level, there the Industrial Arbitration Panel and the National Industrial Court.

Generally, individuals who lose in administrative proceedings can seek review of the decision in a court. Generally, courts defer to the administrative ruling unless it was arbitrary, capricious, or a violation of law. For example, an importer whose goods were seized by the Board of Customs may challenge such seizure in court.

#### **Alternative Dispute Resolution**

At times, people attempt to resolve their disputes, without going to a court, through various methods called "Alternative Dispute Resolution (ADR)." One of the most widely used forms of ADR is called arbitration. In arbitration, people submit their disputes to a third party, who is not a judge in a court, to make a decision. An increasing number of contracts, ranging from employment contracts to contracts with doctors and hospitals for medical services, contain provisions requiring that disputes arising under them must be submitted to arbitration.

Also, some laws require arbitration of particular kinds of disputes. Arbitration has the advantage of simpler procedures and quicker resolution of disputes as compared to trying a lawsuit in court. On the other hand, many procedural protections that are present in courts may not be present in arbitration and other forms of ADR.

Another widely used form of ADR is mediation. In mediation, a third party works to help the parties agree to a settlement of their dispute. An arbitrator usually has the power to decide the matter; a mediator lacks this authority and acts to facilitate a compromise among the parties.

## **Steps in a typical Mediation Session**

### **Step 1** *Introduction*

The mediator sets the parties at ease and explains the ground rules. The mediator's role is not to make a decision but to help the parties reach a mutual agreement. The mediator explains that he or she will not take sides.

### **Step 2** *Telling the Story*

Each party tells what happened, the person bringing the complaint tells his or her side of the story first. NO interruptions are allowed. Then the other party explains his or her version of the facts.

### **Step 3** *Identifying Facts and Issues*

The mediator attempts to identify agreed upon facts and issues. This is done by listening to each side, summarizing each party's view, and asking if these are the facts and issues, as each party understands them.

### **Step 4** *Identifying Alternative Solutions*

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each possible solution.

### **Step 5** *Revising and Discussing Solutions*

Based on the expressed feelings of the parties, the mediator revises possible solutions and attempts to identify a solution that both parties can agree to.

### **Step 6** *Reaching Agreement*

The mediator helps the parties reach an agreement that both can live with. The agreement should be written down. The parties should also discuss what would happen if either of them breaks the agreement.

## Chapter 4

### THE STAGES OF A CASE BEFORE TRIAL

#### CRIMINAL CASE

##### Arrest

An arrest occurs when the police take custody of a person upon suspicion of having committed a crime. At the time of arrest, a person has to be informed of certain basic rights. This is the Judges' rule and constitutionally protected. As is always shown on television and in the movies, the police must tell the suspect that he or she has the right to remain silent, that anything said can be used against the person in a court of law, and that the person has a right to an attorney and that one will be provided if the person cannot afford one. To protect the privilege against self-incrimination (the right to not testify against one's self) as provided in the Constitution, these warnings must be given to every person after arrest and before any questioning begins.

##### Arraignment

The Constitution provides also that after an arrest, that person must be brought before a Magistrate or Judge within 48 hours. This appearance is called an arraignment. At the arraignment, the person is informed of the charges and asked to plead either "guilty" or "not guilty". The judge also has the discretion to determine whether there is an adequate reason to charge the person with having committed a crime. If an accused pleads "guilty", there would be no trial but the judge may ask for a review of the evidence to ensure that there was no miscarriage of justice. The accused is then sentenced accordingly.

##### Bail

On the other hand, if the accused pleaded "not guilty", the judge will set bail. Bail is constitutionally protected and is an extension of the presumption of innocence. Bail is the amount of money or property a person must sign to pay as a guarantee to appear for trial in order to be released before trial and may be with or without surety. The basic purpose of bail is to give the accused a strong incentive to show up for trial; if the person flees or does not appear at the trial, the bail is forfeited.

##### The Constitution and excessive bail

The Constitution prohibits excessive bail. The amount of bail depends on the nature of the offence, the accused prior criminal record, the likelihood the accused will interfere with any further investigation of the case, and the court's assessment of the likelihood that the accused will flee or pose a continuing threat to the community.

## **CIVIL LAWSUIT**

### **The Pleadings**

A civil case proceeds quite differently from a criminal case before trial. A civil suit begins with the filing of an Application for Writ of Summons to issue. This is like filing a complaint in court. The person who files the complaint is called the plaintiff, and the person who is sued is called the defendant. For example, a person injured in an automobile accident is the plaintiff in a suit against the person driving the other car, the defendant, to recover money to pay for doctors' bills and car repairs.

Occasionally, the terminology may be different. In divorce cases (properly called Matrimonial Causes), the person filing for divorce is called the petitioner, and the other spouse is the respondent; the divorce proceeding is initiated by filing a petition for dissolution of the marriage.

After a civil suit is filed in court, the defendant must be served with a copy of the complaint and a Writ of Summons to appear in court. The defendant files a memorandum of appearance while the plaintiff files a Statement of Claim. The defendant may move to have the case dismissed as lacking any legal basis or the defendant answers the plaintiff's complaint. The answer, called a Statement of Defence, is the defendant's opportunity to file a paper with the court responding to the complaint and asserting any claims the defendant might have against the plaintiff.

If the Defendant asserts any claim against the plaintiff in the Statement of Defence, that claim is called a Counterclaim. The plaintiff will then file a reply and a defence to the Counterclaim. All the papers referred to are called pleadings and are used in the high courts. Magistrates' and other lower courts usually dispense with the requirements for pleadings.

## Chapter 5

### THE TRIAL

#### **The Purpose of Trials**

A trial exists to determine the facts: what happened; who did what to whom when? The rules for trials are designed to assure a fair proceeding, one where both sides have an equal chance to present their arguments and evidence.

Thus, a trial is an orderly presentation of evidence according to preset rules to determine in a criminal case whether the accused violated the law or in a civil case, whether the defendant is liable.

Many of the rules for trials are specified in the Constitution. For instance, the Constitution guarantees an accused the right to confront his or her accusers.

#### **Steps in a Trial**

##### **Direct Examination by Plaintiff or Prosecutor**

Each witness for the plaintiff (in a civil case) or prosecution (in a criminal case) is questioned. Other evidence (e.g., documents, physical evidence) in favour of the plaintiff or prosecutor is presented.

##### **Cross-Examination by Defence**

The defence has the opportunity to question each witness for the plaintiff or prosecution. Questioning is designed to breakdown the story or to discredit a witness in the eyes of the Judge. The Plaintiff or prosecution has a restricted right of re-examination.

#### **Motions**

Motions are procedures by which a party makes application to the court for an order or a ruling on a particular issue. With certain exception, a motion can be made at any time during the action, and any party can make a motion. The format, contents and the procedures to follow for preparation, filing and serving motions are contained in the rules of any court.

If the prosecution/plaintiff's basic case has not been established from the evidence introduced, the accused or the defendant may move a motion asking the Judge to dismiss the case. The Judge can end the case by granting the motion to dismiss (in a civil case) or by entering a no case to answer (in criminal cases).

##### **Examination-in-Chief (Direct Examination) by Defence**

Each witness for the defendant (in a civil case) or accused (in a criminal case) is led in evidence. Other evidence (e.g., documents, physical evidence) in favour of the

defendant or accused is presented through the witnesses, and in rare cases, from the bar.

### **Cross-Examination by Plaintiff**

The plaintiff or prosecutor has the opportunity to question each witness for the defence. As stated above, questioning is designed to breakdown the story or to discredit a witness in the eyes of the Judge. The defence has a very restricted right of re-examination.

### **Closing Statement by Defence**

The defence attorney reviews all the evidence presented (noting un-contradicted facts), states how the evidence has not satisfied the elements of the charge, and how the evidence presented by the defence has cast a reasonable doubt (in criminal cases) or preponderates in favour of the defendant (in civil case). The attorney will ask for a finding of not guilty (in criminal cases) or not liable, for the defendant (in civil cases).

### **Closing Statement by Plaintiff/Prosecutor**

Same as closing statement by the defence, the prosecution/plaintiff has the right to make additional closing arguments. The prosecution/plaintiff reviews all the evidence presented (noting un-contradicted facts), states how the evidence has satisfied the elements of the charge or proved the claim, and how the evidence presented by the defence has not cast a reasonable doubt (in criminal cases) or preponderates in favour of the plaintiff (in civil case). The attorney will ask for a finding of guilty (in criminal cases) or for the plaintiff (in civil cases)-

### **Reply Argument**

The defence has a limited right of reply on points of law only. This means that if the plaintiff/prosecutor referred to any law in the closing argument, the defence has the right to comment on that law. However, the defence will not comment again on any facts of the case.

### **A Further Analysis of Nigeria's Adversary System**

Trials in Nigeria are based around the adversarial system. This concept simply means that all proceedings are a competition between the two sides, the prosecutor and the accused person in a criminal case, plaintiff and defendant in a civil suit. In the adversary system, the parties are responsible for initiating the proceedings, conducting the investigations, and presenting the evidence in court.

Adversary proceedings are designed to allow each side to question the other's witnesses (called cross-examination) and to respond to the other's arguments.

The rationale for the adversary system is that it is thought to be the best way to ascertain the truth. In many countries, a government investigator determines the facts. This approach has great risks: lacking a personal stake in the outcome, the person might not do a thorough job; the investigator's biases might unduly influence his or her

determinations. In contrast, in an adversary system, each side has an incentive to investigate thoroughly and to do its best to make a persuasive case. In addition, the adversary system rests on the premise that truth is most likely to emerge from the competition of ideas. If both sides present their case, the trier of fact is well equipped to decide what happened.

### **The Events at a Trial**

Trials are very much structured in a point, counter-point format. The trial itself begins with the prosecutor (in a criminal case) or the plaintiff's lawyer (in a civil case) presenting evidence to support each element of a case or claim. For instance, in a murder case, the prosecutor must present evidence that the accused killed the victim intentionally, with premeditation. Evidence is simply information that helps establish a fact. Evidence might take the form of witnesses' testimony. For example, there might be a witness who saw the accused shoot the victim. Evidence might be tangible, such as a bullet that matches the accused person's gun. A videotape or photograph of the incident, if they are available, also could be used as evidence.

The defence attorney has the opportunity to cross-examine every witness presented by the prosecutor or plaintiff. After the prosecutor or plaintiff has completed presenting his or her case, the defence attorney then has the opportunity to respond. Actually, the defence attorney is never obligated to say anything. The burden of proof is on the prosecutor in a criminal case and on the plaintiff in a civil proceeding. In other words, the benefit of the doubt presumption always rests with the accused. If the prosecutor or plaintiff cannot meet its burden, the accused or defendant wins.

The accused is never required to prove his or her innocence in a criminal case; same principle applies to a defendant in a civil case. In criminal cases, accused persons are presumed innocent and the prosecutor must establish the accused person's guilt "beyond a reasonable doubt," which is a very difficult burden to meet. The criminal justice system rests on the notion that it is better to release ten guilty people rather than convict one innocent person. The system is thus very much designed to prevent the government from wrongly taking away a person's liberty.

## Chapter 6

### THE ROLE OF ATTORNEYS

Throughout this description of our legal system, reference has been made to attorneys or lawyers. Lawyers, of course, are individuals trained in the law who represent the interests of their clients.

Under the rules of the profession, attorneys must do everything for their clients, within the bounds of the law that they would do for themselves under the circumstances. Attorneys are required to keep secret what they are told by their clients; this is called Attorney-client privilege.

Contrary to the image of lawyers presented in television and movies, most lawyers do not spend the majority of their time in court. In fact, many attorneys never set foot in a courtroom. Most attorneys spend their time giving legal advice, drafting contracts, negotiating agreements, and helping clients solve their legal problems.

No person is required to have a lawyer. A person can always represent himself or herself in court. Nevertheless, there is much truth in the adage that a person who represents himself or herself has a fool for a lawyer. However, a corporation, being an artificial person, must be represented in court by a lawyer.

#### **The Right to an Attorney**

The Constitution guarantees everyone who is charge with a crime the right to have an attorney. While many advanced democracies have interpreted the right to counsel in the Constitution as requiring the government to provide a free lawyer to those who cannot afford an attorney in criminal cases where the sentence can include imprisonment, this is not yet the case in Nigeria. However, the Legal Aid Council and the local Bar Association may have in place a system for the provision of free legal representation for those who cannot afford counsel.

Generally, in civil cases, there is no right to counsel though on rare occasions, an attorney might be appointed for an indigent litigant under the local rules of court in Proceedings in Forma Pauperis.

#### **Your Rights and Responsibilities as a Client**

When you hire an attorney, there are certain rights and responsibilities in the relationship.

As the client, you should:

1. Understand the kind of work the lawyer will do for you.
2. Be very honest and provide all the facts that are relevant to the situation, as well as keep your attorney up-to-date with developments.

3. Get an estimate of how long your case may take.
3. Help your case along by promptly giving your lawyer all the information and papers you have. Continue to give your lawyer additional papers as you receive them.
4. Find out how the lawyer will keep you informed on the progress of your case and how often.
5. Ask your lawyer for a written fee agreement. By law, your attorney must have a written fee agreement if your costs are likely to be more than five hundred Naira. Lawyers use various kinds of fee arrangements; make sure you understand how and for what you will be charged. Also, find out if you are responsible for certain expenses, such as court costs or if you will be charged each time you telephone your lawyer.
6. Ask for the bill at least once a month. Then you will know how much the case is costing as it moves along, and avoid a surprise at the end.
7. Make sure you understand what is involved if a lawyer takes your case on a "contingency" basis. Contingency may mean that the lawyer will be paid from the money actually recovered from the defendant or that you will pay the lawyer a percentage of the money the court awards you, but you may be responsible for costs such as filing fees and transportation. Make sure that the lawyer's percentage is included in the written agreement, what it will be and if it will be taken from the amount before or after the court costs are subtracted.

## Chapter 7

### WHO DECIDES

#### Judges

Judges are always responsible for deciding all cases. It is the duty of a judge to listen to all the evidence and decide a case, applying law to the facts of the case.

Judges are virtually always lawyers except for Sharia or Customary court judges who may or may not be. As pointed out earlier, superior courts are created by the constitution for both Federal and State governments.

Federal judges are appointed by the President on the recommendation of the National Judicial Council. Senate confirmation is an added requirement for Supreme Court Justices and Presidents or Chief Judges of other federal courts.

A person shall not be qualified to hold the office of a Supreme Court Justice unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years. A person shall not hold the office of the Justice of the Court of Appeal unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than twelve years.

State Superior Court Judges are appointed by the Governor of the State acting on the recommendation of the National Judicial Council. Judges of the Federal Capital Territory are appointed by the President, also on the recommendation of the National Judicial Council. A person shall not be qualified to hold office of a Judge of a High Court of a State (or of the Federal Capital Territory) unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years. Confirmation by the State House of Assembly is an added requirement to serve as the Chief Judge of a state.

A person shall not be qualified to hold office as Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja unless:

- (a) he is a legal practitioner in Nigeria and has so qualified for a period of not less than ten years and has obtained a recognized qualification in Islamic law from an institution acceptable to the National Judicial Council; or
- (b) he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than twelve years; and
  - (i) He or she either has considerable experience in the Practice of Islamic law, or
  - (ii) He is a distinguished scholar of Islamic law.

A person shall not be qualified to hold the office of President or a Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja, unless:

- (a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and, in the opinion of the National Judicial Council he has considerable knowledge and experience in the practice of Customary law; or
- (b) in the opinion of the National Judicial Council, he has considerable knowledge of and experience in the practice of customary law.

## Chapter 8

### THE VERDICT

#### Criminal Cases

In a criminal case, the judge renders one of three verdicts: not guilty, not guilty because of insanity, or guilty. In many criminal cases, the accused is charged with more than one crime. For each alleged offence, the decision-maker must render a verdict. Each type of verdict has quite different consequences.

A verdict of not guilty means that the accused cannot be criminally punished for that alleged crime. As explained earlier, a "not guilty" verdict does not mean that the judge necessarily believed that the accused was innocent; rather, it signifies that the government did not prove beyond a reasonable doubt that the accused committed the crime. A "not guilty" decision entitle the accused to an acquittal.

The Constitution prohibits double jeopardy, meaning that once the accused is acquitted of a crime, he or she cannot be retried for the same offence. It would be unfair for the government to try a person repeatedly for the same actions and to force a person to bear the emotional and financial costs of repetitive trials.

An acquittal should not be confused with a "discharge". While acquittal is based on the merits of the case and triggers the double jeopardy protection, a discharge is not on the merit but on procedural flaws or technicalities. In this latter case, the accused may be re-arrested and tried for the same offence.

However, a verdict of not guilty in a criminal prosecution does not preclude a later civil suit. For instance, if a person suffers a beating, the government could criminally prosecute the assailant for battery. Regardless of the outcome of that trial, the victim could bring a civil suit for damages against the assailant to recover expenses such as medical bills and for pain and suffering. In some states, the criminal prosecution and the civil litigation may go on simultaneously.

Another possible verdict in a criminal case is "not guilty by reason of insanity." In our criminal justice system, individuals only are punished if they are found to be morally responsible for their actions. Simply stated, a person is found not guilty by reason of insanity if he or she was not capable of understanding right from wrong. A verdict of not guilty by reason of insanity does not mean that the accused will go free. Usually, an accused found not guilty by reason of insanity will be confined to a mental institution for treatment to protect self-harm and the community.

A verdict of guilty means that the court can impose punishment. There are many different types of punishments prescribed by law. The court can order that an accused be imprisoned, or to pay a fine, or to both imprisonment and fine. In addition, courts exercising jurisdiction under the Criminal Procedure Code of Northern Nigeria may order a convicted accused to pay compensation or restitution, which is, giving the victim of the crime money to compensate for any monetary losses.

## **Civil Cases**

In civil cases, the verdict is usually whether to hold the defendant liable. Usually, civil cases are for money damages, and a verdict for the plaintiff can lead to two kinds of damages: compensatory and punitive. As the term implies, compensatory damages are meant to compensate the plaintiff for any actual losses. For example, the victim of an automobile accident can recover from the responsible party the costs of car repair, reimbursement for any medical bills, and damages to compensate for pain and suffering.

Punitive damages, which are allowed in certain types of cases, are damages meant to punish the defendant for particularly wrongful behaviour. In other words, in addition to compensating the plaintiff for any losses, the defendant is punished by being ordered to pay more money. Civil Judgments are enforced by executing a Writ of Attachment on the judgment-debtor's property. The judgment-debtor's properties will be sold and the money realized will be used to satisfy the judgment debt.

## Chapter 9

### THE APPEAL

After the trial is complete, the loser usually can file an appeal to a court of appeal, except in a criminal case where the government may not appeal if the accused is found innocent. A court of appeal does not retry the case. No witnesses testify in a court of appeal proceeding, and no evidence is presented.

Instead, the court of appeal reads the briefs (the papers filed by attorneys presenting arguments) and hears oral arguments from the attorneys. Usually, a court of appeal changes the decision only if the trial court judge made an error as to the law. In other words, courts of appeal usually accept the fact-finding by the trial court and determine only whether an error was made in applying the law.

The appeal court may also set aside a lower court's verdict that is inconsistent with the law or evidence, or increase or decrease the money award. The appeal court usually will overturn the verdict only if the court believes that no reasonable jury could have come to that conclusion.

Usually, if a court of appeal finds that the trial court made a serious mistake, the decision is reversed and the case sent back to the trial court for additional proceedings. In criminal cases, this does not mean that the accused will go free. The government can retry the accused without committing the error. Such a retrial does not violate the prohibition against double jeopardy. For example, if the court of appeal reverses an accused person's conviction on the ground that evidence was admitted in violation of the accused person's rights, the case can be retried without the admission of the illegally obtained evidence.

After the appeals are completed, a final judgment is entered. No more legal proceedings in the case are allowed. The loser cannot go to any other court, ever, about the matter. In civil cases, this is known as *res judicata*.

In a criminal case, an accused convicted of a crime can remain in jail while the appeals are pending, or can be released on bail during this time. Judges have discretion concerning whether to set bail pending appeal and as to the amount of bail. After the appeals are completed, the accused serves his or her sentence if the conviction has been upheld.

In a civil case, a ruling in favour of the plaintiff usually means that the defendant has to pay money. If the defendant fails to pay, the court can send the sheriff out to seize property to satisfy the judgment.

Appeals are from a lower court to a higher court. If a matter was decided by in a Magistrate court, appeal lies with the High court of the state and may go on to the Court of Appeals and the Supreme Court. If it was first decided by a high court, appeal lies with the Court of Appeal, and thereafter, to the Supreme Court. The Supreme Court is the highest and final court.

## Chapter 10

### CHANGING THE SYSTEM

The Nigerian legal system is constantly changing and evolving. Countless problems confront the judiciary as it tries to provide justice for those who are parties to court proceedings. The current system is terribly overburdened. There simply are not enough judges and courtrooms to accommodate all of the cases that must be handled. As a result, there are often long delays before matters are finally disposed of. Additionally, although equal justice for all is the goal, all too often the reality is much different. Many of the poor and middle class simply cannot afford the costs of the legal system.

Many Nigerians go to prison after criminal trials even though no lawyer represented them. This offends the constitutional guarantee for fair trial and right to legal representation. Efforts must be increased to improve the system to make it fair and accessible to all. There are many ways that people can become involved to improve the system.

Laws can be changed to better achieve the ends of justice. Above all, courts exist to apply and enforce the law and if people are dissatisfied, one important thing to do is to change the law. People should become involved in elections to choose candidates who will bring about needed reforms. People should also participate in groups that work through the legislatures to improve the laws. Remember that a free man today may face legal problems tomorrow.

One of the impediments to administration of criminal justice is the centralized police system. Investigating Police Officers (IPO's) are transferred from one part of the country to another without regard to any case they investigated now pending in court or still under investigation. Prosecutors incessantly seek and are granted adjournments because of the absence of the IPO. The clamour for State Police may be a good solution, provided the Federal Police has final oversight over any complaint made against the State Police activity.

The National Judicial Council needs to be strengthened with its own police or marshals. The proposed NJC Marshals should provide security for both Federal and State Judges. They should also be independent from both Federal and State Police. The Marshals should be answerable to the NJC and the President and not to any other person or authority.

Hoping that this book will be revised in the next two years, the author welcomes any suggestion on how to improve the administration of justice to make it more responsive to the needs of a modern the society. Any suggestions and any changes will be noted in subsequent editions.

## GLOSSARY

### A

**ACQUITTAL** - A verdict (decision) after a trial that an accused in a criminal case has not been proven guilty beyond a reasonable doubt of the crime charged and forecloses any further arrest or prosecution for the same offence.

**ADJUDICATION** - Giving or pronouncing a judgment or decree.

**ADMISSIBLE** - Evidence that can be legally and properly introduced in a civil or criminal trial.

**ADVERSARY PROCEEDING** - One having opposing parties; contested.

**ADVERSARY SYSTEM** - The trial methods used in Nigeria and some other countries, based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge.

**AFFIDAVIT** - A written statement of fact given voluntarily and under oath.

**AFFIRMED** - In the practice of appellate courts, the word means that the decree or order at issue is declared valid and will stand as rendered in the lower court.

**ALLEGATION** - The statement in a pleading of what a party expects to prove.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)** - Settling a dispute without a full, formal trial. Methods include mediation, arbitration, conciliation, settlement, among others.

**AMICUS CURIAE** - A friend of the court; one not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

**ANSWER (STATEMENT OF DEFENCE)** - The defendant's response to the plaintiff's allegations as stated in a complaint (Statement of Claim). An item-by-item, paragraph-by-paragraph response to points made in a complaint (Statement of Claim); part of the pleadings.

**APPEAL** - A request by the losing party in a lawsuit that the judgment be reviewed by a higher court.

**APPEARANCE** - Coming into court; the formal act by which a defendant submits to the jurisdiction of a court.

**APPELLANT** - The party who initiates an appeal. Sometimes called a petitioner.

**APPELLATE COURT** - A court having jurisdiction to hear appeals and review a trial court's procedure.

**RESPONDENT** - The party against whom an appeal is taken.

**ARBITRATION** - A form of alternative dispute resolution, in which the parties bring their dispute to a neutral third party and agree to abide by his or her decision. In arbitration, there is a hearing at which both parties have an opportunity to be heard.

**ARRAIGNMENT** - In a criminal case, the proceeding in which an accused person is brought before a judge to hear the charges filed against him or her and to enter a plea of guilty or not guilty.

**ARREST** - To take into custody by legal authority.

**ASSAULT** - Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force, which would give the victim reason to fear or expect immediate bodily harm.

**ATTACHMENT** - A proceeding in which a creditor secures rights to real or personal property and holds it pending the outcome of a lawsuit.

**ATTORNEY-AT-LAW** - An advocate, counsel or official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice, who is employed by a party in a cause to manage it for him or her.

## **B**

**BAIL** - Money or other security (such as bail bond) given to secure a person's release from custody, which is at risk should he or she subsequently fail to appear before the court.

**BAIL BOND** - Often referred to as bond - the obligation, signed by the accused to secure his or her presence at trial, which he or she may lose by not appearing for trial.

**BAILIFF** - A court attendant who keeps order in the courtroom.

**BAR** - Historically, the partition separating the public from the space occupied by the judges, lawyers and other participants in a trial. More commonly, the term means the whole body of lawyers.

**BATTERY** - A beating or wrongful physical violence. The actual threat to use force is an assault; the use of it is battery, which usually includes an assault.

**BEYOND A REASONABLE DOUBT** -The standard in a criminal case requiring that the court be satisfied to a moral certainty that the prosecution has proved every element of the crime. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that all reasonable doubts are removed from the mind of the ordinary person.

**BOOKING** - The process of photographing, fingerprinting, and recording identifying data of a suspect following arrest.

**BREACH OF CONTRACT** - A legally inexcusable failure to perform a contractual obligation.

**BRIEF** - A written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and the applicable law.

**BURDEN OF PROOF** - In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point - the burden of proof is not the same as the standard of proof. "Burden of proof" deals with which side must establish a point or points; "standard of proof" indicates the degree to which the point must be proven.

## **C**

**CAPITAL CRIME** - A crime punishable by death.

**CASE LAW** - Law based on previous decisions of appellate courts, particularly the Supreme Court.

**CERTIORARI** - A means of getting an appellate court to review a lower court's decision. The loser of a case will often ask the appellate court to issue a writ of certiorari, which orders the lower court to convey the record of the case to the appellate court and to certify it as accurate and complete.

**CHAMBERS** - A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the public.

**CIRCUMSTANTIAL EVIDENCE** - Evidence that merely suggests something by implication. Circumstantial evidence is indirect, as opposed to eyewitness testimony, which is direct.

**CIVIL ACTIONS** - Non-criminal cases in which one private individual or business sues another for redress of private or civil rights.

**COMMON LAW** - Law arising from tradition and judicial decisions, rather than from laws passed by the legislature. The common law originated in England and has been followed as the law in Nigeria as part of Nigerian case law.

**COMPLAINT** - The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take.

**CONCURRING OPINION** - An appellate court opinion by one or more judges that agrees with the majority opinion in the case.

**CONTEMPT OF COURT** - Wilful disobedience of a judge's command or of an official court order or doing any act capable of bringing the court to ridicule

**CONTRACT** - A legally enforceable agreement between two or more competent parties made either orally or in writing.

**COUNTERCLAIM** - A claim made by the defendant in a civil lawsuit against the plaintiff - in essence, a counter lawsuit within a lawsuit.

**COURT COSTS** - The expenses of prosecuting or defending a lawsuit other than attorney's fees. An amount of money may be awarded to the successful party (and revocable from the losing party) as reimbursement for court costs.

**CROSS-EXAMINATION** - The questioning of a witness produced by the other side.

## **D**

**DAMAGES** - Money awarded by a court to a person injured by the unlawful act or negligence of another person.

**DECISION**- The judgment reached or given by a court of law.

**DECREE** - An order of the court. A final decree is one, which fully and finally disposes of the litigation; an interlocutory decree is a preliminary order that often disposes of only part of a lawsuit.

**DEFAULT** - failure to respond to a lawsuit within the specified time. When a defendant does not respond in a timely fashion or does not appear at the trial, a "default judgment" is entered against him or her.

**DEFENDANT** - In a civil case, the person being sued. In a criminal case, the person charged with the crime.

**DEPOSITION** -The testimony of a witness taken under oath in preparation for a trial.

**DIRECT EXAMINATION** -The first questioning of witnesses by the party who called them.

**DISSENT** - An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

**DOUBLE JEOPARDY** - Putting a person on trial more than once for the same crime, this is forbidden by the Constitution.

**DUE PROCESS OF LAW** - The right of all persons to receive the guarantees and safeguards of the law and the judicial process. Includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial judge, and to confront and secure witnesses.

## **E**

**EQUAL PROTECTION OF THE LAW** -The guarantee in the Constitution that the law treat all persons equally. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions; that persons be subject to no restrictions in the acquisition of property, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than such are laid upon others; and that no different or greater punishment is enforced against them for a violation of the laws.

**EX PARTE** - On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present during the hearing.

**EXCLUSIONARY RULE** - The rule preventing illegally obtained evidence to be used in any trial.

## **F**

**FELONY** - A crime (such as murder, rape, and robbery) of graver nature than a misdemeanour, usually punishable by imprisonment in a penitentiary for more than a year and/or substantial fines.

## **G**

## **H**

**HARMLESS ERROR** - An error committed during a trial, which was corrected or was not serious enough to affect the outcome of a trial, and therefore was not sufficiently harmful to be reversed on appeal.

**HEARSAY** - Evidence that is not within the personal knowledge of the witness, but was relayed to the witness by a third party. Hearsay evidence generally is not admissible in court, although there are many exceptions under which it can be admitted.

## **I**

**INADMISSIBLE** - That which under the rules of evidence cannot be admitted or received as evidence.

**INJUNCTION** - A preventive measure by which a court orders a party to refrain from doing a particular act. A preliminary injunction is granted provisionally, until a full hearing can be held to determine if it should be made permanent.

## **J**

**JUDGE'S RULE** - Requirement that police tell a suspect in their custody of his or her constitutional rights before they are questioned.

**JUDGMENT** - The final disposition of a lawsuit. Default judgment is a judgment rendered because of the defendant's failure to answer or appear. Summary judgment is judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. It is used when there is no dispute to the facts of the case and one party is entitled to judgment as a matter of law. Consent judgment occurs when provisions and terms of the judgment are agreed on by the parties and submitted to the court for its sanction and approval.

**JUDICIAL REVIEW** - Authority of a court to review the official actions of other branches of government; also, authority to declare unconstitutional the actions of other branches.

**JURISDICTION** - The nature and scope of a court's authority to hear and/or decide a case. Also, the territory from which a court is authorized to hear cases.

## L

**LIEN** - A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lien holder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

**LITIGANT** - A party to a lawsuit.

**LITIGATION** - A case, controversy, or lawsuit.

## M

**MAGISTRATE** - Judicial officer exercising some of the functions of a judge; also, refers in a general way to a judge, as in the phrase "neutral magistrate".

**MANSLAUGHTER** - The unlawful killing of another without intent to kill; either voluntary -- upon sudden impulse, i.e., a quarrel erupts into a fist-fight in which one of the participants is killed; or involuntary -- during the commission of an unlawful act not ordinarily expected to result in great bodily harm, or during the commission of a lawful act without proper caution, i.e., driving an automobile at an excessive speed resulting in a fatal collision.

**MEDIATION** - Forms of alternative dispute resolution, in which the parties bring their dispute to a neutral third party, who helps them, agree on a settlement.

**MISDEMEANOUR** - Criminal offences considered less serious than felonies. Misdemeanours generally are punishable by a fine or a limited local jail term, but not by imprisonment in a state penitentiary.

## N

**NEGLIGENCE** - Failure to exercise that degree of care that a reasonable person would exercise under the same circumstance.

## O

**OBJECTION** - The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by a judge.

**OPINION** - The written decision of an appellate court. The majority or plurality opinion expresses the court's decision. (See also concurring opinion and dissenting opinion.)

**ORDER** - A written or oral command from a court directing or forbidding action.

**ORDINANCE** - A local law adopted by a local government.

**OVERRULE** - Judge's decision not to allow an objection; also, decision of a higher court finding that a lower court decision was in error.

## P

**PARDON** - A form of executive clemency, preventing criminal prosecution, removing, or extinguishing a criminal conviction.

**PARTY** - A person, business, or government agency actively involved in the prosecution or defence of a legal proceeding.

**PERJURY** - The criminal offence of making a false statement under oath.

**PERMANENT INJUNCTION** - Court order requiring that some action be taken, or that some party refrain from taking action.

**PLEA** - In a criminal proceeding, it is the accused person's declaration in open court that he or she is guilty or not guilty.

**PLEADINGS** - The written statements of fact and law filed by the parties to a lawsuit.

**PRECEDENT** - The decision of a court in one case that controls, guides, or influences the decision of a later case with similar facts and legal issues.

**PREPONDERANCE OF THE EVIDENCE** - Greater weight of the evidence, the common standard of proof in civil cases.

**PRE-TRIAL CONFERENCES** - A meeting between the judge and the lawyers involved in a lawsuit to narrow the issues in the suit, agree on what will be presented at the trial, and make a final effort to settle the case without a trial.

**PRIMA FACIE CASE** - A case that is sufficient-that is, that has the minimum amount of evidence necessary to allow it to continue in the judicial process.

**PROBABLE CAUSE** - Sufficient legal reasons for allowing the search and seizure or the arrest of a person.

**PROBATE** - The process of proving that a will is valid and should be carried out. Also refers more generally to the law governing estates.

**PROSECUTOR** -An attorney, working for the state or federal government, who brings a legal action to punish a crime.

## Q

**QUASH** - To vacate or void a summons subpoena, etc.

## R

**REBUTTAL** - Evidence disproving other evidence previously given or re-establishing the credibility of challenged evidence.

**REMAND** -To send a dispute back to the court where it was originally heard. Usually an appellate court remands a case for proceedings in the trial court consistent with the appellate court's ruling.

**REMEDY** - Legal or judicial means by which a right or privilege is preserved, redressed or compensated.

## S

**SEARCH WARRANT** - A written order issued by a judge that directs a law enforcement officer to search a specific area for a specific piece of evidence.

**SELF-DEFENCE** - Claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.

**SELF-INCRIMINATION** - The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed by the Constitution.

**SENTENCE** - A court's determination of the punishment to be inflicted on a person convicted of a crime.

**SEQUESTRATION OF WITNESSES** - Keeping all the witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and admonishing them not to discuss their testimony with other witnesses.

**SERVICE** - The delivery of a legal document, such as a complaint, summons or subpoena notifying a person of a lawsuit or other legal action taken against him or her. Service, which constitutes formal legal notice, must be made by an officially authorized person in accordance with the formal requirements of the applicable laws.

**SETTLEMENT** - An agreement between the parties disposing of a lawsuit.

**STATUTE OF LIMITATIONS** - The time within which a lawsuit must be brought. There are different statutes of limitations for different kinds of lawsuits.

**SUBPOENA** - A court order compelling a witness to appear and testify

**SUMMONS** - A notice to a defendant that he or she has been sued and is required to appear in court.

## **T**

**TEMPORARY RESTRAINING ORDER** - A judge's order forbidding certain actions until a full hearing can be held. Usually of short duration. May also be referred to as interim injunction.

**TESTIMONY** - Evidence given by a witness under oath; does not include evidence from documents and other physical evidence.

**TORT** - An injury or wrong committed on the person or property of another. A tort is an infringement of the rights of an individual, but not founded on a contract. The most common tort action is a suit for damages sustained in an automobile accident.

**TRANSCRIPT** - The official record of all of the testimony and events that occur during a trial or hearing.

## **V**

**VACATE** - To set aside, such as when a judge "vacates" (sets aside) an prior order or a court of appeals vacates a lower court decision.

**VERDICT** - Conclusion, as to fact or law, which forms the basis for the court's judgment. A general verdict is a court's finding for or against a plaintiff after determining the facts and weighing them according to the law.

**VENUE** - The proper geographical area - county, city, or district - in which a court with jurisdiction over the subject matter may hear a case.

## **W**

**WARRANT** - Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search; an affidavit seeking a warrant must establish probable cause by detailing the facts upon which the request is based.

**WITNESS** - One who testifies what he or she has seen, heard, or otherwise experienced.

**WRIT** - A judicial order directing a person to do something.

## LATIN PHRASES AND MAXIMS

### A

**a fortiori** - by stronger reason

**a priori** - from what comes before

**ab initio** - from the beginning

**ab intestato** - having made no will

**absente reo** - in absence of the defendant

**absolute sententia expositore non indiget** - When language of law is clear, no explanation of it is required.

**actus me inito fastus non est meus actus** - An act done by me against my will is not my act.

**actus non faci reu nisi mens sit rea** - The act itself does not make a man guilty unless his intention was so.

**actus reus** - guilty act

**ad hoc** - to this particular purpose

**ad infinitum** - to infinity

**ad nauseum** - to the point of making one sick

**ad proximum antecedens fiat relation nisi impediatur sententia.** - Relative words refer to the nearest antecedents, unless the context otherwise requires.

**addendum** - a thing to be added

**alias** - otherwise

**alibi** - elsewhere

**alter ego** - other self / also known as

**amicus curiae** - friend of the court

**ante** - before

**argumentun a contrario** - Negative-opposite doctrine.

**audi alteram partem** - Hear the other side

### B

**bona fide** - good faith

### C

**casus omisus pro omisso habendus est** - A person, object or thing omitted from an enumeration must be held to have been omitted intentionally.

**caveat** - beware

**caveat emptor** - let the buyer beware

**cessante ratione legis, cessat ipsa lex** - When the reason of the law ceases, the law itself ceases.

**ceteris paribus** - other things being equal

**cf. (confer)** - compare

**compos mentis** - of sound mind (and judgement)

**consensu omnium** - by the agreement of all

consensus ad idem - meeting of minds; agreement as to the same thing.

**contemporanea expositio est fortissima in lege.** - The contemporary construction is strongest in law.

contra proferentem parte - against the proffering party  
**corpus delicti** - the body of the crime  
**corrigenda** - things to be corrected  
**crimen falsi** - perjury  
**culpa** - a sin

## D

**de die in diem** - from day to day  
**de facto** - in fact  
**de iure** - according to law  
**de minimis non curat lex** - The law does not concern itself with trifles  
**de novo** - anew  
**distingue tempora et concordabis jura** - Distinguish times and you will harmonize laws.  
**dura lex sed lex.** - The law may be harsh, but that is the law.

## E

**e vestigio** - from where one stands  
**eiusdem generis** - of the same kind  
**eiusdem generis** - Of the same kind or specie.  
**erratum (errata)** - error (errors)  
**et al. (et alii/et aliae/et alia)** - and others  
**et seq. (et sequens)** - and the following  
**et seqq. (et sequentia)** - and those that follow  
**et sic de ceteris** - and so to of the rest  
**etc. (et ceterae/etcetera)** - and the rest  
**ex cathedra** - with authority  
**ex dolo malo non oritur actio** - No man can be allowed to found a claim upon his own wrongdoing.  
**ex gratia** - done as a favour  
**ex more** - according to custom  
**ex necessitate legis** - By necessary implication of law.  
**ex officio** - by right of office  
**ex parte** - on behalf of one party only  
**ex post facto** - from what is done afterward  
**ex tempore** - without premeditation  
**exceptio probat regulam** - the exception proves the rule  
**excepto firmat regulam in casibus, non excepti** - A thing not being excepted must be regarded as coming within the purview of the general rule.  
**expressio unius est exclusio alterius** - The express mention of one person, thing or consequence implies the exclusion of all others.  
**expressum facit cessare tacitum** - What is expressed puts an end to that which is implied.

## F

**factum est** - it is done

**falsa demonstratio non nocet cum de corpore constant** - False description does not preclude construction nor vitiate the meaning of the statute.

**favorabilia sunt amplianda, adiosa restringenda** - Penal laws that are favourable to the accused are given retroactive effect.

**fiat** - let it be done

**filius nullius** - a bastard

**finis** - the end

**flagrante delicto** - in the act of committing a crime

## G

**generali dictum generaliter est interpretandum** - A general statement is understood in a general sense.

**generalis specialibus non derogant** - A general law does not nullify a specific or special law.

**generali verva sunt generaliter intelligencia** - What is generally spoken shall be generally understood.

## H

**habeas corpus** - you are to produce the body

**hoc quidem perquam durum est, sed ita lex scripto est** - It is exceedingly hard but so the law is written.

**honoris causa** - for the sake of honour

**horribulus dictu** - horrible to relate

## I

**i.e. (id est)** - that is to say

**ib. (ibidem)** - in the same place

**ibi quid generaliter conceditur, inest haec exceptio, si non aliquid sit contra jus fasque** - Every rule is not without exception. Where any thing is granted generally, this exception is implied; that nothing shall be contrary to law and right. (or equity as well as the exceptional situation requires a departure from the established rule)

**ignorantia legis neminem excusat** - ignorance of the law excuses no one

**ignoratio elenchi** - an ignorance of proof

**Impossibilum nulla obligatio est** - There is no obligation to do an impossible thing.

**in absentia** - in the absence of

**in actu** - in practice

**in banco** - on the bench

**in camera** - in private chamber

**In eo plus sit, simpliciter inest et minus** - The greater includes the lesser.

**in futuro** - in the future

**in gremio legis** - in the protection of the law

**in infinitum** - to infinity

**in limine** - at the outset, on the threshold

**in loco parentis** - in the place of a parent

**in ovo** - in the egg

**In pari delicto, potior est conditio defendentis** - In equal fault, the stronger is the situation of the defendant

**in propria persona** - in person

**in re** - referring to

**in rem** - against the matter (property)

**in se** - in itself

**in situ** - in position

**in terrorem** - as a warning or deterrent

**in toto** - completely

**in transitu** - in passing

**in vacuo** - in a vacuum

**Index animi sermo est** - Speech is the index of intention.

**infra** - below, underneath

**infra dig. (infra dignitatem)** - beneath one's dignity

**inter alia** - among other things

**inter se** - between themselves

**inter vivos** - between living (people)

**Interest rei publicae ut finis sit litum** - Public interest requires that by the very nature of things there must be an end to a legal controversy.

**interpotare et concordare legibus est optimus interpotandi** - Every statute must be so construed and harmonized with other statutes as to form uniform system of law.

**interpretate fienda est ut res valeat quam pereat** - A law should be interpreted with a view to upholding rather than destroying it.

**interpretatio talis in ambiguis semper fienda est, ut evitatur inconueniens et absurdum** - Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted.

**intra vires** - within the powers

**ipsissima verba** - the exact words

**ipso facto** - by that very fact

**ipso iure** - by operation of the law

## J

**jus possessionis**: - the right of possession

**jus summum saepe summa malitia est** - extreme law is often extreme wrong.

## L

**lapsus calami** - a slip of the pen

**lapsus linguae** - a slip of the tongue

**lapsus memoriae** - a slip of the memory

**lc (loco citato)** - in the place cited

**legis interpretato legis vim obtinet** - The authoritative interpretation of the court of a statute acquires the force of law by becoming a part thereof.

**legis posteriores priores contrarias abrogant** - A later law repeals a prior law on the same subject that is repugnant thereto.

**lex de futuro, judex de praterito** - The law provides for the future, the judge for the past.

**lex domicilii** - the law of a person's home country

**lex fori** - the law of the forum (country)  
**lex loci** - the law of the place  
**lex non scripta** - the unwritten (common) law  
**lex prospicit, non respicit** - The law looks forward, not backward.  
**lex scripta** - the written law  
**licet** - it is allowed  
**locus classicus** - classical passage  
**locus delicti** - the scene of the crime  
**locus in quo** - the place in which something happens  
**locus standi** - place of standing  
**loq. (loquitur)** - he/she speaks

## M

**m.o. (modus operandi)** - way of operating  
**mala fide** - in bad faith  
**maledicta expositio qua corrumpit textum** - It is dangerous construction, which is against the text.  
**mens rea** - guilty mind  
**modus agendi** - manner of operation  
**moratorium** - a delay  
**motu proprio** - of one's own initiative  
**multum in parvo** - much in small space  
**mutatis mutandis** - with the necessary changes

## N

**natura abhorret a vacua** - nature abhors a vacuum  
**nb. (nota bene)** - note well  
**ne nimium** - not too much  
**necessitas non habet legem** - necessity has no law  
**nem. con. (nemine contradicente)** - with no one speaking in opposition  
**nem. diss. (nemine dissentiente)** - with no one disagreeing  
**nemo dat quod non habet** - no one can give a better title than he has.  
**Nemo iudex in parte sua** - no person can judge a case in which he or she is party  
**nihil ad rem** - nothing to do with the point  
**nisi prius** - unless previously  
**nolle prosecute** - do not pursue  
**nolo contendere** - I do not wish to contend  
**non compos mentis** - not of sound mind  
**non licet** - it is not allowed  
**non sequitur** - he does not proceed  
**non sequitur** - it does not follow  
**noscitur a sociis** - Noscitur a sociis - Word construed with reference to accompanying or associate words.  
**nova constitutione futuris formam imponere debet non praeteritis** - A new statute should affect the future, not the past.  
**novus actus interveniens** - a new act intervening  
**Nudum pactum** - a bare, naked contract, without any consideration.

**nullum crimen sine poena, nulla poena sine legis** - There is no crime without a penalty, and there is no penalty without a law.

**nullis commodum protest de injura propria** - No man should be allowed to take advantage of his own wrong.

**nullum tempus accunit regi** - There can be no legal right as against the authority that makes the law on which the right depends.

## O

**ob. (obiit)** - he/she died

**ob. (obiter)** - in passing

**obiter dictum** - something said in passing

**onus probandi** - the burden of proof

**op. cit. (opere citato)** - in the cited work

**optima statuti interpretatix est imsum statutum** - The best interpreter of a statute is the statute itself.

**optimus interpres rerum usus** - The best interpreter of the law is usage.

## P

**p.a. (per annum)** - every year

**pace** - by leave of

**Pari materia** - Relating to same matter.

**pari passu** - with equal pace

**particeps criminis** - partner in crime

**paucis verbis** - in a few words

**peculium** - property

**pendente lite** - while a suit is pending

**per annum** - yearly

**per capita** - per head

**per cent (per centum)** - per hundred

**per contra** - on the contrary

**per diem** - daily

**per mensem** - monthly

**per pro (per procuratio nem)** - by delegation to

**per se** - by itself

**persona (non) grata** - (un)welcome person

**post factum** - after the fact

**post mortem** - after death

**post obitum** - after death

**post partum** - after childbirth

**potior est in tempoe, potior est in jure** - He who is first in time is preferred in right.

**pr (per rectum)** - through the (back) rectum

**prima facie** - at first sight

**primus inter pares** - first among equals

**privilegia reciprint largan interpretationen voluntate consonan concedentis** - Privileges are to be interpreted in accordance with the will of him who grants them.

**pro bono (pro bono publico)** - for the good of the public  
**pro forma** - as a matter of formality  
**pro hac vice** - for this occasion  
**pro nunc** - for now  
**pro rata** - in proportion to the value  
**pro tem. (pro tempore)** - for the time being  
**pro tunc** - for then

## Q

**quod (quod est)** - which is  
**QED (quod erat demonstrandum)** - which was to be demonstrated  
**quod warranto** - by what authority?  
**qua** - in so far as  
**quandam** - formally  
**quando aliquid prohibetur ex directo, prohibetur et per obliquum** - What is prohibited directly is prohibited indirectly.  
**quantum meruit** - as much as he/she deserved  
**quid pro quo** - something for something  
**quo iure** - by what law?  
**quorum** - of whom

## R

**ratihabito acquiratur mandate** - Legislative ratification is equivalent to a mandate.  
**ratio decidendi** - reason for the decision  
**ratio legis** - Interpretation according to spirit.  
**ratio legis est anima** - The reason of the law is its soul.  
**re** - concerning  
**reddendo singula singulis** - Referring each to each; referring each phrase or expression to its appropriate object; or let each be put in its proper place.  
**referendum** - something to be referred  
**restitutio in integrum** - restitution or restoration to the previous condition  
**res extincta** - the thing no longer exists.  
**res gestae** - things done.  
**res ipsa loquitur** - the thing speaks for itself  
**res iudicata** - thing already judged upon  
**res sua nemini servit** - no one can have a servitude over his own property.

## S

**salus populi est supremum lex** - The voice of the people is the supreme law.  
**satis** - enough  
**sc. (scilicet)** - that is to say  
**scienter** - knowingly (knowledge)  
**sensu stricto** - strictly speaking  
**seq. (sequens)** - the following (one)  
**seqq. (sequentia)** - the following (ones)

**seriatim** - in order  
**sic** - thus  
**sine die** - without a day (indefinitely)  
**sine qua non** - something/someone indispensable  
**stare decisis** - to stand by things decided  
**stare decisis et non quita movere** - Follow past precedents and should not disturb what has been settled.  
**status quo** - the current state of being  
**sub iudice** - under a judge  
**sub lite** - in dispute  
**sub poena** - under penalty of law  
**sui generis** - of his/her/its kind  
**suo loco** - in a person's rightful place  
**supra** - above  
**surplusagium non noceat** - Surplusage does not vitiate a statute.

## T

**tabula rasa** - blank tablet  
**terra firma** - solid ground  
**totidem verbis** - in so many words

## U

**uberrima fides** - utmost good faith  
**ubi cadem ratio ibi eadem disposito** - Where the law governing a particular matter is silent on a question at issue, the provision of another law governing another matter may be applied where the underlying principle or reason is the same.  
**ubi jus, ibi remedum** - Where there is a right, there is a remedy.  
**ubi jus incertum, ibi jus nullum** - Where the law is uncertain, there is no law.  
**ubi lex non distinguit nec nos distinguere debemus** - Where the law does not distinguish, we should not distinguish.  
**ubique** - everywhere  
**ultra vires** - beyond the powers  
**ut magis valeat quam pereat** - That construction is to be sought which gives effect to the whole of the statute - its every word.  
**uti possidetis** - as you possess  
**utile per inutile non vitiatur** - The useful is not vitiated by the non-useful.

## V

**v (verso)** - reverse  
**v (versus)** - against  
**v (vide)** - see  
**verba accipiendos sunt secundum materiam** - A word is to be understood in the context in which it is used.  
**verba intentioni non a contra debent inservire** - Words ought to be more subservient to the intent and not the intent to the words.

**verba legis** - Plain-meaning rule.

**verba legis non est recedendum** - From the words of the statute there should be no departure.

**verbatim et litteratim** - word for word and letter for letter

via - by way of

**via media** - the middle way

**vice** - in place of

**vice versa** - in reverse order

**vigilantes sed non dormientibus jura subveniunt** - The laws aid the vigilant, not those who slumber on their rights.

**volenti non fit injuria** - No injury is done to a consenting party (voluntary assumption of risk)