

COURSE GUIDE

COURSE CODE: PUL337

COURSE TITLE: PUBLIC ADMINISTRATIVE LAW (for students of
B.Sc. Public Administration, Faculty of Management Sciences)

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1.0 INTRODUCTION

Constitution is the whole system of government of a country, the collection of rules which establish and regulate or govern the government. Nwabueze (1993) refers to the constitution as the frame of composition of a government, to the way in which government is actually structured in terms of its organs, the distribution of power within it, the relations of the organs *inter-se*, and the procedures for exercising powers. Okoli and Okoli (1999) state that the constitution is a collection of norms and standards according to which a country is governed while Joel (2011) also sees the constitution as the law that directs a country politically, economically and socially, that the constitution in fact spells the basic political institutions in a country and its principles are used in running the affairs of the country. In his attempt at the meaning of constitution, Adole (2013) simply defined the constitution as the fundamental rules, principles, laws and convention that guide the conduct of affairs in a state or country. In view of the above definitions, we can clearly posit that the constitution is prescribed by the people and collectively they prescribe how power will be distributed among the various segments of the people that make up the country. It also defines the functions of the organs of government i.e. the executive, legislature and judiciary. The importance of constitution in a country cannot be over emphasized that is why Bidault (2000) noted that "the good or bad fortune of a nation depends on three factors: its constitution, the way constitution is made to work and the respect it inspires". It is based on this premise that this course is designed to x –ray some of the laws that guides administrative

behavior amongst public servants in Nigeria. It will also examine the extent of the adherence of the provisions as regards to the workings of the organs of government in Nigeria. Relevant cases of administrative breeches will be cited in the course of our analysis in this module.

2.0 JUSTIFICATION

Law does not operate in a vacuum. It has to reflect social values, attitudes and behavior. Societal values and norms, directly or indirectly, influence law. Law also endeavors to mold and control these values, attitudes and behavioral patterns so that they flow in a proper channel. It attempts either to support the social system or to change the prevalent social situation or relationship by its formal processes. Law also influences other parts of the social system. Law, therefore, can be perceived as symbolizing the public affirmation of social facts and norms as well as means of social control and an instrument of social change.

All collective human life is directly or indirectly shaped by law. Law is, like knowledge, an essential and all pervasive fact of the social condition. No area of life-whether it is the family or the religious community, scientific research is the internal network of political parties-can find a lasting social order that is not based on law. A minimum amount of legal orientation is indispensable everywhere. Law is not, nor can any discipline be, an insular one. Each rule postulates a factual situation of life to which the rule is to be applied to produce a certain outcome.

Law, in essence, is a normative and prescriptive science. It lays down norms and standards for human behavior in a set of specified situation(s). It is a 'rule of conduct or action' prescribed or formally recognized as binding or enforced by a 'controlling authority'. It operates in a formal fashion. It enforces these prescribed norms through state's coercive powers. However, the societal values and patterns are dynamic and complex. These changing societal values and ethos obviously make the discipline of law dynamic and complex. Law, therefore, has to be dynamic. Law has acquired a paramount significance in a modern welfare state as an effective instrumentality of socio-economic transformation. It indeed operates as a catalyst for such a transformation. Such a complex nature of law and its operation require systematic approach to the 'understanding' of 'law' and its 'operational facets'. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, and their social relevance. It also enables to assess efficacy of law as an instrument of socio-economic changes and to identify bottlenecks, if any.

3.0 COURSE OBJECTIVES

At the end of this course, students are expected to know the meaning and dynamics of the constitution. The functions of the organs of government as enshrined in the 1999 constitution in Nigeria. The course will examine the principles of separations, the rule of law, delegated legislation and the like. The course shall also discourse the operations of public accountability institutions like the Economic and Financial Crimes Commission (EFCC), and the Public Complaint Commission performing oversight or ombudsman's like functions in Nigeria.

4.0 WORKING THROUGH THE COURSE

To complete this course you are required to read the study units, recommended text books and other materials. Each unit contains self –assessment exercises and at tutor decided time in the course, you are required to submit assignment for assessment purposes. At the end of the course is a final extermination. The course should take you 14 weeks (Revision and extermination inclusive in total to complete. Bellow you will find list of all the components of the course, what you have to do and how you should allocate you time to each unit in order to complete the course successfully.

5.0 COURSE MATERIAL

The major materials to be used for the course are:

- This Course Guide;
- Study Units;
- Text Books;
- Assignment Files; and
- Presentation Schedule

In addition, you must obtain the textbooks as they are not provided by NOUN. You are required to obtain them in your own responsibility. You may purchase your own copies. Your tutor will always be available should you have any challenge in obtaining the textbooks.

6.0 STUDY UNITS

There will be 3 Modules in this Course which are sub-divided into 10 units, and they will be distributed as follows;

Module 1

Unit 1: Nature and Scope of Administrative Law

Unit 2: Constitutional Concepts

Unit 3: Public Corporations as Agents of African Governments

Module 2

Unit 1: Delegated Legislation

Unit 2: External Control of Delegated Legislation

Unit 3: Certiorari in Administrative Law

Unit 4: Mandamus

Module 3: General Research Planning

Unit 1: Declaration and Injunctions

Unit 2: Writs of Habeas corpus and Quo Warrantor

Unit 3 Administrative Adjudications

Note; Most units contains a number of self-assessment questions. These questions generally test your understanding of the topics you have just covered by requiring you to apply what you have read in some practical ways. This will definitely help you to gauge you progress and to reinforce your understanding of the materials. Together with the TMAs, these exercises will assist you in achieving the stated leaning objectives of the individual units and of the course in general.

COURSE MARKING SCHEME

The following table shows how the examination will be graded for the guidance of the student.

Continuous Assessment -	30%
Final Examination -	70%
Total -	100%

7.0 REFERENCES

Some of the important materials that will be used throughout the course are listed below:

- Hiwir Wade and Forsyth C.F *Administrative law* 10th Ed by Christopher forsyth oxforduniversity press New York.
- Okany M.C (2007) *Nigeria Administrative law* Africana First publisher Ltd.
- www.google.com
- Ese Malemi. *The Nigerian constitutional law* legal practitioner and lecturer faculty of law Lagos State University.. M.C Oany, (2007), Nigeria Administrative law Africana First Publishers Limited
- Ese malemi (2008) *Administrative Law 3rd Edition* Prince to publishing
- Wikipedia, the free Encyclopedia
- Oluyede, P.A. (2007). *Nigerian Administrative Law*. Ibadan: University Press Plc.
- H. W. R. Wade & C.F Forsyth. *Administrative Law* 10th Edition
- Ese malemi (2010). *The Nigeria constitutional law* (2010.ed).ikeja. Lagos Princeton publishers.
- Okany, M.C. (2005), *Nigerian Administrative Law*. Enugu: Africana First Publishers,

8.0 ASSIGNMENT FILE

In this file you will find the details of the work you submit to your tutor for marking. The mark you obtain for these assignments will count towards the final mark you obtain for this course. Further, information on the assignments will be found in the assignment file itself.

9.0 ASSESSMENT

There are two aspects of the assessment of this course; the Tutor-Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge must have acquired from the Course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the assignment file. The work you submit to your tutor for assessment will count for 30% of your total score.

TUTOR-MARKED ASSIGNMENT

There is a Tutor-Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each. When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor. before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for PUL337 is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of Self-Assessment Exercises and the Tutor- Marked Assignment you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self-Assessment Exercises and Tutor-Marked Assignments before the examination.

Course Marking Scheme

The following table lays out how the actual course marking is broken down.

Assessment Marks

Assignments 1-4 (the best three of all the assignments submitted)

Four assignments, marked out of 10% Totaling 30%

Final examination 70% of overall course score

Total 100% of course score.

10.0 SUMMARY

By trying out all of the above, we are quite confident that you will not only have a sound understanding of Legal Research Methodology and Project Writing, you will also be able to pass your exams with ease.

We wish you success with the course and hope that you will find it both interesting and useful.

PUL337: PUBLIC ADMINISTRATIVE LAW 3 CREDIT UNITS

MAIN COURSE

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MODULE 1 ADMINISTRATIVE PROCESSES

Unit 1: Nature and Scope of Administrative Law

Unit 2: Constitutional Concepts.

Unit 3: Public Corporations as Agents of African Governments

Unit 1 INTRODUCTION

CONTENT

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Historical Background

4.0 Conclusion

5.0 Summary

6.0 Tutored- Marked Assignment

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1.0 INTRODUCTION

The origin of constitution or law can be traced to the works of Thomas Hobbes, John Locke and Jean – Jacques Rousseau (the social contract theory) founded on the hypothetical state of nature. From the premise of the state of nature, Hobbes and Locke go on to construct a provocative and compelling argument for why we ought to have constitution in societies. Thus the growth and development of constitutionalism in modern societies. In this section, attempt will be made to conceptualize administrative law so as to draw a distinction between it and Constitutional law.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- Define administrative law
- Discuss the nature and scope of administrative law
- Discuss the distinction between administrative and constitutional law

3.0 MAIN CONTENT

3.1 What is Administrative Law?

Administrative law or the law relating to public administration defies almost any precise

definition or limitation. Dicey, in the 19th century, held the view that there was no administrative law in England in the sense that there was no concise and separate system of administrative law as it was to be found in many Continental countries, like France.

Administrative law or the law relating to public administration defies almost any precise definition or limitation. Dicey, in the 19th century, held the view that there was no administrative law in England in the sense that there was no concise and separate system of administrative law as it was to be found in many Continental countries, like France.

K.C. Devis regards administrative law as

"the law concerning the powers and procedure of administrative agencies." But, B. Schwartz states that: Administrative law is the law applicable to those administrative agencies which possess powers of delegated legislation and/or adjudicatory authority.

Schwartz is of the opinion that Jennings' approach is really French, rather than the Anglo-American conception of the scope of administrative law, since according to him:

It is broad enough to cover all of the matters dealt with in a French treatise like that of Waline... Thus, it includes within its scope matters such as administrative organization and the law of the civil service, which are, in traditional Anglo-American theory, for the student of public administration, not the administrative lawyer.

He also takes the view that Davis' definition is "closer to the generally accepted Anglo-American

Conception of what administrative law is.

E.C.S. Wade and G. Phillips define administrative law as: *A branch of public law which is concerned with the composition, powers duties, rights and liabilities of the various organs of government which are engaged in administration.*

In his book, *Administrative law*, H.W.R. Wade state:

It is more important to understand the broad objectives than to attempt to define administrative law scientifically. It should suffice to say that it is concerned with the nature of the powers of public authorities and especially, with the manner of their exercise.

On his emphasis on function rather than on structure, Wade explains that "... the authorities can easily be recognized: the Crown, ministers, local authorities, police, and so forth, but it is harder to define administrative powers..."since they overlap. According to Wade:

Any attempt to define the subject (i.e. administrative law) scientifically leads to a number of arguable questions... If the powers and authorities of the state are classified as legislative, administrative and judicial, then administrative law might be said to be the law which concerns administrative authorities as opposed to the others.

Commenting on Jennings approach to the definition of administrative law, J.A.G. Griffith and H. Street in their book *Principles of Administrative Law*, stated:

Jenning's approach is the most commonly accepted definition today, but it does not attempt to distinguish constitutional law, which in its usual meaning has a great deal to say concerning the organization of administrative authorities. In another sense, also, this is a very wide definition, for the law which determines the powers of these authorities must include, for example, the provisions of Acts relating to public health, housing, town and country planning, the National Coal Board, and the personal health services. Indeed, almost every statute affects to some extent the powers and duties of administrative authorities.

Griffith and Street concluded by saying that "the truth is... that any definitions of constitutional or administrative law and any distinctions drawn between them are arbitrary and based on the convenience of the particular writer."

From the above quotations, we can see that the problem of defining administrative law and its scope is exceedingly vast and tortuous where the political organization of a country is highly developed, as it is in England, administrative law is a large and important branch of the law. From the institutional point of view, it includes the law relating to the civil service, local government law, the law relating to nationalized industries, and the legal powers which these authorities exercise. But, looking at the subject from the functional point of view, one may say that it includes the law relating to public health, the law of highways, the law of social insurance the law of education, and the law relating to the provision of gas, water, and electricity. The above are merely examples only, for a list of the powers of the administrative authorities would occupy a long catalogue.

3.2 Nature and Scope of Administrative Law

Private law deals with the legal relationship between ordinary individuals, partnerships, companies, etc., in their everyday transactions, it includes the law of contract, commercial law, family law and the law of tort. Public law, on the other hand, concerns among other things, the constitution and functions of all organs of government, including local authorities, and their legal relationship with each other and with the individual. Public law embraces constitutional law, administrative law and criminal law.

It is also necessary to note the distinction between criminal law and civil law. Criminal law covers all those legal rules which specify that certain forms of conduct are punishable at the hands of the State, whilst civil law includes the whole of private law and all aspects of public law other than criminal law. Nigerian administrative law is strictly an adaptation of the English administrative law. The same rules govern the Nigerian administrative system as the English administrative system.

3.3 The Distinction between Administrative Law and Constitutional Law

Although the distinction between administrative law and constitutional law is important, when delimiting administrative law the difference between them is not essential or fundamental, *for* constitutional law does not differ in essence from administrative law, or indeed from other branches of law. This is because the sources of both are the same and both are concerned with the functions of government. The early English writers, such as Austin and Maitland, attempted to define administrative law in terms of constitutional law, whilst A.V. Dicey is blamed for denying (through his vigorous writings on the Rule of Law), the existence of administrative law independently of constitutional law. In fact, it has been asserted by Griffith and Street, that English administrative law has not yet recovered from the confusion into which Dicey plunged it by denying its existence, through his misconception of the French *draft administrative*.

However, it may be noted that, today, many English writers include in their texts on constitutional law a great deal of weighty material on administrative law. This may be because both constitutional law and administrative law are both part of what is sometimes referred to as "public law." Perhaps, the best description of the borderline between the two is that constitutional law is concerned with the organization and functions of government *at rest*, whilst administrative law is concerned with that organization and those functions *in motion*. It may be added that even the above description is not entirely true, for the law relating to the electoral system and the organization of certain administrative bodies at a level below the central government, such as local authorities and independent statutory corporations, is commonly regarded as being within the scope of administrative law. One may, therefore, be forced to concede that the distinction between the two is one rather of convenience and custom than logic. The result of the English awareness of the existence of administrative law (not as an appendage of constitutional law) is that there has arisen in recent years a remarkable body of texts specifically devoted to the subject of administrative law.

4.0 CONCLUSION

In this Unit, you have learnt the definition, scope and nature of administrative law. You have also learnt the major difference between administrative and constitutional law knowing the extent to which one impacts on the other.

5.0 SUMMARY

Administrative law or the law relating to public administration defies almost any precise definition or limitation. It is more important to understand the broad objectives than to attempt to define administrative law scientifically. It should suffice to say that it is concerned with the nature of the powers of public authorities and, especially, with the manner of their exercise.

6.0 TUTOR-MARKED ASSIGNMENT

What is administrative law?

What is the scope of administrative law?

What is the difference between administrative law and constitutional law?

7.0 REFERENCES/FURTHER READING.

Egwummuo, J.N. (2000) Modern Trends in Administrative Law, Enugu:Academic Publishing Company.

Oluyede. P. A.,(1966)(5TH Edn.) Ibadan:University PressPlc.

UNIT 2 CONSTITUTIONAL CONCEPTS

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Rule of Law
 - 3.2 Separation of Powers
 - 3.3 Constitutional Conventions
 - 3.4 Ministerial Responsibilities
 - 3.5 Parliamentary Sovereignty
 - 3.6 The Organs of Government.
 - 3.7 Classification of Powers
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor- Marked Assignment
- 7.0 References/Further Reading.

1.0 INTRODUCTION.

Concepts are ideas or mental images which correspond to some distinct entity or class of entities, or to its essential features, or determines the application of a term and thus plays a part in the use of reason or language. They are the fundamental building blocks of our thoughts and beliefs. They play an important role in all aspects of cognition. When the mind makes a generalization such as the **concept** of tree, it extracts similarities from numerous examples; the simplification enables higher-level thinking. The vast majority of contemporary constitutions describe the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a constitution.

2.0 OBJECTIVES

At the end of this introductory unit, you should be able to:

- know the rule of law
- know separation of power
- Know constitutional conventions.

3.0 MAIN CONTENT

3.1 The Rule of Law

Man is a social animal. He has to live in society and never in isolation. His aspirations and his hopes, his duties and obligations, his rights and privileges are all realized in society with his fellow man. To live in society, man has had, in his own interest, to fashion out for himself the laws and other instruments of government. Sometimes, these man-made instruments of government operate or are operated for the oppression of man. Man has therefore throughout the ages, revolted against oppressive national laws and the denial of his rights. In his desperation, he has always appealed to something higher than his own local laws, to something which he wished his own local laws should approximate. In one age, it was to *JUS NATUAE* - the Law of Nature that man fled for refuge. In another age, the age of the fathers and doctors of the Church, the age of Saint Ambrose, Saint Augustine and Saint Gregory, it was to the law of God. In a later age, solace was sought in the Theory of the Social Contract. This was the age of Thomas Hobbes, John Locke and Jean Jacques Rousseau. According to Rousseau, on the day of the Spanish Armada in 1588, his mother gave birth to twins - himself and fear and, after watching man's inhumanity to man, Rousseau exclaimed in a despairing cry that "man was born free, but is always held in chains by his fellow man."

The concept of law as a check upon arbitrary power is as old as political theory itself. Aristotle, a Greek philosopher, stated that:

He who bids the law rule, bids God and reason rule, but he who bids man rule adds an element of the beast; for desire is a beast, and passion perverts rulers, even though they be the best of man.

Therefore the law is reason free from desire

Rule of law can be defined as the supremacy of the law for administering the state. It implies that the law it is the law which rules and nothing else, thus in authority must rule according to the tenets of the rule of law. It proposes

- a. Supremacy of the law
- b. Equality before the law
- c. Liberties of citizens

3.2 Separation of Powers

The doctrine of "Separation of Powers" stemmed from the observation of John Locke of the conditions prevalent in seventeenth century England. Locke thought that it was convenient to confer legislative and executive powers on different organs of government as the legislature can act quickly and at intervals, while the executive must constantly be at work. He argued that it was foolhardy to give to lawmakers the power of executing the laws, because in the process, they might exempt themselves from obedience and suit of the law {both in making and executing it) in their individual interests. The doctrine of "Separation of Powers," as understood today, was first formulated by the French jurist

Baron Louis de Montesquieu (1689-1755) in his monumental work L'Esprit des Lois. According to Montesquieu:

Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. To prevent such abuses it is necessary that power should be checked by power.

Montesquieu distinguished three different classes of powers in a government called organs of government. These are the legislature, the executive and the judiciary.

Be safest in which those three organs of government are separated; that is, made independent of each other and entrusted to different persons or group of persons. He declared:

When the legislative and executive powers are united in the same person or the same body of magistrates, there can be no liberty because apprehension may arise lest the same monarch or senate should enact tyrannical laws to execute a tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and apprehension. There would be an end to everything where the same man or the same body, whether of the nobles or of the people exercise those three powers.

The principle of separation of powers states that the organs of government should work independently so that one organ can act as a check on the other. That when power of law making, interpretation and execution of the law is in one individual there is bound to be conflict.

3.3 Constitutional Conventions

The term "convention" has been accepted largely through the influence of Dicey to describe certain obligations created by constitutional law, whether they derive from custom, agreement; or expediency. As stated by Dicey:

Conventions are rules for determining the mode in which the discretionary powers of the Crown (or of ministers as servants of the Crown) ought to be exercised. Constitutional conventions have also been described as Rules of political practice which are regarded as binding by those whom they concern.... but which

would not be enforced by the courts if the matter came before them.

These conventions are quite distinct from the laws. Laws are enforced by the courts, but as stated above, conventions are not so enforced. The consequence of any breach of conventions was ably described by Vinogradoff, when he said:

Constitutional law creates obligations in the same way as private law, but its reactions as to persons possessed of political power are extra-legal: revolution, active and passive resistance, the pressure of public opinion. The sanction is derived from the threat of these consequences.

In Nigeria, the interesting case of *Akintola v Aderemi* demonstrated the futility of importing the unwritten constitutional conventions of Britain in the interpretation of the written Constitution of Nigeria, since these conventions have not been incorporated into the Nigerian constitution. A summary of the facts is as follows: The regions governor removed the premier from office without a prior resolution by the Western House of Assembly since the issue had reached the floor of the house. The governor based his action upon extraneous documents signed by some members of the Western House of Assembly showing that the premier no longer commanded the support of the majority of the members of the House. The Supreme Court of Nigeria held (Brett, F.J. dissenting)

(1) That the constitutional convention obtaining in England with respect to removal of a Prime Minister upon a resolution passed on the floor of the House of Commons must be followed in removing a premier from office;

(2) That section 33(10) of the Western Nigeria Constitution, 1960, was an attempt to state in writing the English constitutional convention applicable to the removal of a Prime Minister. Brett, F.J., held that section 33(10) did not prescribe the matters to which the governor was to have regard in the deciding whether the condition necessary for a premier's removal has been satisfied. However, the decision of the Supreme Court was reversed by the Judicial Committee of the Privy Council, and the Privy Council decision was in turn nullified by a retrospective legislation of the Western House of Assembly.

3.4 Ministerial Responsibility

Ministerial responsibility can be said to be a peculiar British contribution to modern political practice, at least as it is understood in Commonwealth countries. As stated by Hood Phillips, "Responsibility in this context does not mean moral responsibility or culpability, but accountability," Ministerial responsibility may be understood in a number of senses. First, it may mean that all the ministers are collectively responsible to an

elected parliament for the general policy of the administration. The members of the cabinet are responsible to the parliament and hold office so long as they possess the confidence of members of the parliament. They must resign whenever they lose the confidence of members of the parliament. Collective responsibility was described by Mr. Joseph Chamberlain, a former British Prime Minister, as:

Absolute frankness in our private relations and full discussion of all matters of common interest... the decisions freely arrived at should be legally supported and considered as the decisions of the whole government. Of course there may be occasions in which the difference is of so vital a character that it is impossible for the minority...to continue their support, and in this case the ministry breaks up or the minority number resigns.

Lord Salisbury also hit the nail at the head when he said in 1878;

For all that passes in Cabinet, every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues ... It is only on the principle that absolute responsibility is undertaken by every member of the cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of ministers to Parliament can be upheld and one of the most essential principles

This statement explains why it is essential to draw the veil of secrecy over all that passes in cabinet, even in times when the requirements of security do not necessarily impose the ban of silence. It is impossible to preserve a united front, if disclosures are permitted of differences which have emerged in arriving at a decision.

3.5 Parliamentary Sovereignty

Parliamentary sovereignty or legislative supremacy, as it is sometimes called, is a legacy of the British parliamentary practice which arose out of the conflict between the Crown and parliament. It is a legal concept, and in its broadest sense it means that an elected body of men (by whatever name it is called, whether parliament, congress, house of representatives, etc.) can pass any law on any topic which affects the interests of persons. According to Hood Phillips;

The most important characteristic of British Constitutional Law is the legislative supremacy of the United Kingdom Parliament. Positively this means that Parliament can legally pass any kind of law

whatsoever; negatively it means that there is no person or body whose legislative power competes with it or overrides it.

That parliament, within the limits of physical possibility, can make or unmake any law whatever, was also highlighted by Coke when he said:

Of the power and jurisdiction of Parliament, for making of laws and proceedings by bill, it is so transcendent and absolute as it cannot be confined either for causes or persons within any bounds.

Sir Erskine also tells us that law passed by the British Parliament "may be unjust and contrary to sound principles of government: but Parliament is not controlled in its discretion and when it errs, its error can only be corrected by itself." Although in Britain, parliament is the supreme lawmaking body, nevertheless it cannot pass any law which would bind its successors; otherwise succeeding parliaments would not be sovereign or supreme. This is illustrated by the case of *Vauxhall Estates v Liverpool Corporation*, where it was held that the provisions contained in a later Act (Housing Act, 1925, section 46, which related to compensation for land compulsorily acquired), repealed by implication the provisions of an earlier Act (Acquisition of Land (Assessment of Compensation) Act, 1919, section 7 (i) which attempted to invalidate subsequent legislation so far as it might be inconsistent. Also in *Ellen Street Estates Ltd. v Minister of Health*, Haughan, L.J., said:

The legislature cannot according to our constitution bind itself as to the form of subsequent legislation, and it is impossible for Parliament to enact that in a subsequent statute dealing with the same subject matter there can be no implied repeal. If in a subsequent Act, Parliament chooses to make it plain that the earlier Statute is being to some extent repealed, effect must be given to that intention just because it is the will of the legislature.

3.6 The Organs of Government

We have traditionally three organs of government-the legislature, the executive or the administration, and the judiciary. The legislative organ deals with the formulation of policies, the executive is concerned with the execution of policies, though with some modification, whilst the judiciary deals with the actual interpretation of the laws made by the legislature.

The executive function is often split into two-administrative and ministerial. The ministerial branch relates to an area where the law has fixed conclusively what is to happen on any given circumstances, for example, the execution of a warrant on the goods of a judgment debtor. There are three phrases which are commonly used to indicate groups of bodies with administrative powers: "The government" sometimes means the

cabinet but is often extended to mean those central departments the heads of which are directly appointed by the Prime Minister or the President and are ministers. The phrases can also be used more loosely to describe anybody who has governmental powers including local authorities and other public corporations. "The executive" covers the same ground of meaning and is often used to include all governmental authorities which put the law into effect. It normally appears in contrast to the legislature and the judiciary. "The administration" sometimes serves as a modern synonym for the executive. It covers such organs of government as (1) The cabinet (2) local government Authorities and (3) other statutory bodies.

3.7 Classification of Powers

Although there is no strict separation of powers in Nigeria, yet it is conventional to refer to the functions of administrative authorities as: legislative or rule-making, executive or administrative, judicial or quasi-judicial. As we shall see later, certain legal consequences flow from a judicial or quasi-judicial decision of an administrative authority, as opposed to a situation where it is exercising a legislative or executive power.

4.0 CONCLUSION.

The principle of separation of powers states that the organs of government should work independently so that one organ can act as a check on the other. That when power of law making, interpretation and execution of the law is in one individual there **is** bound to be conflict.

5.0 SUMMARY

In this unit you have learnt about the rule of law, Separation of powers, constitutional conventions, ministerial responsibility, parliamentary sovereignty and the organs of government.

6.0 TUTOR MARKED ASSIGNMENT

- What are the main organs of government?
- What is separation of powers?
- What is the rule of law?
- Who popularised the rule of law?

7.0 REFERENCES/FURTHER READING.

<http://www.dawodu.com/oraegbunam1.....>
<http://www.ncsl.org/.../separation....>

UNIT 3 PUBLIC CORPORATIONS AS AGENTS OF AFRICAN GOVERNMENTS

CONTENT

- 1.0 Objectives
- 2.0 Main Content
- 3.0 Conclusion
- 3.1 Classification of Corporations
 - 3.1.1 Commercial Corporations
 - 3.1.2 Economic Corporations
 - 3.1.3 Industrial Corporations
 - 3.1.4 Welfare and Social Service Corporations
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor- Marked Assignment
- 7.0 References/Further Reading.

1.0 INTRODUCTION

DEFINITION OF CORPORATION:

The corporations are quasi-government bodies formed for the sole purpose of performing some specific functions given to them by the government. Some of these public corporations are national in character as covering the whole country, while others are the creatures of regional governments. These corporations can sue and be sued in their respective names like any natural person, and they had separate legal personality quite distinct from those of its directors or members. The Acts of Parliament establishing the various corporations contain provisions giving them the power to appoint their own staff, on such conditions and terms as they deem fit. Such employees are not civil servants but contract workmen in the service of the corporations. The intention is that, freed from the strict and sometimes frustrating civil service control (red tape), the corporations would be in a better position to discharge their duties speedily and profitably. In Nigeria today, certain services are rendered to the public by independent utility corporations set up under Acts of Parliament. Examples of these corporations are the Nigerian Broadcasting Corporation, the National Electric Power Authority, the Nigerian Railway Corporation, and the Nigerian Ports Plc.

2.0 OBJECTIVES

At the end of this unit, students should be able to understand the following:

- Commercial Corporations
- Economic Corporations

- Industrial Corporations
- Welfare and Social Service Corporations

3.0 MAIN CONTENT

The idea of establishing public corporations is not entirely new in African countries. Right from the time the British established their administration in African countries, some municipal corporations were established. In Ghana, for example, the Town or Municipal Ordinance of 1894, 1924, 1943 and 1953 provided that the various bodies established by them should be legal entities capable of suing and being sued in the court of law like any private person. The Lagos Executive Development Board was established under the Lagos Town Planning Act 1928 for the purpose of "planning and development of Lagos. It has ever since been a body corporate. The development in African countries in this respect was inspired by the practice prevailing in the United Kingdom. In Britain, there are various independent statutory authorities which carry out public functions. Examples of these authorities are the National Coal Board, set up under the Coal Industry Nationalization Act, 1946-56; the British Transport Commission and the London Transport Executive, set up under the Transport Acts, 1947-1953; the Bank of England, set up under the Bank of England Act, 1946 etc. The chairmen and other members of the boards are appointed and may be removed by the respective minister or by the Crown. These public corporations are independent of the Central Government, but it is customary for the constituent statute to provide that a minister of the Crown shall be entitled to give directions of a more or less general nature to a public corporation operating within that minister's field of interest." But the idea of establishing public corporations for the purpose of carrying out economic, industrial and commercial projects became widespread only after the Second World War.

This development was stimulated by the government formed in the United Kingdom after the 1945 elections there. The Labour Party which formed the government had pledged itself to achieve social justice by creating a welfare state in the country, and to ensure more equalitarian redistribution of the national wealth among all classes of the community, the government embarked on the creation of public corporations both at home and in the colonies. Another reason for establishing public corporations in the colonies was the need to have necessary institutions that would facilitate early attainment of political independence, based upon sound economic and social foundations. It was felt that public corporations and state owned companies would be much more honest in dealing with the general public than the private capitalist investors, who were in any case reluctant to invest their capital in underdeveloped economy. The main reason why many independent African countries chose to establish new corporations or convert some existing government departments into corporations, was the need to give opportunities to as many people as possible, within the community, to participate in the management of state affairs.

3.1 Classification of Corporations

Having regard to the nature and purpose of public corporations, we may classify them into the following broad categories which are, however, not mutually exclusive:

1. Commercial Corporations
2. Economic Corporations
3. Industrial Corporations
4. Welfare and Social Service Corporations

We may now discuss the different types of corporations, *seriatim*:

3.1.1 Commercial Corporations.

Under this heading, we have the coal and electricity corporations of Nigeria; the Ugandan electricity board; the railway corporation, airways and port authorities in some of the African countries, as well as the National Insurance Corporations in both Nigeria and Uganda. This list is certainly not exhaustive, but it gives a general idea of the type of corporations regarded as commercial corporations. The general characteristic of the commercial corporations is that they control commercial undertakings, which supply commodities or facilities on payment, to the general public. In this sense, they may be described as managerial-economic bodies. The electricity corporations or boards in the different countries, for example, are charged with the responsibility of developing and maintaining efficient, coordinated and economical system of electricity supply to all parts of the countries they serve. In the case of Uganda, the electricity board has the additional duty of ensuring that electricity is supplied to Kenya at a cheap bulk rate. The Nigerian Railway Corporation, the Ghana Railway Board and similar corporations in other African countries were created to take over the functions of the former Government Railway Departments established by the colonial governments. Like the Transport Commission in England, they are under a general duty to provide and maintain railway services throughout their respective countries.

3.1.2 Economic Corporations

The corporations that may be conveniently classified as economic corporations include the Cocoa Marketing Board and the Agricultural Produce Marketing Board in Ghana; the Produce Marketing Company and the various Regional Marketing Boards in Nigeria, and the Multipurpose Uganda Development Corporation. The Cocoa Marketing Board was established in Ghana in 1947 and was given the responsibility of buying and exporting all cocoa produced in Ghana, the main objective being to ensure stabilization of fluctuating prices of cocoa in the world market, and thereby protect farmers against consequent hardships. Its statutory duty is:

To secure the most favourable arrangements for the purchase, grading, exporting and selling of Ghana cocoa, and to assist in the

development by all possible means of the cocoa industry for the producers.

3.1.3 Industrial Corporations

These include the Industrial Development and the Volta River Project in Ghana, the Regional Development Corporations in Nigeria and other corporations in various African countries, whose main function is to finance and encourage manufacturing industries. It is the ambition of all African countries to move from agricultural and subsistence economy to industrialized economy within the shortest possible time. The various industrial corporations and boards are therefore charged with the duty of establishing and managing industrial projects in different parts of the country. They are sometimes empowered to enter into partnership with foreign firms with the technical expertise, for the purpose of running industries, as is the case with the Uganda Development Corporation. The Nigerian Industrial Development Bank, in the sense that it finances industrial projects, may be classified as an industrial corporation.

3.1.4 Welfare and Social Service Corporations

The welfare and social service corporations may be defined as those corporations established to provide for the needs of the community, for little or no payment. It is obvious that such corporations will not be expected to pay their way. They depend mainly on money provided by the government in order to be able to carry out their functions. The corporations that come under this head include the broadcasting corporations, which have the duty to inform and entertain the general public, the

Lagos Executive Development Board which is charged with, among other duties, the responsibility of providing cheap accommodation for low income workers, the eservice e men welfare organizations of the various countries, which are expected to promote comradeship amongst ex-servicemen and to assist necessitous ones. All the public corporations in African commonwealth counties, like their counterparts in the United Kingdom, were created by Acts of Parliament, which clearly define their functions and the limits of their powers. For example, in Nigeria, the corporations are independent of the federal government. However, this independence is circumscribed not only by the powers vested in the ministers or the President-in-Council to appoint and dismiss members of these corporations, but also by the power of the minister after consultation with the appropriate corporation to give general or specific direction as to the mode of discharging its functions in relation to matters of public importance. The efficiency of this method of control, and the complaints against those corporations, are best reflected in the report of the commission of inquiry into the affairs of the Nigerian Railway Corporation headed by Dr. T.C. Elias in 1960. As a means of ensuring a true accountability to parliament, the Commission recommended that:

...the Federal House of Representatives be strongly advised to set up a Committee on Statutory Instruments, made up entirely of members and charged with the duty of subjecting all forms of subordinate law making to detailed and expert scrutiny and of reporting their findings to the House...

The management of the affairs of each corporation in African commonwealth countries is left with a board consisting of a chairman and a number of members or directors. The chairman and members of a corporation are appointed by the minister in charge of the corporation, who has absolute discretion in the matter. He is, however, sometimes required to consult some interested bodies or organizations before making the appointments. But in most cases, he is required to appoint only persons appearing to him to be qualified as having had experience in the administration and management of the type of industry or projects for which the corporation was established. The chairman and director of the Uganda Development Corporation, for example, are appointed by the minister. But the Act establishing the corporation provides that only persons with outstanding ability and experience in business and administration may be appointed. On the other hand, the Nigerian Broadcasting Corporation Act and the Nigerian Railway Corporation Act are silent on what type of persons should be appointed to the boards of the corporations.

As a result of the failure of these Acts to specify the qualifications required of a chairman or board members, many people who have neither the experience nor sufficient intelligence to take active part in the running of the corporations had been appointed. There was an instance when a retired messenger of a corporation was immediately appointed a director of the same corporation. The only qualification the ex-messenger had was that he was a brother of the minister in charge of the corporation. In many other countries throughout Africa, corporations are regarded as a dumping ground for political supporters who for one reason or another cannot win an election to parliament. In some instances, corporations have been established for this sole purpose.

4.0 CONCLUSION

It must be emphasized that the classification is not precise. There are many corporations that may be classified as economic corporations but which are at the same time welfare or commercial corporations. A typical example of such corporations is Ghana's Cocoa Marketing Board whose main function is commercial. But it is also a welfare corporation in the sense that it provides money for the construction of roads and Schools in the cocoa producing areas of the country. But, for the purpose of detailed examination of the corporations, it is proposed to adhere to the above classification as much as possible.

5.0 SUMMARY

In this study module, you have learned that:

1. Administrative law is the law relating to the administration. It determines the organization, powers and duties of administrative authorities.
2. Public law, on the other hand, concerns among other things, the constitution and functions of all organs of government, including local authorities, and their legal relationship with each other and with the individual. Public law embraces constitutional law, administrative law and criminal law.
3. The principle of separation of powers states that the organs of government should work independently so that one organ can act as a check on the other. That when power of law making, interpretation and execution of the law is in one individual there is bound to be conflict.
4. Rule of law can be defined as the supremacy of the law for administering the state. It implies that the law it is the law which rules and nothing else, thus in authority must rule according to the tenets of the rule of law. It propose: Supremacy of the law; equality before the law and Liberties of citizens

6.0 TUTOR MARKED ASSIGNMENT

Now that you have completed this Module. You can assess how well you have achieved its learning outcomes by answering the following questions. Write your answers in your study diary and discuss them with your tutor at the next study support meeting. You can check your answers with notes on the self-assessment questions at the end of this module.

1. What are public corporations?
2. Define an invitation to treat and give three examples?
3. Discuss with relevant examples how the principle of the rule of law has been abused by politicians in Nigeria from 1999 – 2015?
4. Distinguish between Public and Private law.?
5. What do you understand by the term Parliamentary sovereignty?

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MODULE 2 LEGISLATIONS

Unit 1: Delegate Legislation Introduction.

Unit:2: External Control Of Delegated Legislation

Unit 3: Certiorari and Prohibition

Unit 4: Mandamus

UNIT 1 DELEGATE LEGISLATION INTRODUCTION.

CONTENT

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1. Define delegated legislation

3.2. Reasons of delegated legislation

3.3. Discuss the criticism against delegated legislation

3.4 The Executive

3.4.1 Powers of the Executive.

3.4.2 Internal control of delegated legislation by the Executive

3.5 Prior Consultation with official superiors, administrative agencies, institutions, specific interest and individuals.

3.5.1 Subsidiary laws to be made with the approval of an official superior

3.5.2 Subsidiary laws to be made on the recommendation of an administration body or authority.

3.5.3 Subsidiary law not to take effect until approved by executive council a minister or any other administration body or authority.

3.5.4 Subsidiary laws presented before an administration or quasi administrative agency and made subject to annulment by resolution

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment (TMA)

7.0 References/Further Reading

1.0 INTRODUCTION

Government responsibilities have continued to increase in scope thus making it difficult to satisfy the interest of the masses in the state. It becomes imperative for it to share some of its powers to individuals and even departments and agencies to help perform some of these tasks on her behalf. It is based on this premise that you will be introduced to the concept of delegated legislation. Its advantages and disadvantages will also be considered

2.0 OBJECTIVES

By the end of this Unit, you will be able to:

- Define delegated legislation
- Reasons of delegated legislation
- Discuss the criticism against delegated legislation

3.0 Main Content

3.1 What Is Delegated Legislation?

Delegated legislation which is also referred to as subsidiary legislation is law made by an administrative authority, public authority or agency to whom the constitution or an enabling statute has given power to make law simply put, delegated legislation is law making in action. It is law making by the public authority other than parliament as a general rule, power may be delegated by one person to another person or body to action, make delegated legislation or to do all that the donor of the power is legally entitled to do. Subsidiary legislation or delegated legislation is the subordinate in that it is made by a body on which parliament has conferred limited subject to abrogation, amendment or alteration by parliament or parliamentary control. Whether parliament delegate power to another person or authority to make laws the end product or law that is made is known as secondary laws of the primary laws or parent statute which is made by the parliament and is subject to the control of parliament which delegated the power to make them in the first place. Additionally subsidiary laws are also subject to control and review by courts. Examples of delegated legislation include rules and regulation, statutory orders forums, precedents etc.

3.2 Reasons for Delegated Legislation

1. To avoid overloading the limited parliamentary timetable delegated legislation can be amended and or made without having to pass an act through parliament which can be time consuming. Changes can therefore be made to the law without the need to have a new act or parliament and it further avoids parliament having to spend a lot of clarification of a specific part of the legislations.

2. Delegated legislation allows law to be made by those who have relevant expert knowledge. By way of illustration a local authority can make law in accordance with what their locally needs as opposed to having one law across the board which may not suit their particular area. A particular local authority can make a law, to suit local needs and that local authority will have the knowledge of what is best for the locality rather than parliament.

3. Delegated legislation can deal with an emergency situation as it arises without having to wait for an act to be passed through parliament to resolve particular situation.

4. Delegated legislation can be used to cover a situation that parliament had not anticipated which makes it flexible and very useful to law making delegated legislation is therefore able to meet the changing needs of society and also situations which parliament had not anticipated when they enacted the Act of parliament.

5. Delegated legislation brings government nearer to people. The administrative law maker is often somewhere from the locality. For instance, this more or less bring the law making process and government nearer to the people whose input and suggestion can be heard and accommodated in the law making and enforcement process.

6. It saves cost for parliament. The practice of delegated legislation saves the financial cost, human and material resources and formalities parliament would have expended on the time consuming tedious and boring process required to pass the technical and specialized rules or subsidiary legislation that are required to implement primary law made by parliament

3.3 Criticism of Delegated Legislation

1. It reduces the supremacy of parliament delegated legislation is a usurpation of the law making powers of parliament and it amounts to a reduction of the supremacy of parliament to make law.

2. It is undemocratic and prone to abuse. Delegated legislation is undemocratic for persons who are not elected as parliamentarians and taking legislative mandate to make laws. Administrative law makers do not have parliament experience and are likely to abuse delegated legislation.

3. It is a violation of the rule of law, the making of delegated legislation by administrative authorities without the observance of the usual law making procedures is a fundamental defect and violation of the rule of law.

4. It encourages arbitrariness and dictatorship, the possession of the power to make law and implement the law, more often than not makes the executive or administrative authority too powerful bold and over confident, insolent, arrogant and more likely to be arbitrary and dictatorial in this disposition and action.

5. Delegated legislation lack publicity surrounding it, when law is made by statutory instrument, the public are normally notify of it whereas with Act of parliament on the other hand, they are widely publicized. One reason for the lack of publicity surrounding delegated legislation made and this results in the public not being informed of the changes to law. There has also been concerned expressed that too much law is made through delegated legislation.

6. Delegated legislation is subject to less parliamentary security than primary legislation. Parliament therefore has a lack of control over delegated legislation and this can lead to

inconsistencies in laws. Therefore delegated legislation has the potential to be used in ways which parliament had not anticipated when it conferred the power through the Act of parliament.

3.4 The Executive

Under the 1999 constitution of the federal republic of Nigeria, the power of the government is delegated by the people through the constitution and is distributed among the three branches of government namely the legislature, the executive and the judiciary. We shall be concentrating on the executive arm of government.

3.4.1 Powers of the Executive.

The executive is vested with the powers of implementation that is power to carry out government business and apply the laws.

Section 5 of the 1999 constitution delegated executive power to the executive. Section 5 (1) (a) and (2) (a) provided:

- (1) Subject to the provision of this constitution, the executive powers of the federation -
 - (a) Shall be vested in the president and may subject as aforesaid and to the provisions of any law made by the national assembly be exercised by him either directly or through the vice president and ministers of the government of the federation or officers in the public service of the federation; and
- (2) Subject to the provision of this constitution the executive powers of a state -
 - (a) Shall be vested in the governor of that state and may, subject as aforesaid and to the provisions of any law made by a house of assembly, be exercised by him either directly or through the deputy governor and commissioners at the government of that state or officers in public service of the state.

3.4.2 Internal control of delegated legislation by the Executive

Every executive arm of government as well as every ministry, department of bureau and every administrative agency are expected to have some internal system of control to ensure that outside criticisms of their activities are reduced to the barest minimum.

The search light of the internal control system is usually directed to an agencies communications with and services to outsiders, such subsidiary laws meant to bind persons and things with a given geographical area. Hence, even without any statutory injunction to do so a ministry must insist that before any subsidiary law or circular is issued by any of its subdivisions, the approval of the head of department, the permanent secretary or the minister must first be obtained. However, in many cases the statutes which authorizes subsidiary laws to be made usually require the draft there of to go through more internal system of control before being signed into law or before taking effect as law. The internal control takes different alternative forms.

3.5 Prior Consultation with official superiors, administrative agencies, institutions, specific interest and individuals.

Some subsidiary laws are required by their enabling statutes to be made only after the makers have consulted some official superiors or some administrative agencies, institutions, specific interest or individuals. What is required here is some consultation and not permission before making the prescribed law. But the consultation must be meaningful and real in the sense that as Buchmill, L.J., observed “sufficient information on the subject matter of legislation must be supplied to those to be consulted, and sufficient time and opportunity must be given to them to reflect on the issues involved, and express their views thereon freely without any fear of the consequence. Apart from consultations aimed at ascertaining the views, suggestions or recommendations of individual or members of special interest groups, consultations may be prescribed by the parent statute to be held with special advising bodies or committees set out by or under the statute. Such bodies or committees may be established within a set out by or under the statute. Such bodies or committees may be established within a given ministry. The parent statute may require the draft of any subsidiary law made there under to be submitted to the committee or required subsidiary laws to be submitted to the committee, a minister sensitive about public opinion may voluntarily establish such committee, to consider and advise him on such subsidiary he may from time to time refer to it. Where an advisory committee is consulted its influence on the resulting subordinate legislation would depend mostly on the disposition of the minister concerned to accept advice.

Examples of this system of internal control are found in number of enabling statutes, including;

1. Section 1964 of the electoral Act, 1962, which empowered the minister to make regulations there under after consultation with the electoral commission.
2. Section 47 and 48 of the police Act as modified in 1961 and 1967, the federal military government may make standing orders for the good order and discipline and welfare of the police force after consultation with the police council on matters of organization and administration of the force, and with the police service commission on matters of appointment, promotion, transfer dismissal and discipline control.
3. Another example of obligatory consultation prescribed by the parent statute is to be found in section 43 of the provident fund advisory council to which the minister may, if he thinks it fit, submit the draft of any regulation made by him under the Act, the advisory council shall then publish a notice informing the public when they could read or see the publication of the draft regulation, and the time limit within which they could lodge an objection such objections are required to be in writing and should specify the aspect of the draft considered objectionable and ground for the objection. After due consideration, the council is required to report its findings to the minister who would then proceed to make any necessary regulation having regard to the report and the recommendations of the council.

Apart from the type of consultation discussed above that with special committees or bodies set up by or under parent there may consultation prescribed by the parent statute to be held with either the general public or with special groups the parent statute may require the general public to be consulted, but it may confine the consultation to special groups likely to be affected in very rare cases it may prescribe that interest groups likely to be affected, it clearly identifiable should be made to prepare the draft of the subsidiary law required under the statute.

As already indicated in dealing with the national provident fund Act, consultations with the public to be meaningful and effective must take certain forms for example;

1. It must be prepared by a public notice issued in the language understandable by those to be affected.
2. It must be circulated in the area or locality where those to be affected would be able to read it.
3. The public must be told that they have a right to lodge an objection they must also be told how, when, and where the objection is to be lodged.

After receiving the objection, there must be a public local forward to expatiate or prove the nature and extent of their fears and they recommend as an alternative. Any report prepared by such a fact finding committee or tribunal should be submitted to the minister or authority responsible for preparing the subsidiary law.

In most of the above cases consultations seems to be imperative, though the advice received does not bind the maker of the subsidiary law, where, however the consultation is to made if thought by fit by the consultation unless he considers it necessary whether any disregard of this statutory requirement of consultation will be fatal to any regulation made depends on a number of other considerations.

3.5.1 Subsidiary laws to be made with the approval of an official superior

In some cases the parent statute prescribes that a subsidiary law to made there under should be made with the approval not just consultation, of an official superior the authority such a situation, the prescribed law will be made unless and until the superior approval should be sought for "the making" and not for the "the content" of the subsidiary law. The superior, it seems is entitle to insist on seeing the draft of the proposed enactment before giving the prepared permission in other word and approval is valid notwithstanding that the draft was not seeing before it was given.

Section 10 of the Act provides:

"The Air council, with the approval of minister may make regulation as to the persons to whom command over the establishment and units any member thereof vested and as to circumstances in which such command as aforesaid is to be exercised and without prejudice to the generality of the forgoing may ins such regulations provide for the duties, functions and powers of the commander, its Air force staff and officers, warrant officers non-commissioned officers and airmen."

Similarly, under section 48 of the Nigerian Police Act modified in 1961 and 1967 provides that,

“The Nigerian police council may with the approval of the head of federal military government make such standing order as they may think fit and proper with respect to any matter relating to the duties and operational control of the force such orders shall be binding upon all police officers but need not to be published Gazette.”

3.5.2 Subsidiary laws to be made on the recommendation of an administration body or authority.

Subsidiary laws are often required to be made by an official or agency on the recommendation of an administrative body or authority. In such a case the recommendation must be received before the subsidiary law is made but it seems there is no obligation to adopt or Act strictly in accordance with the recommendation. An example of this form of control is to be found in section 47 or 48 of the police Act as modified in 1961 and 1967 the section provide that:

“the head of the federal military government may make regulations on the recommendation of the Nigerian police council or the police service commission as the case may be with the council of matter relation to the organization administration of the force or with the commission on matters relating to appointments, promotions, transfer, dismissals and disciplinary control.”

Also section 45 of the National Provident Fund Act Provide that:

“The minister may if he thinks fit prepare a draft on any regulation he want to make under the act and submit to the national provident funds advisory council for consideration. The advisory council is it to receive public comments and views on the draft and base on any investigation it may make, it should prepare and submit to the minister its own report and recommendation on the draft.”

3.5.3 Subsidiary law not to take effect until approved by executive council a minister or any other administration body or authority.

Most of the subsidiary laws when normally put into force without any further formalities. A few of them are however required not to take effect until they have received the approval of the executive council, a minister or a specified administrative body or authority. Such a subsidiary law even if validly made cannot be validly enforced until the required approval received. An example of this form of control is to be found in section 4 of the ports Act, 1963. The ports authority set up under the ports Act, 1959-63 is authorized to make regulations for purposes of the Act, while section 4 of the 1963 Act provides that. “no regulation or byelaws made after the commencement of this Act by the authority in exercise of the power conferred on them by any enactment shall come into force until the regulation or byelaws have been approved by order of the minister.

Another example include section 9(2) of the Nigeria council for medical research Decree, 1966 which established the Nigerian council for the medical research empowers to make

regulations which “shall not have effect until they are approved by the federal executive council and have thereafter been published in the federal Gazette”.

Also section 23 of the Nigerian council for scientific and industrial research set up by the decree has the power to make regulations for purpose of the decree, provided that such regulations are not to take effect until they are approved by the appropriate authority. The appropriate authority is defined as the federal executive council or such other authority or public officer upon whom such power or functions or as the case may be, responsibility for such matter is vested or delegated accordance to law.

3.5.4 Subsidiary laws presented before an administration or quasi administrative agency and made subject to annulment by resolution.

Having seen cases of subsidiary laws presented before the executive council or minister for approval which they must receive before coming into force in each of such case the required approval is a condition precedent to the commencement of the enactment as law without it. The subsidiary law would not be ripe or mature for enforcement. Here we are concerned with cases where subsidiary laws made have fully mature and come into force before being laid before the appropriate authority vested with power to reject and therefore disallow them.

4.0 CONCLUSION

The making and enforcement of delegated legislation are not left uncontrolled in the hands of the done as of the powers in question. A system of control operates to ensure that the subsidiary laws that are made and enforced are in letter and spirit of what the legislature intended. Controls are either external or internal in the sense that the agencies concerned with the monitoring and control of that making and enforcement of the laws are located either within or outside the administrative establishment responsible for making and applying the laws. The monitoring and control may be parental or post natal depending on whether they precede or come after the making of the subsidiary law. Normally the internal controls of the administrative agency concerned with the making of a subsidiary law are aimed at reducing or removing from a given subsidiary law such objectionable features as may expose it to open public criticism and condemnation. The administration in such a situation seeks to save itself from unnecessary avoidable embarrassment by keeping its place tidy and in order.

4.0 SUMMARY

In this unit we discussed the meaning, rationale and criticisms of delegated legislation. Delegated legislation refers to the laws (such as rules, regulations and orders) made by ministers, local government councils, professional bodies, public corporations and other statutory bodies under powers given to them by the legislature in the form of a parent act.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- What is delegated legislation?
- Give reasons for delegated legislation?
- List any three criticism of delegated legislation.

7.0 REFERENCES/FURTHER READINGS

<http://www.parl.gc.ca/.../>

<http://www.parliament.nsw.gov.au/.../....>

UNIT 2 EXTERNAL CONTROL OF DELEGATED LEGISLATION

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 External Control of Delegated Legislation by the Legislature
 - 3.2 Legislative Control or Scrutiny
 - 3.3 Participation of the Legislature In Subsidiary Law-Making
 - 3.3.1 Special Legislative Committees for Scrutinizing and Controlling Subsidiary Laws
 - 3.3.2 The Scrutiny Committee or (lie Joint Select Committee)
 - 3.3.3 Monitoring the Operation of the Subsidiary Law
 - 3.3.4 Questions in the house
 - 3.2. Reasons of delegated legislation
 - 3.3. Discuss the criticism against delegated legislation
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Reading

1.0 INTRODUCTION

Delegated legislation means permitting bodies beneath parliament to pass their own legislation. It can also be called Secondary legislation, Subordinate legislation or Subsidiary legislation. It is a law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation. It is a law made by a person or body other than the legislature but the legislature's authority. In view of the forgoing, we shall examine how delegated legislation is controlled externally to enable you know how some of this subsidiary laws are controlled or regulated.

2.0 OBJECTIVES

At the end of this Unit, you will be able to:

- Discuss external control of delegated legislation by the legislature
- Know Legislative Control and Scrutiny

3.0 MAIN CONTENT

3.1 External Control of Delegated Legislation by The Legislature

Delegated legislation means permitting bodies beneath parliament to pass their own legislation. It can also be called Secondary legislation, Subordinate legislation or Subsidiary legislation. It is a law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation. It is a law made by a person or body other than the legislature but the legislature's authority. There are three forms of delegated legislation which are statutory instrument bye-laws and order in council.

Statutory instruments are created by government departments for areas under their responsibility. The parent Act gives the department permission as well as guidance about how the new piece of legislation is to be written and processed statutory instrument gives department immense freedom to change the law and as a result 300 statutory instruments are brought into force each year. **Bye-laws** are created by local authorities to cover matters in their own area, which must be approved by central government **Orders in Council** are laws passed in an emergency by the government, when parliament is unable, to sit. Under the Emergency Powers Act 1920 Orders in council are approved by the Privy Counsel and signed by the Queen.

3.2 Legislative Control or Scrutiny

Legislative Control or Scrutiny of delegated legislation takes various forms and operates at various forms and operates at various stages in the life or history of a subsidiary law. It may come first, while the bill for the parent statute is going through the legislature and take the form of the standards (procedural and substantive) prescribe by the enabling statute to guide and control the making of the subsidiary law and top the subsidiary law maker from running wild with the power vested in him. In other words, when 'the bill for the parent statute is being discussed by the National Assembly, opportunity is usually offer to members to express their views on whether the power to make the law should be delegated, what safe guards should be written into the parent statute for the protection of the public or to ensure that the power being delegated is not abused. The parent statute after being discussed by the legislature may be completely different from the original proposal submitted to the legislature.

Thus the result of legislative discussions in many cases will be narrow down to the scope of power being delegated, and to have the power delegated clearly defined. If the legislature does not favour delegating a particular type of power, it may vote against any proposal to delegate, thereby indicating that the necessary law in the field should be made by the legislature itself. On the other hand, if it favours the delegation, it may prescribe difficult procedural requirements for exercising the power thereby delegated. It may for example require that the subsidiary law should be drafted after due consultation with various interest to be affected by it. It may require that the subsidiary law when drafted should be widely publicized and objections received from the public.

Legislative control has to do with how law makers monitors the laws other bodies make on their behalf. The aim is to ensure that subsidiary bodies that make laws do not go beyond their powers. In other words it may require that before a regulation, order or by law to be made is to come into force it must first appear in draft and the public given opportunity to express their views thereon. It may even require that the draft be published in local newspapers and in conspicuous places in the locality so as to afford the local people opportunity of criticizing the draft. It may further impose on the subsidiary law maker the burden of a public local inquiry to ascertain the nature and extent of fears entertain by the public, that is, it may go further to require objections to the draft should be lodged with named authority and that public local enquiries should be held to ascertain the existence, nature and scope of fears expressed by the people, and that the report of such investigation 'must be made upon the final draft of the proposed subsidiary law.

Secondly, legislative control or scrutiny of delegated legislation may come during the making of the subsidiary law, when it may take the form of legislative participation in the making of the subsidiary law by scrutinizing, amending: rejecting or approving the law in draft. It may be added that the form of control or procedural requirement prescribed by the enabling statute depends on the extent of confidence reposed by the legislature on the subsidiary law-maker. It may also come while the subsidiary law is frilly enacted and enforced is being applied to concrete situations and is facing practical social problems and friction, with the general public subjected to it expressing approval or rising up in arms against it. The legislature monitoring the impact of the law on the people may decide either to call on the responsible minister or agency to amend the provisions or else enact another statute amending the parent statute or even repealing or contradicting the provisions of the subsidiary law itself. Suffice it to say that subsidiary law enacted incomplete disregard of the procedural and substantive requirements of the parent statute may not stand, if challenged, for the courts would not hesitate to grant a declaratory judgment proclaiming its validity. To be intro vires and valid, a subsidiary law must keep within the narrow bounds or limits marked out by its enabling statute, and it is within the prerogative rights of the legislature to grant very limited or wide or vaguely defined power of law-making.

3.3 Participation of the Legislature In Subsidiary Law-Making

Where the legislature wants to take part in the making of subsidiary law, it usually makes provision for that in the parent statute by prescribing that the subsidiary law when drafted or made should be laid before it for clearly specified action to be taken thereon. At present, however, most of the subsidiary laws in Nigeria are not subjected to this type of external control, for they usually take effect immediately they are made without waiting to be laid by the legislature. Such laws are not subjected to any form of democratic system of security and control.

The laying of subsidiary law before the legislature may take different forms. A subsidiary law may be laid before the legislature in draft that is when drafted but not yet converted into a law. But it may also be laid before the legislature when made, that is when it became a law. Even then, a subsidiary law made and laid before the legislature may be subjected to a contingent provision requiring that it should not come into force until some other event have occurred. For example it may be provided by the parent statute that a subsidiary law when made shall not be put into force until it has been approved by a resolution of either or both houses of National or State Assembly. In that case, although the law has been made, it will not come into force till it has been approved by either or both houses of the legislature as required by the parent statute. Again, the parent statute may require a subsidiary law to be laid before the legislature either in draft or when made subjecting it to no specific treatment or action by the legislature. In that case, though the subsidiary law maker is bound to comply with this procedural requirement, that is to have the subsidiary law laid before the legislature, the legislature cannot by mere resolution modify or change the subsidiary law if already made.

The fact is that once a subsidiary law has been made and put into force, it forms part of law the law of the land and cannot be changed or repealed except by a validly made law. A mere resolution of either or both houses of the legislature cannot amend or repealed such a law, unless the parent law provides that it could. This type of laying requirement however has its own value being a mere fact that the subsidiary law presented before the legislature would be exposed to legislative criticism which is enough to curb the excesses of the subsidiary law maker. Example of such laying requirement are to be found in Section 62(1) of the Education (Lagos) Act 1957; Section II of the Foreign Jurisdiction Act, 1890 (U.K) Section 15(2) of the Pharmacist Act 1964, each of which provides that the minister shall lay a copy of all regulations before each house of the legislature as soon as may be possible after the regulations are made.

The laying requirement of the different groups of the subsidiary law include;

- i. Those laid but not subjected to any form of legislative treatment.
- ii. Those laid in draft or as made and subjected to negative procedure.
- iii. Those laid in draft or as made and subjected to affirmative procedure.
- iv. Those laid and made subject or amendment

3.3.1 Special Legislative Committees for Scrutinizing and Controlling Subsidiary Laws

The various laying requirement discussed above are not altogether very effecting in controlling the making of subsidiary laws. In many cases, subsidiary laws are laid but parliament or the legislature never has the time to scrutinize or criticize their provisions. In other words, the legislature is usually so busy with financial matters and other government- sponsored business that it hardly ever spares time to scrutinize subsidiary laws laid before it. Only the requirement on laying a subsidiary law subject to affirmative

resolution makes it imperative for legislature to provide time for the subsidiary law in question to be discussed by each house. If it's not discussed and approved it will not come into force, it will cease to be operative after a specified period of time. The legislature sees to it that time is provided for such subsidiary laws to be discussed and approved. It follows, therefore, that the laying requirement, if not coupled with a requirement 'for an affirmative resolution, may turn out to be more than a window dressing decorative meant to give the false impression that administrative legislature is subject to decorative security and control.

To ensure that the legislature in fact supervises and influences the making of subsidiary laws by scrutinizing such laws when laid before it, the two houses of the British parliament and their counterpart in some of the other commonwealth countries have set up standing committees to deal specially with subsidiary laws laid before them, such committees usually accept such an assignment and face it with zeal, as it may be held responsible for failing to detect and call the attention of the legislature to any objectionable feature that might cause trouble and rioting in the future.

In Britain, for instance each house of parliament has set up a special committee to keep an eye on administrative law-making and report unusual and objectionable features of subsidiary laws to the House, there is the House of Lords - Special Orders Committee-set up in 1925, and the House of Commons Scrutiny Committee set up in 1945.

(a) The Special Orders Committee

This committee was set up by the standing orders of the House and is required to scrutinize subsidiary laws laid or laid in draft before the House and made subject to affirmative resolution procedure. Accordingly, instruments not required to be laid before Parliament and those made under sub-delegated powers are excluded from the terms of reference of the committee. The committee is required to exercise such instrument, paying attention especially to:

- i. Whether the provisions of a particular instrument raise important questions of policy or principle;
- ii. How far those provisions are founded on precedent;
- iii. Whether there should be any further inquiry; and
- iv. Whether there is any doubt as to the vires of the instrument, that is whether the instrument is within the powers granted by the parent statute

It is important to note that the terms of reference of the committee are very restrictive. As already observed, instruments, not subject to affirmative resolution procedure are outside the scope of the authority of the Committee. The committee must deal only with those instruments subject to affirmative resolution and procedure, and as Garner rightly observed

As there are low comparatively few of these and they are the instruments to which the members of the House are compelled

to pay some attention in any event, this Committee is not of every great importance.

The work of the committee, therefore, is not very important, since it is very much restricted to less than ten percent of the subsidiary laws that require parliamentary consideration.

3.3.2 The Scrutiny Committee or (lie Joint Select Committee)

The Committee has the mandate to consider subsidiary laws laid or laid in draft before the house and call the attention of the House to them on a number of grounds, namely; that

- (i) It impose a tax or charge without any statutory authorization to do so;
- (ii) By virtue of the enabling statute it is excluded from challenge in the courts;
- (iii) It appears to make some unusual or unexpected used of the delegated power.
- (iv) There appears to have been some unjustified delay in the publication or laying of the instrument;
- (v) It purports to have retrospective effect where no such express authority was conferred by the parent statute. The instrument has come into operation prior to the laying and the speaker has not been promptly notified thereof (as required by Section 4(i) of the Statutory Instruments Act, 1946)
- (vi) It is obscure and requires further elucidation

The powers of the Committee are as indicated above limited to drawing the attention of the House to any objectionable aspect of an instrument laid or laid in draft before the House. Once it has done that, it is left to the Eloise to take whatever action it considers necessary under the circumstance. It is necessary to note that the Committee, can only draw the attention of the House to any objectionable aspect of an instrument of draft, it is not empowered to annul or pass any resolution on behalf of the House, because such an action by it would have ultra vires and of no effect. It is for the House to consider any instrument laid before it base on any recommendation. It may receive from the committee however the committee's recommendations are not binding on the House. Based on the information supplied to the committee, any member or members of the House may move a motion for the annulment of the instrument is noteworthy that in Nigeria, no legislature has seen it 'fit to set up a scrutiny committee, probably because the number of subsidiary law required to be laid before it is still small. However, the need has always been there for what ought to be scrutinized, including not only subsidiary law laid but also those not laid. The action the legislature could take similarly include not only the passing of resolutions, ejecting or affirming a given subsidiary law, but the making of a statute to modify or even revoke or nullify the subsidiary law, regardless of whether or not such an action is prescribe by the enabling statute.

3.3.3 Monitoring the Operation of the Subsidiary Law

As the representative of the people in a democracy, the legislature is usually not only the policy maker but also the custodian of public welfare. Its function does not consist in making and unmaking laws; it extends to and includes the monitoring of the impact of such laws on the people. The people who wear the shoe should indicate where it pinches them, and this therefore calls for some flexibility. Therefore the legislators should sack to pinpoint the attitude of the people to individual enactment. A subsidiary law may be arbitrary or harsh in the provisions and may as a result spark off a considerable adverse reaction, it may lead to petitions, demonstration, protest and even rioting. The legislature or its members should not close their eyes and ear to all these merely because the enactment concerned was made by administrative agencies. The first reaction of the people to such enactments considered by them to be obnoxious is to approach their representative in the legislature, and demand an explanation or promise of some action to be taken to nullify or mitigate the hardship caused by the enactment.

Thus, where a subsidiary law is causing some hardship in a particular locality, the representative of that constituency has a number of alternative actions to take. He may write or approach the responsible minister privately for an explanation and promise of some action; he may raise in a formal session of the legislature, calling the attention of the legislature to crippling or destructive effect of the law on the community; in a parliamentary system he may call on the ministers to provide explanation there and then, whereas in a presidential system lobbyist may be set in action to pressure the executive or legislature into modifying the law in question.

However, where a given subsidiary law does not meet the expectations of the legislature, two alternative actions may be taken by the legislature, depending on the circumstance;

- (a) It may pass a resolution criticizing the subsidiary law and calling on the appropriate authority to amend or revoke it in line with the recommendation made by the legislature.
- (b) It may enact a new law expressly or impliedly repealing or modifying the said subsidiary law.

3.3.4 Questions in the house

After the making and coming into force of a subsidiary law, legislative control and scrutiny continues, but it is important to note that at this stage, the legislature cannot by mere resolution of either or both Houses amend or nullify subsidiary law. Control at this stage takes the form of questions put to the responsible minister in the House. Such questions may be asked orally or in writing and is usually addressed to a particular minister calling upon him to explain the working of a given subsidiary law made or under the surveillance of his ministry. In some cases, such questions may be prompted by demonstration, protest or outcries by those on whom the subsidiary law is being enforced,

and the minister would be called upon to explain to the house whether or not he was aware of the outcry, and what actions he considered necessary to deal with the situation. The minister responsible will be obliged to answer the question explaining the workings of a subsidiary law within his ministry. Such questions are very useful because they may compel a minister to have a look at a situation existing within his administration, if he had taken cognizance of it, It may also compel the responsible minister to give some directives which will result in administering the law more liberally or in having the law amended or repealed by the appropriate authority.

4.0 CONCLUSION

Delegated legislation means permitting bodies beneath parliament to pass their own legislation. It can also be called Secondary legislation, Subordinate legislation or Subsidiary legislation. It is a law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation. It is a law made by a person or body other than the legislature but the legislature's authority. There are three forms of delegated legislation which are statutory instrument bye-laws and order in council.

5.0 SUMMARY

We have learnt how delegated legislation is being externally controlled by the legislature, Legislative Control and Scrutiny such as participation of the legislature in subsidiary law making monitoring the operation of subsidiary law and question in the house is made and answered. If the legislature does not favour delegating a particular type of power, it may vote against any proposal to delegate, thereby indicating that the necessary law in the field should be made by the legislature itself. On the other hand, if it favours the delegation, it may prescribe difficult procedural requirements for exercising the power thereby delegated.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- What do you understand by the term legislative control
- What does legislative control and scrutiny may include?
- What may legislative control and scrutiny include?
- What are the functions of the special orders committee

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 CERTIORARI AND PROHIBITION IN ADMINISTRATIVE LAW.

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Law of Certiorari
 - 3.1.2 The Order of Certiorari Law
 - 3.1.3 When Is The Order Of Certiorari Issued By Court?
 - 3.2 Prohibition
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Reading

1.0 INTRODUCTION

This Unit is designed to expose you to some of the basic terms and procedures used in courts and administrative processes. The origin of these concepts will be traced and relevant examples will be cited to acquaint you how they are used in administrative law.

2.0 OBJECTIVES

- At the end of this Unit, you should be able to:
- Know the Law of certiorari
- Know the Law of prohibition

3.0 MAIN CONTENT

3.1 The Law of Certiorari

Certiorari as defined by Black's Law Dictionary (Ninth Edition) is an extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. *P. A. Oluyede* defined certiorari as one of the prerogative remedies by which an ultra vires act may be challenged usually by an order issued by the high tribunals or bodies in order that their legality may be investigated. Certiorari is simply commanding an inferior court "to certify" its record of proceedings, the superior court could quash (set aside) the inferior courts proceedings; if they were erroneous the truth is that all inferior courts of tribunals have limited powers. Therefore in the interest of the liberty of the common man and good administration, such bodies must be kept strictly within legal bounds. It should be noted that the special characteristics of certiorari is that it is issued not because of personal injury to the applicant, but because of the need to control the machinery of Justice in the general public interest.

Perhaps it should be added that certiorari is a discretionary remedy and like any other prerogative, the applicant will have to apply ex parte for leave to apply for it. He will state the ground for the order and the facts have to be alleged in an affidavit. As a result, the court may grant leave to apply. The grant will operate as a stay of the matter in question, then comes the second stage. The applicant will again apply for the order by notice of motion which will be served on all interested parties with a copy of relevant affidavits. It is exceptional for the court to allow cross-examination on the affidavits.

The procedure is akin to, if not on all fours with, the procedure evolved by the chief Justice of Nigeria by virtue of section 42(3) of the constitution known as The Fundamental Rights (Enforcement procedure) Rules, 1979. But the advantage under the 1979 Rules is that the applicant can apply for private remedies like injunctions, damages, and declaration along with the prerogative of certiorari. It is therefore beyond dispute that one of the great defects of certiorari is that it often involves an inquiry into the distinction between judicial acts and administrative acts. In reality the difficult problem is how to determine which bodies act judicially and at what point in time are such bodies merely acting administratively which action will not invite the remedy of certiorari.

3.1.2 The Order of Certiorari Law

Certiorari is a Latin word which means “to be informed of”. A certiorari is an order directing a lower court, public or administrative authority to forward its record of proceedings to a higher court for that court to inquire into the legality of its decision and review it as may be necessary.

A certiorari is an order made by a superior court to an inferior court or tribunal requiring it to produce a certified record of a particular matter or proceedings, for its information, so that the superior court may determine whether there has been any defect the procedure or decision. It is an order by which a superior court or tribunal calls upon an inferior court, tribunal, public, or administrative authority to produce the record of the proceedings upon which such body based its decision, touching the right of an applicant so that the superior court will examine the record and adjudge the legality of the decision reached on it. Thus a certiorari is an order and proceedings of a higher court to superintend and review the judicial acts of lower courts, tribunals; public and administrative bodies exercising judicial or quasi-judicial powers. An order of certiorari is available to control judicial and quasi-judicial decisions.

3.1.3 When Is The Order Of Certiorari Issued By Court?

The order of certiorari is issued so that the court issuing the order may inspect the records and determine whether there has been any irregularity or injustice. Another of certiorari is therefore commonly used to refer to cases, decisions or mailers to a higher court, which

uses the order as a discretionary device to review the matter where necessary, and to do justice in it. It is an order issued on account of some alleged incompetence; defect or other grounds of injustice to enable the superior court determine the legality of the decision based on it. It is a corrective order. The order of certiorari is issued so that the court issuing the order may inspect the records and determine whether there has been any irregularity or injustice. Another of certiorari is therefore commonly used to refer to cases, decisions or mailers to a higher court, which uses the order as a discretionary device to review the matter where necessary, and to do justice in it. It is an order issued on account of some alleged incompetence; defect or other grounds of injustice to enable the superior court determine the legality of the decision based on it. It is a corrective order. It is the proper remedy to be granted for actions which have already been completed. Therefore certiorari is the appropriate order when a final decision has been made.

On a matter, an order of certiorari is available against government not against private persons and bodies. It will not be issued unless a superior court can quash the verdict, for instance, on the ground of:

1. Ultra vires
2. Lack of jurisdiction, or excess of jurisdiction
3. Breach of the rules of natural justice, or lack of fair hearing
- 4, Error of law on the face of the record
5. Error of fact on the face of record or misdirection of self on that
6. Irrelevant considerations
7. Uncertainty and vagueness
8. Unreasonableness
9. Improper purpose or motive, bad faith, corruption and so forth.

In the case of Lawson v. Local Authority, Aba, The defendant appellant was charged at the instance of the Administrative Officer in his capacity as the Local Authority responsible for tax collection in Aba, for failure to pay income tax, and was tried by the Administrative Officer acting again in his capacity as Magistrate and was found liable. His appeal to the High Court was dismissed. On further appeal the West African Court of Appeal held: that the proceedings were vitiated by the fact that the same person was both prosecutor and judge. This offended against the rules of natural justice. Therefore, the decision was quashed and set aside.

In the case of ***Owolabi and 2 Others v. Permanent Secretary Ministry of Education***, the applicants were given leave to apply for an order of certiorari to remove to the High Court and quash the order of the permanent secretary, Ministry of Education who was the respondent on January 21, 1969 ordered the transfer of the financial administration and the staffing of St. Peter Blessed School, Agege to the Local Education Officer, Ikeja

purportedly acting under section 58 of the Education Law Western State of Nigeria which provides; as far as is material, thus:

If, either upon complaint by any person interested or otherwise, the Minister is satisfied that the managers or governors of any public primary or secondary modern school or any higher institution have failed to discharge any duty imposed upon them or under this Law, the Minister may make an order declaring the managers or governors, as the case may be in default in respect of that duty, and giving such direction for the purpose of enforcing the execution thereof as appear to the Minister to be expedient.

Prior to the transfer order, the respondent had sent two identical letters on November 30, 1968 to the first applicant and some complainants respectively inviting both sides to a meeting on December 2, 1968. The applicants who were not able to attend the meeting, however, wrote a letter informing the respondents of their inability to attend the meeting fixed for December 2, 1968 because they would be appearing in a case in the High Court in Ikeja. The applicants went further to ask in their letter that another date be fixed for the meeting as soon as possible. Nevertheless, the meeting scheduled for December 2, 1968 was held in the absence of the applicants. In consequence, the respondent took the action against which the applicants sought an order of certiorari. It was held that the respondents had not given the applicants a fair opportunity of correcting or contradicting any allegation that the complainants might have made against them and he has therefore not acted judicially quoting with approval Lord *Loreburn* in *the Board of Education v. Rice*. On the question whether the act of the respondent in transferring the financial administration of the school to the Local Education Officer “until further notice” is an error of law appearing on the face of the order or not, the court held that it was an error of law appearing on the face of the order. “The proper order that the respondent should have made is one transferring the financial administration and the staffing of this school to the Local Education Officer for a time certain.”

It was the view of the court that the words “for such period as he thinks fit” is not for a time certain as provided by the law. But the order should be for a period certain, “however long the period may be”. There is hardly any need to add anything to the foregoing except that the respondent should, according to section 58(1) of the Education law, declare the managers of the school i.e. the applicants in this case, to be default before giving any direction he might think necessary. If the applicants then defaulted the respondent could take the steps he did for a period certain.

3.2 Prohibition

It is often said by students of administrative law that while “certiorari looks at the past, prohibition looks to the future”. In other words, the order of certiorari is meant to bring to the High Court to quash or correct any error a judicial or quasi-judicial tribunal might have made. On the contrary, the prerogative remedy of prohibition is available to an applicant only to prevent the performance of administrative action which must be judicial

in nature. In sum, prohibition would lie where an administrative tribunal has not yet reached a decision while certiorari is the remedy for an action already completed.

A prohibition is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers. An order of prohibition may be pre-emptory to stop a judicial body from commencing its proceedings at all, or a temporary prohibition until certain conditions are fulfilled at which time the order will be discharged, or it may be a limited or partial prohibition which operates to prohibit only that part of the proceedings which is in excess of the jurisdiction of the inferior court or body, whilst allowing it to continue with the residue. Thus, an order of prohibition prevents, or forbids unlawful assumption of jurisdiction, it stops or arrests midway a lower court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers or discretion. Thus, an order of prohibition is an order to prevent the exercise, or continuation of the exercise of judicial or quasi-judicial powers, which is likely to affect the applicant's right. It is an order by which a superior court prevents a lower court, tribunal, public or administrative authority:

- i. From exceeding its jurisdiction in a matter on which it has power, and thereby confines it to its proper jurisdiction; or
- ii. From hearing or determining a matter which is not within its jurisdiction; or
- iii. From sitting due to improper constitution of the court; or
- iv. From acting contrary to the rules of natural justice or fair hearing; and so forth.

An order of prohibition is usually granted to restrain a person or body from performing a judicial or quasi-judicial proceeding, or actions from commencing at all, or it aborts it, while it is on course before its completion. Thus an order of prohibition lies where a judicial or quasi-judicial proceeding has not yet taken off or has commenced proceedings, but has not reached a decision.

An order of prohibition when it is issued may:

1. Absolutely prohibit an inferior authority or body from exercising its jurisdiction. In this for instance, it is pre-emptory and wholly prevents the exercise of the jurisdiction as the action cannot be commenced at all or prevent it from concluding it; or
2. Temporarily prohibit an action until a particular act or condition is fulfilled, at which time the order authentically discharges; or
3. Prohibits the part of the proceeding, which is beyond the jurisdiction of the inferior court or tribunal and leaving it free to proceed with the residue which is within its jurisdiction, and so forth. It is an order which restrains an inferior court or tribunal from its powers. It may issue, for instance to prevent an inferior court or tribunal from usurping a matter, exceeding its jurisdiction or from infringing the rule of natural justice. It does not lie once a final decision has been made. Therefore, an order of prohibition does not lie and is not available to stop a judicial act or determination that has been completed. An order of prohibition is only available in two instances, these are; either to

restrain i.e. to stop the commencement or to stop the continuation of judicial determination.

A case in point is *Shugaba Abdulrahaman Darman Vs. The Federal Ministry of Internal Affairs and Others*. In this case, *Shugaba Abdulrahaman Darman*, a member of the defunct Great Nigeria people's party was purportedly deported from Nigeria by the federal authority and its agents on January 24th 1980. An application was therefore filed on his behalf under the fundamental rights (enforcement procedure) rules, 1979 for enforcing and securing the enforcement of his fundamental rights and for redress for violation of the same to which he sought, among others, a declaration that the order by which he was deported was null and void; and injunction restraining the respondents from further interfering with his rights; a claim of N500,000 as damages; and an "order prohibiting the fourth respondent from proceeding with the business of the *Akpambo* tribunal which was to determine the nationality of *Alhaji Shugaba Abdulrahaman Darman*".

There is hardly any need to add that both private law remedies and injunctions, damages and declarations and the public law remedy or prerogative remedy of prohibit an action until a particular act or condition is fulfilled, at which time the order automatically discharges; or Prerogative remedy of prohibition have been married in this action. This is how it should be in all cases. It should be possible for litigants to make use of these remedies in this manner provided 1979 special rules.

We cannot but note that the remedy of certiorari has been conspicuously absent in this case Paragraph 5 of the application which sought an unspecified "order for the applicant of his Nigerian passport unlawfully impounded by the first and second a good ground for certiorari. However, the applicant might have been persuaded take the course of action he adopted as a result of the practical problems in the use of remedies of certiorari and prohibition. Commenting on the procedural difficulties in this sphere of law in Britain, Professor Wade has rightly observed: It is in the sphere of procedure that certiorari and prohibition reveal disadvantages.

The prerogative remedies as a body have hereditary defects, which are attributable to the fact that they escaped the radical reforms of the nineteenth century in which the old forms of action, with their multifarious peculiarities, were swept away and replaced by a single and greatly simplified scheme of procedure. The prerogative remedies were left on one side, so that they are isolated survivors from the era of separate forms of action. In consequence they have their own special procedure, which cannot be combined with applications for any other form of relief. Although the above statement is equally true of the situation in this country, in a more relevant manner to our situation in Nigeria and in a most incisive approach, Wade continues with his criticisms of certiorari and prohibition; indeed of prerogative remedies generally.

A serious defect of prerogative remedy procedure is its incompatibility with the procedure for obtaining private law remedies. In principle a litigant ought to be ok to ask for all possible remedies in the alternative. The remedies of private law, as damages, injunction and declaration, are all available in the ordinary form of on and a plaintiff may seek any or all of them simultaneously. But the prerogative remedies can be sought only by their own special procedure, in which a court is asked to extend a royal privilege to a subject. Certiorari and a declarative judgment cannot therefore be sought alternatively in one proceeding. The courts have mitigated this disadvantage by allowing great freedom of amendment, so that an appeal [may be converted into an application for certiorari on the spot and with the minimum of formality. Nevertheless the difficulty remains, and proposals for the reform of administrative law give prominence to the need to make all the remedies interchangeable in one form of proceeding.

There is also hardly any need to add that this is an area that cries for immediate reform. Such reform cannot, it is submitted, lie in developing either the private law or public law remedies exclusively. *Shugaba's* case clearly shows that the order of prohibition will issue to an applicant who has not suffered any personal injury, even, if he is a stranger. As stated earlier, an "application was filed on his (*shugaba's*) behalf". The order will normally also be made in favour of a person directly affected. It should however be noted that the court has a discretion whether it will make the order or not. The order of prohibition may be asked for on the grounds that there has been a breach of the rules of natural justice, lack or excess of jurisdiction, fraud, collusion, duress or error of law on the face of the record.

It has earlier been said that the order of prohibition looks to the future rather than the past. But can the order apply where an inferior tribunal has passed a sentence on a person and the sentence is yet to be executed? It is submitted that a statement of intention to execute the sentence may be followed by an order of prohibition, however long a time since the sentence was pronounced by the tribunal. Again, it may well happen that an inferior tribunal determines an application not made to it but neglects that made to it. In such a case, the tribunal has not done its duty or at best it has refused to do its duty. In such circumstances neither certiorari nor prohibition will but mandamus;-

4.0 CONCLUSION

For proper understanding of the above explanations, it is important to define some terms that were used in our definitions and explanations. Among such terms are:

- i. Ultra vires: A Latin word for "beyond the powers (00". Unauthorized; beyond the scopes of power allowed or granted by a corporate charter or by law.
- ii. Ex-parte: Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court

action taken by one party without notice to the other, usually for temporary or emergency relief.

iii. Jurisdiction: A government's general power to exercise authority over all persons and things within its territory; especially, a state's power to create interests that will be recognized under common law principles as valid in other states.

iv. Quash: To annul or make void; to terminate. Also to suppress or subdue; to crush, Quash: judicial: Of, relating to, or involving an executive or administrative official's adjudicative acts.

vi. Remedy: The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.

vii. Prerogative writ: Also termed extraordinary writ. A writ issued by a court exercising unusual or discretionary powers. Examples are certiorari, habeas corpus, mandamus, and prohibition.

5.0 SUMMARY

In this Unit, you have learned that:

1. Certiorari is a Latin word which means "to be informed of". A certiorari is an order directing a lower court, public or administrative authority to forward its record of proceedings to a higher court for that court to inquire into the legality of its decision and review it as may be necessary.
2. An order of prohibition is usually granted to restrain a person or body from performing a judicial or quasi-judicial proceeding, or actions from commencing at all, or it aborts it, while it is on course before its completion. Thus an order of prohibition lies where a judicial or quasi-judicial proceeding has not yet taken off or has commenced proceedings, but has not reached a decision.

6.0 SELF ASSESSMENT QUESTION

Now that you have completed this Unit, you can assess how well you have achieved its learning outcomes by answering the following questions. Write your answers in your study diary and discuss them with your tutor at the next study support meeting.

1. List any four ways that a higher court can order for Certiorari
2. It is often said by students of administrative law that while "certiorari looks at the past, prohibition looks to the future. Discuss
3. Define the term certiorari.
4. Under what circumstance an order of prohibition is granted?

7.0 FURHTER READING/REFERENCES

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UNIT 4: MANDAMUS UNDER ADMINISTRATIVE LAW

CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Concept of Mandamus
 - 3.1.1 What is Mandamus?
 - 3.2 Scope of Mandamus
 - 3.3. The Limitation of Mandamus
 - 3.4 Types of Mandamus
 - 3.5 The Characteristics of Mandamus
 - 3.6 Sample of Cases Involving Mandamus
 - 3.7 Who May Obtain Mandamus
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Reading

1.0 INTRODUCTION

This Unit is designed to expose you to some of the basic terms and procedures used in courts and administrative processes as discussed in study Unit four. The origin of these concepts will be traced and relevant examples will be cited to acquaint you how they are used in administrative law.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

Define writ of Mandamus, Know the Scope of Mandamus, List the Limitation of Mandamus, List types of Mandamus, List the characteristics of Mandamus, Discuss Sample of Cases Involving Mandamus, Who May Obtain Mandamus and Certiorari,

3.0 MAIN CONTENT

3.1 Concept Of Mandamus

It Is More Or Less An Axiom Under the legal system that rights depend on remedies. If a person has a right and that right is violated then such a person should be entitled to some remedy. Thus section 46 of the 1999 constitution of the Federal Republic of Nigeria empowers the High Court to make such orders, Issue writs and give directions as it considers appropriate for the purpose of enforcing of any rights and mandamus is among that which is established for the purpose of enforcing right. **Mandamus** is a Latin word

meaning “we command”. It is an order of court commanding the performance of a public duty which a person or body is bound to perform, is a device for seeing judicial enforcement of public duties, mandamus is a discretionary power given to the courts and while the courts will grant only in suitable cases.

3.1.1 What is Mandamus?

Mandamus is a Latin word meaning “we command”. It is an order of court commanding the performance of a public duty which a person or body is bound to perform, is a device for seeing judicial enforcement of public duties, mandamus is a discretionary power given to the courts and while the courts will grant only in suitable cases.

According to *P. A. Oluyede* in his book “Nigerian Administrative Law” **mandamus** is a device for securing judicial enforcement of public duties. Just like other prerogative orders. Mandamus is a discretionary power given to the courts and which the courts will grant only in suitable cases. It was introduced to prevent disorder from a failure of justice and defect of the police. Therefore it ought to be used up on all occasions where the law has established no specific remedy and where, in justice and government there ought to be one. According to *David Foulkes* in his book “Administrative Law” Fourth Edition, Mandamus is a prerogative order which commands a person or body to perform a public duty imposed on it by law. A distinction must therefore be made between a duty and a mere power. A book *Administrative Law by H. W. R. Wade*” Third Edition” Mandamus has for long been the normal weapon for compelling performance of public duties, at least where the plaintiff does not wish to run the hazard of an action for damages.

Mandamus came into general use for this purpose in the eighteenth century, having formerly been mainly for restitution of offices to persons who had been wrongfully deprived of them.

3.2 Scope of Mandamus

Mandamus may be used by one public authority against another. The Borough Council of popular in London on one occasion refused to pay their statutory contributions to the London county council for rates. The county council obtained a mandamus ordering the proper payments to be made and moreover when the payments were not forthcoming they obtained writs of attachment for imprisonment of the members of the popular council who had disobeyed the mandamus. Thus the remedy may fortify the internal machinery of government where specific legal duties exist. Statutes also sometimes provide expressly that a duty owed by one authority to another authority may be enforced by mandamus, as well as providing special enforcement procedures of their own. Unlike its less fortunate relative certiorari, mandamus was never subject to the misguided notion that it could apply only to judicial functions. It applies to all sorts of functions indiscriminately.

Thus it will issue to compel such bodies as railway and dock companies to carry out duties imposed on them by statute, to compel the levying of a rate by a local authority to compel the payment of statutory compensation to compel the production of public documents to compel a returning officer or a local authority, to hold an election correctly, to compel the allowance of an item in an assessment for income tax, and to compel the repayment of a sum due to the tax payer. In connection with compulsory purchase of Land, the court will compel the purchasing authority to proceed with the purchase once it has given notice of its decision to act, so that the owner will not be left with unmarketable land on his hands for longer than necessary.

Another important sphere in which mandamus operates freely is that of inferior courts and tribunals. If they refused to entertain a case where they have jurisdiction, they can be ordered to hear and determine it according to law. Thus magistrates, licensing justice, county courts, statutory tribunals and other jurisdictions subject to the High Court can be prevented from refusing jurisdiction wrongfully. A county court judge, for instance, who mistakenly declined to hear an action for possession by mortgages on the ground that the county court had no jurisdiction, was ordered to hear and determine the case on a mandamus from the Queen's Bench Division. But there must be some public duty to exercise jurisdiction. Mandamus will not issue to a private arbitrator or to a tribunal voluntarily acting as arbitrator under a government contract.

3.3. The Limitation of Mandamus

1. It will not of course lie where the authority has discretion on the point since then it is a matter of power rather than duty of its more technical limitations mention must be made of two.

2. It will not lie if parliament has provided some other remedy which is construed as being exclusive: It will be better to treat the later restriction first. The doctrine that mandamus is excluded if parliament has provided an exclusive remedy is illustrated by a decision of the House of Lords in a case where the owner of a paper mill was trying to force the local authority to build sewers adequate to the discharge of effluent from his mill. Under the Public Health Act 1875 the local authority had the duty to provide such sewers as might be necessary for effectually draining their district. The Act also provided that if complaint was made to the local government board about failure to provide sewers, the Board, after fully inquiring into the case might enforce their order by mandamus, or else appoint some persons to perform the duty. This scheme of enforcement was held to bar the right of a private person to seek mandamus on his own account, since the Act implied that his right course was to complain to the Board. The decision is an application of the general doctrine (already criticized with reference to default powers) that a statutory remedy may be exclusive if it relates to some special right or duty created by the statute.

3. The court may similarly refuse mandamus if there is a right of appeal which has not been exercised. This is a situation where it may be reasonable to require the prior exhaustion of remedies. But there is always discretion to award mandamus, as was done in one case where licensing justices had rejected an application without ransoms given, so that it was difficult for the application to appeal effectively.

4. Mandamus could, of course, be eliminated by express statutory provisions, but in fact those do not occur. In so far as it might be affected by wide clauses excluding judicial control, of the type we have met in connection with certiorari, it now enjoys the protection of the Tribunals and Inquiries Act 1958, already cited in the same context.

5. We come to the presidency: finally, it will be obvious from what has been said about the prerogative remedies that, since they emanate from the crown, they cannot lie against the presidency. That there can be no mandamus to the sovereign, there can be no doubt, both because there would be an incongruity in the Queen commanding herself to do an act, and also because disobedience to the writ of mandamus is to be enforced by attachment.

This does not matter with certiorari and prohibition, since there lies to control inferior jurisdictions, and extend to ministers of the crown and other public authorities wielding statutory powers. But it is serious on the case of mandamus, since the crown itself has public duties. How is their performance to be enforced?

3.4 Types of Mandamus

1. **Alternative Mandamus:** A writs issued upon the first application for relief, commanding the defendant either to perform act demanded or to appear before the court at a specified time show cause for not performing it.

2. **Peremptory Mandamus:** An absolute and unqualified command to the defendant to do the act in question, in other word it is issued when the defendant defaults on, or fails to show sufficient cause in answer to, an alternative mandamus.

3.5 Characteristics of Mandamus

1. There must be an imperative public duty incumbent on someone and not just a discretionary power to act.

2. The applicant must have made a request for the performance of the duty and this must have been refused.

3. The applicant must have a substantial personal interest in the performance of the duty concerned.

4. The court to which application for mandamus is made must itself have jurisdiction to entertain and grant it. Etc.

3.6 Sample of Cases Involving Mandamus

1. *Fawehiuni v Akilu (1987) 4NWLR pt. 67.p.797 SC.*

The fact of this case is that the plaintiff applicant requested the Director of public prosecutions (DPP) to exercise his discretion to prosecute the respondents. The DPP did not come to a decision whether or to prosecute, the applicant then applied for leave for an order of mandamus to issue on him to come to a decision. On further appeal the Supreme Court held: allowing the appeal, that have to apply for an order of mandamus would be granted to compel the DPP make a decision to prosecute or not to prosecute, after the order, the DPP exercised his discretion and decided not to prosecute the complaint filed by the applicant.

2. *The Director, SSS v Agbakoba (1999)3NWLR. Pt.595.p.314 SC.*

The defendant's appellants impounded the passport of the plaintiff respondent. He brought action for enforcement of his fundamental right and claimed inter alia an order of mandamus the Supreme Court affirmed the judgment of the court of Appeal and held: that the seizure of the passport was null and void and an order of mandamus would issue against the defendants appellants for its release.

3. *Banjo & others v Abeokuta urban District council (1965) AIINLR 509.*

The court granted an application for an order: of mandamus to issue compelling the management committee of the defendant council to issue permits to the applicant taxi owners to operate their taxi cabs in the area of jurisdiction of the council.

3.7 Who May Obtain Mandamus?

As with the other prerogative remedies it is usually private person who sees proceedings for mandamus into motion. But the non-performance of a public duty seems to be regarded as less of an offence against public order than is the unlawful exercise of power. An applicant for mandamus must therefore show that he has a substantial interest in the performance of the duty. But on the whole the courts are more generous in awarding mandamus than some of their statements might suggest. The court may say that it proceeds on a very strict basis. But it seems willing to allow a ratepayer to enforce the local authority's statutory duties and it has not refused to consider a claim by a member of parliament that the police should be ordered to prosecute gaming clubs actively.

The interest which has to be shown is not a technical legal interest. It merely marks the distinction between persons who are particularly concerned with the performance of a public duty, and other people generally. An application for mandamus may fail because the applicant is not especially concerned as well as on the ground (which is not always

clearly distinguished) that the court decides in its discretion to refuse the remedy. It is easy for the argument to proceed in a circle for the question whether a duty is owed to the applicant is really determined by the question-whether he has a remedy for enforcing it. Commercial rivalry will not necessarily amount to a sufficient interest. Thus where the governments were required by statute to collect the annual tax on setting shops in two instalments, mandamus was refused to book marketers whose concern was to put their rivals out of business. But there is usually locus stand where the applicant has been a party to some kind of legal process.

The Manchester Corporation once obtained a special Act of parliament for the construction of train ways, against the opposition of an insurance company which insured against road accidents. The company procured a clause in the Act requiring the corporation to make bylaws for a prescribed minimum distance between successive trains but the corporation made by laws which instead of prescribing a distance left the matter to the police. The company were granted a mandamus to compel the corporation to make a bylaw as required by the Act, and it was held that their initiative in procuring the clause gave them a superior interest to that of the general public. In another case a clergyman opposed an application to justices for the transfer of a liquor license from one house to another. The justices allowed the transfer, but in so doing they exceeded their statutory powers. The clergyman then obtained a mandamus to direct them to hear and determine the case correctly. His special interest in the legality of the justice decision lay in the fact that he had appeared as an objector when the application for the transfer was made to them. These examples show a healthy disinclination to make technical rules about locus stand.

4.0 CONCLUSION

The court always has discretion to refuse the remedy to an undeserving applicant. But in general the court is concerned to see that the law is observed. Where some act or order is challenged as ultra vires, mandamus is often as an adjunct to certiorari where these acts are done with no jurisdiction at all, certiorari will issue to quash it and prohibition to prevent further proceedings. Where there is jurisdiction, but it has been abused, certiorari will quash, and a proper re-hearing can be ordered by mandamus. A typical example is provided by the case of the schools at Swansea, soon to be explained. The Board of Education's decision was quashed by certiorari, since they had addressed their minds to the wrong questions; and they were then ordered by mandamus to consider the right questions and determine them according to law. In such cases, the prerogative remedies supplement one another, and their availability is governed by the same principles.

But even where certiorari seems to be required, mandamus can also be used by itself. If the lower tribunal is ordered to re-hear the case, the mandamus amounts also to an implied declaration that the previous decision was a nullity, thus doing the work of certiorari automatically. Mandamus alone was awarded, for instance, in the case where

county council theatrical licensing committees had refused to allow a theatre to continue to sell alcoholic refreshments and were ordered to reconsider.

5.0 SUMMARY

Mandamus as a substitute for certiorari has become habit in liquor licensing cases. This is because it was liquor licensing cases that were first bedevilled by doubts as to whether the function was sufficiently judicial to allow certiorari and though the doubts no longer exist, the habit does. It has been suggested in one case that mandamus might be granted in advance of certiorari, so that the initial act could be kept in force until replaced by a valid act in obedience to the mandamus.

6.0 TMA/SELF ASSESSMENT QUESTION

1. List any three characteristics of the writ of Mandamus.
2. Name and explain three limitations of mandamus?
3. What is mandamus?
4. What are the limitations of Mandamus?
5. Who may obtain Mandamus?

7.0 REFERENCES/ FUTHER READING

Oluyede P.A. (1988). Nigerian Administrative Law: University Press Limited Ibadan (pp.498-501.)

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MODULE 3 REDRESS OF GRIEVANCES

Unit 1: Declaration and Injunction

Unit 2: Writs of Habeas Corpus and Quo Warrant

Unit 3: Administrative Adjudication

UNIT 1 DECLARATIONS AND INJUNCTIONS

CONTENT

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1Declarations

3.1.2 What are Declarations?

3.1.3 Cases Involving Declaratory Judgments.

3.2 Injunction

3.2.1 Classification of Injunction

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment (TMA)

7.0 References/Further Reading

1.0 INTRODUCTION

This Unit is designed to expose you to some of the basic terms and procedures used in courts and administrative processes as discussed in study Unit four. The origin of these concepts will be traced and relevant examples will be cited to acquaint you how they are used in administrative law. It is based on this premise that we shall introduce you to the concept of declaration and injunction.

2.0 AIMS AND OBJECTIVES

By the end of this Unit, you should be able to:

- define declaration
- define injunctions

3.0 MAIN CONTENT

3.1 Declaration

Declaration or declarative judgment is the earliest and first method, procedure, relief or remedy devised by court to do justice. This is so unless the rights of the parties are first ascertained and then reconciled, the court cannot properly decide the matter in dispute. A

declaration from of right is the root and foundation of a judgment is based on and proceeds from the declaration of rights and obligations of parties. According to sir Williams Wade and Christopher Forsyth state that “ declaratory judgment play a large part in private law and are particularly valuable remedy for setting dispute before they reach the point where a right is infringed. The essence is to state the legal position of the parties as they stand without changing them in any way. Ese Malemi states that: a declaration of rights otherwise known as declaratory judgment is a declaration by a court to determine the legal right and obligation of the parties in a suit with or without making any consequential orders.

1. Government will not set a bad example of disobeying the order of the court it has established and thereby pave the way for other for persons to disobey the court and lead to anarchy and chaos;

2. To set good example of obedience to court orders and thereby entitle itself morally to rule of law and also to enforce courts orders where necessary through its law enforcement agencies;

3. So that the rule of law will prevail in the country and regulate the actions across all kinds of cases, they are however especially common to legal actions based on constitution law, administration law, land law etc. A plaintiff may therefore sue a government, public officer or agency claiming for example a declaration that:

i. The act of such public authority is invalid null and void.

ii. For a declaration of his right in the circumstance; and

iii. For relief and or consequential order, and court will grant such relives or order as it deems fit and necessary in the circumstances.

3.1.2 What is Declaration?

A declaration of rights otherwise known as declaratory judgment is a declaration by a court to determine the legal right and obligation of the parties in a suit with or without making any consequential orders.

3.1.3 Cases Involving Declaratory Judgments

Shugaba v Ministry of Internal Affairs & Ors: The plaintiff applicant, a member of a Great Nigeria People Party (GNPP) and the majority leader in the Borno State House of Assembly in the Second Republic was deported by the Federal Authority and its agents from Nigeria. An application was filed on behalf of the plaintiff to enforce his fundamental rights and for redress of the violation. He sought inter alia a declaration that he is a Nigerian citizen and as such has a fundamental right to immunity from expulsion from Nigeria. *Oye Adefila J. held*: Inter alia that the deportation of the applicant was in

constitutional set aside the deportation order and granted declarations, orders of injunction, prohibition mandamus and damages. Once a person proves that he is a Nigeria citizen, under section 23 of the 1979 constitution he cannot be deported from Nigeria.

Adeniyi v Governing council, Yaba College of Technology: following some allegations, the plaintiff appellant was retired by the dependant respondent Governing Council. The appellant brought action that he was not given an opportunity to explain himself and that his retirement was contrary to the rules of natural justice. The Supreme Court held: that there was lack of fair hearing and accordingly the purported retirement of the appellant was null and void.

3.2 Injunction

Basically, **injunction** is a judicial order restraining a person from an action or compelling a person to carry out a certain act. An injunction according to ESE Malemi is an order of court prohibiting a person or body from doing a specified thing. According to Sir William Wade and Christopher Forsyth in their book title “Administrative Law” defined injunction as the standard remedy of private law for prohibiting or forbidding the commission of some unlawful act e.g. a tort or breach of contract.

Injunction are either preventive, that is restrictive or mandatory that compulsive. In terms of period of time, injunction is:

- i. Interim
- ii. Interlocutory
- iii. Perpetual i.e. fine

There are many kinds of injunction such as *mareva* injunction, which is a temporary injunction to restrain a person from removing property from jurisdiction pending the hearing of the matter as was granted in ***Mareva Compania Naviera v International Bulk Carriers Ltd.*** An injunction may be granted in any kind of proceeding to prohibit any kind of thing from being done, and maintain the status quo until the matter is heard. When an injunction has been granted, breach of it is usually punished as a contempt of court. *Sir W. Wade and C. Forsyth* commend that “Its sanction is imprisonment or fine for contempt of court or attachment of property”. Although now statutory historically it is an equitable remedy since it is derive from the former court of chancery and accordingly it has a discretionary character. In administrative law, the most important remedies are discretionary injunction declaration and certiorari.

3.2.1 Classification of Injunction

Though an injunction is an order forbidding or restraining a specified thing. It is an order of court stopping a person from doing a wrongful act. Injunction is most prohibitory in nature. It restricts, stop or prevent something from being done or continued. An injunction can be issued against any person, without any exception whether, a private

individual, private body, company, government or any public authority. When an injunction is mandatory in nature, such an injunction is better known called an order of mandamus.

Classification

The classification of injunction is as follows:

- i. Interim injunction
- ii. Interlocutory injunction
- iii. Perpetual injunction

Interim Injunction: An order of interim injunction is an order of injunction usually granted to maintain the status quo for a short period of time: which sufficient to put the other party on notice. Below is an instance involving interim injunction.

Nnamani JSC said in *Kotoye v CBN*: “The undertaking to pay damage applies whether the plaintiff has not been guilty of misrepresentation, suppression or other default in obtaining the injunction... The undertaking is equally enforceable where a court of first instance fails to extract an undertaking as to damages an appellate court ought normally to discharge the order of injunction on appeal.

The main features of Interim injunction are:

- (i) It issues to preserve the status quo until a named date or until a further order is made or until an application on notice for an interlocutory injunction is heard.
- (ii) It is for a situation for a real urgency to preserve and protects the right of the applicant seeking it from injury or destruction.

Interlocutory Injunction: An interlocutory injunction is usually granted upon a motion on notice, copies of which processes are serving on the party against whom the order of injunction is sought, so that he may appear in court for its hearing. An interlocutory injunction is to maintain the status quo until final determination of the case or matter. As the Supreme Court re-affirmed in the case of *Governor of Lagos State v Ojukwu*, once a temporary or interim injunction has been made, parties are to maintain the status quo and not take the laws into their hands no resort to self-help. No one including the government is entitled to take law into his own hands. **Perpetual Injunction:** This is an injunction, which is granted after the final determination of a case to prohibit threatened act for all time. It prohibits in perpetuity the doing of thing specified in order. In the case of *Badejo v Federal Minisrty of Education and other, Mohammed JSC* stated in the law thus, “An order of injunction is not a remedy for an act which was already been carried out”.

4.0 CONCLUSION

An injunction is a civil judicial process initiated to stop or prevent violation of the law, such as to halt the flow of harmful effluents in Nuisances, and to correct the conditions

that caused the violation to occur. Injunction or a temporary restraining order or could be permanent.

5.0 SUMMARY

A declaration from of right is the root and foundation of a judgment is based on and proceeds from the declaration of rights and obligations of parties. Declaration of rights, cuts across all kinds of cases, they are however especially common to legal actions based on constitution law, administration law, land law etc. A plaintiff may therefore sue a government, public officer or agency.

6.0 TMA/ SELF ASSESSMENT EXERCISES

- List any three types of injunction?
- What are the factors to consider before the granting of an interim injunction?
- What is declaration is based on?

7.0 REFERENCES

- *Oluyede P.A. (1988). Nigerian Administrative Law: University Press Limited Ibadan (pp.498-501).*
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UNIT 2 THE WRIT OF HABEAS CORPUS AND QUO WARRANT

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- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Writ of habeas corpus
 - 3.1.2 What is habeas corpus?
 - 3.2 Writ of Quo Warranto
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Reading

1.0 INTRODUCTION

This Unit is designed to expose you to some of the basic terms and procedures used in courts and administrative processes as discussed in study Unit six. The origin of these concepts will be traced and relevant examples will be cited to acquaint you how they are used in administrative law. It is based on this premise that we shall introduce you to the concept of Habeas Corpus and Quo Warrant in this unit.

2.0 AIMS AND OBJECTIVES

At the end of this Unit, you will be able to:

- Define the writ of Habeas Corpus
- Define Quo Warrant

3.0 MAIN CONTENT

3.1 Writ of Habeas Corpus

The Latin term **habeas corpus** means “you have the body”. A habeas corpus is a writ for securing the liberty or immediate release of a person from unlawful custody or other unjustified detention. The writ is usually directed at the authority who detained a person, who must produce the detainee before court for it to examine the legality or otherwise of the detention and where the detention is lawfully effected under an enabling statute order that the person be returned to the prison, but where detention or its process is unlawful, it makes an order for the immediate release of the detained person. In other words habeas corpus is a writ issued against the captors or custodians of a prison and commanding them to produce the detainee so that the court will examine the legality of the detention and set him free if the detention is not legal or done according to an enabling law.

A habeas corpus is a writ for releasing a person from unlawful detention; habeas corpus is a writ for questioning the legality of the detention of a person who is in official custody, or private hands. However when a person is in private hands police action or criminal proceeding is usually a faster means of securing freedom. The purpose of the writ is not to determine whether the detainee is guilty or innocent the only question a writ of habeas corpus presents for determination is whether the detainee is been detained according to the due process of law. It is essentially issued to challenge the detention or a person in official custody or even in private hands, for the custodians to show reason why the prisoner should not be released. Where a court is satisfied that detention of a person is Prima Facie illegal a writ of habeas corpus is usually governed by statues law, for instance the High Court, civil procedure laws of the various state. Furthermore the writ is usually guaranteed by the country's constitution which provides for the right to personal liberty section 35 of the 1999 constitution provides for the fundamental right to personal liberty that is freedom from unlawful detention, false imprisonment and so forth, the procedure rules of the courts. The writ of habeas corpus is extra ordinary remedy which is issued upon cause show, in case where ordinary remedies are in application or inadequate. A writ of habeas corpus as a legal process for challenging the authority under which a person has been detained is of immemorial antiquity in English law.

After a chequered history in which it was used in the struggles between the common law between the English parliament and monarch the writ was protected by enactment into statute law as the habeas corpus act 1679 the habeas corpus act the magna cart 1215 made under King John (1199-1216) and the bill of right (1689) made under King Williams and Queen Mary (1689-1602). Habeas corpus is commonly issued to bring a person to court to test the legality or illegality of his detention. However a writ corpus may be issued for several other purposes, the right to ball or the amount of bail or the jurisdiction of a court that has imposed a criminal sanction and so forth. An early case that demonstrates the speed and power of habeas corpus is Wolfe Gang's case.

3.1.2 What is Habeas Corpus?

A habeas corpus is a writ for releasing a person from unlawful detention; habeas corpus is a writ for questioning the legality of the detention of a person who is in official custody, or private hands. However when a person is in private hands police action or criminal proceeding is usually a faster means of securing freedom.

An order to detain somebody in a "police custody" is much wider than an order to detain the person in a "police station"; therefore, since the decree permitted detention only in the "police station"; the inspector-general order to detain the applicant in a "police custody" was ultra vires and void, and the applicant should, therefore, be immediately released. From cases above cited, it is clear that the Nigerian courts are still not unanimous in the views they hold about whether or not they can enquire into the truth of the statement made in return to a writ of habeas corpus. But having regards to the provisions of section

14 of the habeas corpus law of the former western Region, it seems that the courts are free to enquire into such matters. Where the facts are not stated but the return to the writ followed the formula set out in the enabling statute, the court would have no basis for investigation the truth of the alleged ground for the detention. However, if the detainee challenges the contents of such a return by putting forward in an affidavit facts that clearly show that the detainer acted in bad faith, or that the contents of the return are false or a misrepresentation of the true facts, the court should go further to enquire into the matter. Where the state claims privilege, section 219 of the evidence act provide; “The certificate of a minister to the effect that tendering given evidence will prejudice the security of a state, is conclusive”. Such evidence ought to however be brought to the court for the judge to see and draw his own conclusion.

3.2 Writ of Quo Warranto

Until 1938 information in the nature of a **quo warranto**, which in the 16th century had replaced the old and obsolete prerogative writ of *quo warranto*, could be filed either by the attorney at the instance of a private prosecutor, to challenge any person who claimed or usurped a public office. The writ was used to inquire by what authority the claimant was asserting his right to the office which he had claimed and occupied.

The proceedings, although criminal in form, were deemed to be civil in character. It should be noted that, under Edward I, *quo warranto* become a potent royal weapon against the usurpers of franchisee jurisdictions, but it had been used by private suitors long before that time. In 1938, the information in the nature of *quo warranto* was abolished by the administration of justice (Miscellaneous provision) Act 1938. Section 9 of the Act provision that in any case where a person acted in an office to which he was not entitled, and a *quo warranto* information would formerly have lain against him, the high court could grant an injunction restraining him from so acting and if necessary, declare the office to be vacant . No such proceedings apply for *quo warranto* information.

Since the old rules of substantive law still apply, they be summarized here the office must be one off a public nature. The holder must have already exercised that office; a mere claim to exercise it is not enough. At one time the office had to be one created by the crown by charter or otherwise. But the emphasis of *quo warranto* proceedings shifted from a vindication of the rights of the public, and it was held that an information would lie in respect public office created by act of parliament, provided that the office was not that of deputy or servant held at the remedy is barred to a private relator (or plaintiff) if he has been guilty of acquiescence in the usurpation of office or undue delay. The procedure on an application for an injunction under the 1938 Act is the same as on an application for *mandamus*. The applicant may be refused for undue delay, and is in any event not to be brought if the respondent has acted in the office for six years.

The abolition of information in the nature of *quo warranto* was effected in Eastern Nigeria by the high court law, which reads: The court shall have all the jurisdiction of the high court of justice in England to make an order granting an injunction to restrain any person from acting an office in which he is not entitled to act where, before the passing of the administration of justice (miscellaneous provision) Act, 1938, an information I the of *quo warranto* would have lain against him and may (if the case so requires) declare such office to be vacant. Corresponding provision exists in Western Region by section 4910 of administration of justice crown proceedings) law, 1959, information in the nature of *quo warranto* was abolished. Section which he is not entitled to act and information in the nature of *quo warranto* would but for the provision of the last foregoing sub-section have lain against him, the high court may grant as constitution provided for declaration and injunction as against any unlawful act of government.

4.0 CONCLUSION

Though the Latin phrase: “Quo Warranto” means: “By what authority”, it is also the title of one of the most ancient and important original styles of remedial court actions inherent to any sovereign; including (but not limited to) each of the people in the United States. It is the ultimate means the people have to limit officials to acting within the confines of the authority lawfully provided them through their office. Quo Warranto is generally executed through a writ or related court order.

Because all authority in government collectively comes from the individual sovereign people, any of the people, can always use a properly executed *quo warranto* action to remove any official from office; if said official violates the privileges of their official capacity by acting outside of the lawful bounds of their authority and/or fails to perform the required responsibilities of that office. Respectively, the government cannot lawfully interfere with the right to *quo warranto*; accordingly, the inherent right is irrevocable, ongoing and cannot be lawfully obviated by any legislative act.

Thus, where all authority in government comes from the people, Quo Warranto remains a right retained by the people to ask, “By what authority”; and, the respective Writ of Quo Warranto is the remedial instrument used by the courts to remove any official from office when that official is, through *quo warranto*, found to have violated the privilege of that office by acting absent of or in contradiction to the authority of that office.

In the United States, the right, with its respective Writ, are reserved to the people through the 9th and 10th amendments. Quo Warranto can be used to ask any of the following three questions regarding anyone holding any office:

1. Did the officer acquire the office unlawfully?
2. Did the officer fail to do anything the office required them to do?
3. Did the officer do anything forbidden from them while in the office?

If the answer to any of those questions is, “Yes”, Quo Warranto applies; and, the court must issue the Writ of Quo Warranto; which removes the officer from the office.

Here is how a Quo Warranto action works to secure its remedy:

First, except in rare occasions, the action is always brought by the government; thus, when any official commits any act forbidden to his office, or fails to act as required by his office, any of the people can write a letter to the Attorney General (hereinafter, “AG”) [in some cases the District Attorney is appropriate] showing cause for the Quo Warranto action and requesting that the AG bring the action to secure a Writ of Quo Warranto against the officer. Also, if the unlawful action in question personally aggrieved or injured a party that party can bring the action directly into the court by their own right as a personally aggrieved/injured party.

Second, the AG either brings the action requested or declines the request. If the AG declines, either overtly or by tacit admission (by failing to act (bring the action in court) within a fortnight), the right to proceed with the action in court as an independent prosecutor for the AG’s office (with the AG’s full authority to prosecute the case) automatically passes to the party that made the request for action to the AG.

Third, the aggrieved party or the government [through the AG, an assistant AG or a special prosecutor for the AG’s office] files the action in court where the case must be given the top priority of the court (taking precedence over all other actions).

Forth, the Defendant (officer in question) is summoned to appear in court, usually within five days, where the Defendant must prove their authority to so act in the office in question.

Fifth, if the defendant fails to provide evidence at trial proving lawful authority for the action in question (i.e.: the answer to the questions above are, “No”), Quo Warranto applies and the judge has no choice but to issue the Writ of Quo Warranto, which ousts the defendant from office. This is an important point; though the judge reviews the facts to determine whether the answer to any of the three questions was, ‘Yes’, if “yes”, the judge has no choice; but, to apply the remedy by issuing the Writ that removes the officer from the office.

The court has no jurisdiction to determine either what the remedy will be or whether the remedy should be applied; they can only determine the answer to the questions, and if “yes” is the answer to any of the questions, execute the remedy; to fail to do so would make the judge subject to a Quo Warranto action. You may notice that the right to Habeas Corpus is a lesser subset of the right to Quo Warranto

5.0 SUMMARY

In this Unit, you have learnt that the writ of habeas corpus is extra ordinary remedy which is issued upon cause show, in case where ordinary remedies are in application or inadequate. Therefore it is a writ for releasing a person from unlawful detention and it could also be said that habeas corpus is a writ for questioning the legality of the detention of a person who is in official custody, or private hands.

6.0 TMA/SELF ASSESSMENT QUESTION

Now that you have completed this Unit, you can assess how well you have achieved its learning outcomes by answering the following questions. Write your answers in your study diary and discuss them with your tutor at the next study support meeting. You can check your answers with notes on the self-assessment questions at the end of this module.

- What is the writ of Habeas Corpus?
- Define the term habeas corpus?
- What does the term quo warranto mean?

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UNIT 3 ADMINISTRATIVE ADJUDICATION

CONTENTS:

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Writ of habeas corpus
 - 3.1.2 What is habeas corpus?
 - 3.2 Writ of Quo Warranto
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Reading

1.0 INTRODUCTION

This Unit is designed to expose you to some of the basic terms and procedures used in courts and administrative processes as discussed in study Unit six. The origin of these concepts will be traced and relevant examples will be cited to acquaint you how they are used in administrative law. It is based on this premise that we shall introduce you to the concept of administrative adjudication.

2.0 AIMS AND OBJECTIVES

At the end of this Unit, you should be able to:

- Define administrative adjunction

3.0 MAIN CONTENT

3.1 Administrative Adjudication

This is a legal process that aims to expedite the delivery of resolutions or punishment to squabbling parties. The result of the adjunction process is a legally – binding judgment; the stipulations and demands of the judgment are legally upheld by a local or federal governing body. Adjudication occurs when a natural person, typically someone empowered by an agency to formalize a binding decision, is given a task of examining evidence or facts to render a legally– acceptable and affirmed judgments.

Administrative adjudication denotes the system of deciding dispute by body other than the court. Disputes between administrative and individuals themselves are resolved apart from judicial system by an alternative system of adjudication ranging from tribunals to administrative officers exercising quasi – judicial powers. The adjudicatory bodies are

characterized as indicating that they are not simple courts but partake some features of both courts as well as that of administration. Hence, quasi-judicial indicates processes which are simultaneously both judicial and administrative. Therefore, to understand quasi – judicial or adjudicatory body, it is necessary to understand both administrative and judicial bodies in comparison to adjudicatory body. L.J. Savdle defines “court” in following terms: it is not necessary that a court should be a court in the sense that a court is a court; it is enough if it is exercising after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court; if it is tribunal, which has to decide rightly after hearing evidence and opposition.

3.2 The constitutionality of administrative adjudication

In Nigeria, as in most countries, there is no rigid application of the doctrine of separation of powers in the practice or government framework. Administrative adjudication is one of the exceptions to the doctrine of separation of powers. However, the 1999 Constitution clearly reflects the three arms, separation of powers, or division of government powers, that is to say the. Legislature, Executive and Judiciary. Section 4 vests legislative powers in the National Assembly at the Federal level and in a state House of Assembly at the state level. Section 5 vest executive powers on the executive arm of government to implement the laws and carry on the business of government. Whilst section 6 vests judicial powers in the regular courts. Though section 6(1) and (2) provides for the establishment of regular courts at Federal and States levels, however section 36(1) makes it clear that bodies may adjudicate on matters and this is where administrative adjudication comes in. **Section 6(1) provides:**

The judicial powers of the Federation shall be vested in the courts to which these section relates, being courts established, subjects as provided by this Constitution for a State.

However section 36(1) provides:

In the determination of his civil rights and obligation including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartially.

As we can see from the fair hearing provisions of section 36(1) of the 1999 Constitution, courts and tribunal make up the judiciary. Therefore tribunals and similar bodies other than regular courts have a constitutional and legal basis.

3.3 The need for administrative adjudication

Just as the complexity of modern government has made it necessary to delegate power to the executive or administration to make delegated legislation, so also the administration has had to take on some of the traditional judicial functions of the court and sit as

tribunals, panels, or commissions and boards of inquiry and so forth such other functions as may be assigned to them.

Administrative adjudication has developed all over the world and there exists all kinds of administrative adjudication in different countries. Such adjudicatory bodies may therefore be set up by government under statute as the need arises and be charged with the duty to exercise.

1. Judicial
2. Quasi-judicial; and or
3. Other functions, a may be conferred on them by statute or by the terms of reference given by the authority setting it up.

An administrative tribunal is a body outside of the hierarchy of regular courts. They are usually established under specific legislations and charged with the investigation, hearing, or decision of matters in dispute, especially matters arising from:

1. Public administration
2. Controversies which require specialized knowledge or experience, for instance, the assessment of compensation for land acquired by government for public purpose.
3. Disputes which are thought unsuitable for the regular courts to adjudicate.

Many administrative bodies have a standing administrative adjudicatory body, or do set up an administrative adjudicatory body, from time to time, to meet for instance their in-house need for regulation, standard and discipline and so forth as the case may be. Included in this category are chartered professional bodies which have been established to project such professions, train personal and also to maintain standard amongst their membership. Giving evidence on the need for tribunals of inquiry in modern governance before the UK Royal Commission on working of tribunals of inquiry 1966, LORD M. L.

HEYWOOD explained that one of the rationales for setting up these bodies was to satisfy the public that a proper investigation has been made into the matter about there is great public disquiet. Apart from administrative tribunals or similar bodies set up under statutes, the administrative machinery all over the world, in its day to day function and performance of their duties to adjudicate or make one type of determination or decision, to act one way or the other, which determination or decision may affect the rights r interest of concerned individuals or groups. Some of these decisions may be purely administrative or discretionary for which affected parties may, or may not readily have a remedy. In actual fact, administration exercises a wide range of discretionary powers and is frequently experienced, the concerned individual, or group is not sufficiently protected from maladministration, arbitrariness, omission, or misconduct that have often occurred in the exercise of administrative powers.

4.0 CONCLUSION

Have you ever had a time where you and a friend just could not agree on something, like a news headline or a movie you both saw? Sometimes these minor disputes can turn into major arguments where you feel like you need someone to step in and decide the issue for both of you. When this 'someone' steps in, it is known as **adjudication**, and that person is the **adjudicator** of the issue. Adjudication basically constitutes various ways that decisions are made by a neutral third party. Usually, the third party has the authority to make a binding decision. There can be different types of adjudication but many people refer to adjudication as the resolution of litigation or other conflicts which is done in a court by a judge.

5.0 SUMARRY

In this Unit you have learnt that administrative adjudication denotes the system of deciding dispute by body other than the court. Disputes between administrative and individuals themselves are resolved apart from judicial system by an alternative system of adjudication ranging from tribunals to administrative officers exercising quasi – judicial powers. The adjudicatory bodies are characterized as indicating that they are not simple courts but partake in some features of both courts as well as that of administration. Hence, quasi-judicial indicates processes which are simultaneously both judicial and administrative. Therefore, to understand quasi – judicial or adjudicatory body, it is necessary to understand both administrative and judicial bodies in comparison to adjudicatory body.

6.0 TMA/SELF ASSESSMENT QUESTION

- What do you understand by the term administration procedure?
- What is the constitutionality of administrative adjudication?
- What is the need for administrative adjudication?

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