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**IMPERATIVES OF INCLUDING SHARIAH LAW COURSES IN
THE NIGERIAN LAW SCHOOL CURRICULUM**

By

Barakat Adebisi Raji, Dauda Adeyemi Ariyoosu and Dawood Hamzah¹

ABSTRACT

The Nigerian Law School is an institution where law students are trained as Barristers and Solicitors. A law student who has been called to the Nigerian bar having passed the Bar Final Examinations is entitled to right of audience in all the Nigerian Courts without any exemption, the Shariah Court inclusive, with its special practice and procedure. This paper therefore advocates, as its main objective, for the teaching of rules of practice and procedure of Shariah Courts in the Nigerian Law School so as to enable lawyers gain full audience with adequate knowledge in this court. The methodology employed in this paper is doctrinal with the use of both primary and secondary sources of Nigerian law. Internet materials are also sourced in the course of the research. It has been found that the curriculum of the Nigerian Law School does not cover the basic Shariah law courses that will make appearances of lawyers before the Shariah Court a viable experience and this is not unconnected with the fact that these Shariah Law courses are not being taught at the Law School. There is therefore a need to expand the law school curriculum to accommodate courses such as Islamic law of Evidence, Maqosidu Shariah, Islamic Jurisprudence and maumalat, among others, in as much as these courses are integral parts of the practice and procedure of Shariah Courts. Lawyers who wish to patronize these courts must be fully trained in these courses to keep them abreast of how to carry out their business in Shariah Court. Hence the needs to expand the curriculum of the Nigerian Law School

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for training of lawyers that will enable them practice well in the Shariah Courts without any impediment. This will also assist the public to have more access to decided cases of Shariah Courts and encourage such to be reported.

KEY WORDS: Shariah Court, Curriculum, Council of Legal Education, Legal Systems in Nigeria.

1. INTRODUCTION

Shariah has been an important aspect of the Nigerian Legal system since inception. However, despite the Shariah law being an important aspect of Nigeria's Legal System and despite a Standard Legal Education that is said to be obtainable in Nigeria, an important aspect, the practice and procedures in Shariah Courts are not being taught at the Nigerian Law School. This is specifically saddening considering the fact that every lawyer in Nigeria, irrespective of whether he has an understanding of the Shariah law or not, has a right of appearance at the Shariah Court. This paper will not however be calling for the prevention of certain members of the Bar from practicing in Shariah law courts, rather, it would be craving that the Shariah law which is an important aspect of the Nigerian legal system be inserted and taught at the Nigerian Law school in order to fully train legal practitioners in the practice and procedures of the Shariah Courts. Shariah literally means straight path that leads to certain destination.² It is a way of life and it is a Law of Allah which He enacted for human beings in their beliefs, religions, moralities, socials, to regulate their affairs in all spheres of life for the purpose of achieving success in this world and the hereafter.³ It is clear that the Nigerian Law School is patterned after the English system. The common law is the only law that the designers of legal education in Nigeria had in mind.⁴ In essence, the Shariah courts, even though recognized in the Constitution of the Federal Republic of Nigeria 1999(as amended), its practice and procedure, unlike other Courts, are not taught at the Nigerian Law

2Alhaji Y. Sodiq, "The teaching of Islamic Law in Nigeria: Past and present, Islamic Law in Nigeria (Application & Teaching), (Islamic Publication Bureau, 1988): 109; M. Battour, and Mohd Nazari Ismail, "Islamization Trends: Implications for Tourism Market," (2008): 73-82; David, L. Johnston, "A Muslim and Christian Orientation to Human Rights: Human Dignity and Solidarity," *Ind. Int'l & Comp. L. Rev.* 24 (2014): 899; Charity, Butcher, and Carter Hallward Maia, "Bridging the Gap Between Human Rights and Peace: An analysis of NGOs and the United Nations Human Rights Council," *International Studies Perspectives* 18, no. 1 (2016): 81-109.
3Al-Qatan, "Traihat-tashrie al Islami," (Cairo, 1976): 9; M. Milani, Mohsen, "The Making of Iran's Islamic Revolution: from Monarchy to Islamic Republic: Routledge, 2018;
4Abdulummini A. Oba, "Lawyers, Legal Education and the Shari'ah Courts in Nigeria," (2003): 6; Mammam, Lawan, "Islamic Law and Legal Hybridity in Nigeria," *Journal of African Law* 58, no. 2 (2014): 303-327; Nathan J. Brown, and Mara Revkin, "Islamic Law and Constitutions," *The Oxford Handbook of Islamic law* (2015); Gilbert Enyidah-Okey Ordu, "Sharia Law In Nigeria: Can A Selective Imposition Of Islamic Law Work In The Nation?," *Journal of Islamic Studies and Culture*, 3(2), (2015): 66-81.

School. This paper however makes an attempt to look into this obvious loophole and recommends certain solutions to erase the identified loophole.

2. SHARIAH AS A SOURCE OF NIGERIAN LAW

Islamic law is a source of law under the Nigerian legal system and same is recognized under the Nigeria 1999 Constitution as amended. The Constitution recognizes the Shariah Court of Appeal of the Federal Capital Territory where it provides that 'There shall be a Shariah Court of Appeal of the Federal Capital Territory, Abuja'⁵

It also recognizes the Shariah Court of Appeal for States where it provides that "There shall be for any State that requires it a Shariah Court of Appeal for that State."⁶

3. HISTORY OF THE LEGAL PROFESSION IN NIGERIA

The first brush Nigeria had with Legal Practice was in 1862, when the British colonial administration introduced a system of courts like that of the British system in order to create an organized legal profession which would gradually familiarize the country with English laws and procedure. Hence, authors tend to set out the history of Legal Profession in Nigeria in three different stages; 1876-1914, 1914-1962 and 1962 to date.⁷

Between 1876 and 1914, legal practice was carried out in Nigeria by three categories of lawyers, namely, professionally qualified attorneys, those who served Articles and local attorneys. Those who have been called to bar or admitted as solicitors in England, Scotland and Ireland were automatically enrolled in the Supreme Court of Nigeria as legal practitioners in Nigeria.⁸ To qualify to practice as a Barrister in England at that time, a person must pass the Part I and Part II of the Bar Examination, join one of the four Inns of Court, and keep terms by dining in the Inn. But to qualify to practice as Solicitor, a person must enroll as a student with the Law Society, serve a period of pupillage – article for a minimum of four years with a practising Solicitor and pass Parts I and II of the Law Society qualifying examination.⁹

⁵Section 260(1), Constitution of the Federal Republic of Nigeria 1999 (As Amended); Medugu, Nasiru Idris. "Muslims of the federal capital territory: A survey," Background Paper 5 (2012); Tab'u, M "Islamic Law in Nigeria: A Historical Perspective on Some Basic Issues" *Journal of Islamic and Comparative Law* 19 (1993): 31.

⁶S. 275 (1), Constitution of the Federal Republic of Nigeria 1999 (As Amended).

⁷Joe-Kyari Gadzama, 'The Legal Profession in Nigeria After 50 Years of Legal Education: A Critical Appraisal'

<<http://www.google.com.ng/url?sa=t&rct=j&q=history%20of%20legal%20profession%20in%20nigeria>> accessed on 09 October, 2018; T. O. Elias, "The Nigerian Legal System," (Routledge & Keagan Paul), (1992) at 113.

⁸ The Nigerian Law School, "Electronic Handbook on Professional Ethics and Allied Matters," 4.

⁹ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria', being a Lecture delivered at the 2013 State of the Legal Profession Lecture of the Nigerian Institute of Advanced Legal Studies, Abuja

<<http://www.punchng.com/feature/the-law-you/modernising-legal-practice-in-nigeria>> accessed on 09 October, 2018; Felicia, Eimunjeze, "Achieving Excellence in the Legal Profession in a Globalized

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The second category of lawyers that practised during this period were those who served Articles. By the provisions of Section 73 of the Supreme Court Ordinance 1876, the Chief Justice may admit as a Solicitor of the Supreme Court, any person who has served 5 years continuously in the office of a practising barrister or solicitor residing within jurisdiction of the court and who has passed such examination on the principles and practice of law before such persons as the Chief Justice may from time to time appoint.¹⁰

The third category of lawyers that practised during this period were the local attorneys. The Supreme Court Ordinance 1876 also vested in the Chief Justice of Nigeria, discretionary power to grant temporary license to admit fit and proper persons to practise as local attorneys. To qualify for such licence, the applicant must sit for an examination to test his general education and knowledge, as well as the principles and practice of law. *He must also be shown to be of good moral character*, attested to by a judge or two District Commissioners. The licence to practice was usually for six months and renewable subject to good moral character.¹¹

In the second phase of the history of Legal Profession in Nigeria, 1914-1962, the Supreme Court Ordinance of 1876 was replaced with the Supreme Court Ordinance 1914. During this period, all of the people enrolled to practice law in Nigeria were trained in the United Kingdom, such that a call to the English or Scottish Bar qualified a Nigerian to be enrolled and practise law in Nigeria. This was made possible by virtue of Order XVI Rule 1 of the Supreme Court (Civil Procedure) Rules 1 and 6 made pursuant to the Supreme Court Ordinance 1876, which empowered the Chief Justice to approve, admit and enroll as a barrister and solicitor, any person who is entitled to practise as a barrister in England or Scotland.¹² Those

World: Imperatives for Developing Economies," *Journal of Sustainable Development Law and Policy* (The) 5, no. 1 (2015): 198-218.

10 The Nigerian Law School, "Electronic Handbook on Professional Ethics and Allied Matters," (2011), 4; Chidi, Oguamanam, and W. Pue, Wesley, "Lawyers' Professionalism, Colonialism, State Formation, and National Life in Nigeria, 1900-1960: 'The Fighting Brigade of the People,'" *Social Identities* 13, no. 6 (2007): 769-785.

11 Joe-KyariGadzama, "The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical.

Madubuike-Ekwe, "Challenges and Prospects of Legal Education in Nigeria: An Overview," *NAUJILJ* 8 (1) (2017):1-12.

12 Chinwendu Okoroma, "How to qualify as a lawyer in Nigeria," <<http://toscanacademy.com/blog/nigeria-education/qualify-lawyer-nigeria>> accessed on 09 October, 2018; Chukwujindu, Michael, Ogweszy, "The Legal Practitioners Act: A Code for Regulating the Conduct of Lawyers in Nigeria," *AGORA Int'l J. Jurid. Sci.* (2013): 108; E. S. Nawauche, "The Need to Review the Immunity of Legal Practitioners for Negligence in Nigeria," 29, (2016):569-576; Jr., Heineman, W. Ben, Lee F. William and Wilkins, B. David, "Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century," Center on the Legal Profession at Harvard Law School (2014); David B. Wilkins, and Kim, Young-Kyu, "The Action after the Call," *Diversity in Practice: Race, Gender, and Class in Legal and Professional Careers* (2016): 37; Wilkins, David B., and Young-Kyu Kim. "The Action after the Call: What General Counsels Say About the

who qualified as barristers or solicitors in Britain were in three classes as follows: Barristers, Graduate Barristers and Solicitors.

The major challenge of legal practice in Nigeria during this period was that the legal training in the UK did not take into account the Nigerian legal System especially the customary law and the strong influence of Islamic law.¹³

The government of the Federation of Nigeria in April 1959 set up a Committee consisting of the regional Attorneys General, the Solicitor-General of the Federation, the Legal Secretary of the Southern Cameroon and six distinguished legal practitioners under the chairmanship of the Attorney-General of the Federation, E.I.G. Unsworth. The committee was mandated "to consider and make recommendations for the future of the legal education and admission to practice, the right of audience before the court and the making of reciprocal arrangement in this connection with other countries."¹⁴

From the committee's report published in October 1959, the following recommendations emerged:

- (a) Legal education should be provided locally and adapted to the needs of Nigeria.
- (b) Law faculties should be established, first at University of Ibadan and any other subsequent universities to offer degrees in law.
- (c) A law School should be established in Lagos to provide practical training for law graduates.
- (d) A law degree should be a requirement for practice of law in Nigeria and for admission into Law school.¹⁵

The Federal government accepted the Committee's recommendations and implemented them through the promulgation of two Acts, namely: The Legal Education Act 1962 and the Legal Practitioners Act 1962 subsequently replaced and consolidated in the Legal Education (Consolidation, etc) Act *Cap L10 Laws of Federation of Nigeria 2004* and the Legal Practitioners Act *Cap L11 Laws of Federation of Nigeria 2004*. While the former Act regulates the legal education in Nigeria, the latter Act regulates the practice of law in Nigeria.¹⁶

Value of Diversity in Legal Purchasing Decisions in the Years Following the 'Call to Action.' HLS Center on the Legal Profession Research Paper 2015-5 (2015): 1-49.

13 Joe-Kyari Gadzama, "The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical Appraisal."

14 C. O Okonkwo, "A Historical Overview of Legal Education in Nigeria," Report of the Committee on Legal Education for Students from Africa, CMND 1255 (1961).

15 Ibid

16 Jayanth, K. Krishnan, and Kunle, Ajagbe, "Legal Activism in the Face of Political Challenges: The Nigerian Case," *J. Legal Prof.* 42 (2017): 197; Oluyemisi, Bamgbose, "Access to Justice through Clinical Legal Education: A way Forward for Good Governance and Development," *African Human Rights Law Journal* 15, no. 2 (2015): 378-396; Cynthia, Farid, "New Paths to Justice: A Tale of Social Justice Lawyering in Bangladesh," *Wis. Int'l LJ* 31 (2013): 421; Patricia, Ibijoke, Byron, "The Relationship between Social Justice and Clinical Legal Education: A Case Study of the Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria," *Int'l J. Clinical Legal Educ.* 20 (2014): 563.

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In the third phase of the history of Legal Profession in Nigeria, from 1962 to date, Legal practitioners in Nigeria consist of persons entitled to practise as a barrister and solicitor either generally or for the purpose of any particular office or proceedings under the Legal Practitioner Act.¹⁷ Students with a law degree from an approved university are admitted into the Law School, where they are trained as legal practitioners. These students are required to pass the Bar Part II Examinations, while students who are admitted into the school with degrees obtained outside Nigeria are required to pass in addition the Bar Part I examination.¹⁸ A person is entitled to practice generally only if his name is on the Roll of Legal Practitioners kept by the Chief Registrar of the Supreme Court of Nigeria.¹⁹

4. SHARIAH LAW COURSES AND THE NIGERIAN LAW SCHOOL CURRICULLUM

Shariah finds its place in Nigeria's 1999 Constitution only in a number of provisions relating to the Shariah Courts of Appeal of the Federal Capital Territory and of 'any State that requires it'²⁰; in fact, eighteen of the nineteen states of the ex-Northern Region have Shariah Courts of Appeal, the nineteenth, Benue State, sharing with

¹⁷See Section 24 of the Legal Practitioners Act, Cap. L11, vol. 8 LFN, 2004; Yemisi, Olorunfemi Doreen, "The Information Behaviour of Law Students in Nigerian Universities," (PhD diss., University of Zululand, 2014); John, Harrington, and Manji, Ambreena, "Africa Needs Many Lawyers Trained for the Need of their Peoples' Struggles over Legal Education in Kwame Nkrumah's Ghana," *American Journal of Legal History* 59, no. 2 (2019): 149-177; P.K. Tripathi, "In the Quest for better Legal Education," (2016), 09; Oduwale, Oluwakemi Titilayo, "Institutional Assessment as an Agent of Reform: An Analysis of Nigerian Legal Education," (PhD diss., University of Toronto, 2012).

¹⁸Z. Adangor, "Globalization of Legal Practice in Nigeria: Challenges and Obstacles," *JL Pol'y & Globalization* 51 (2016): 7; Sande, L. Buhai, and Kumar, Ved, "The Role of Law Schools in Educating Judges to Increase Access to Justice," *Pac. McGeorge Global Bus. & Dev. LJ* 24 (2011): 161; Stephen, Ikemefuna, Nwoye, "Foreign Legal Representation in Arbitral Proceedings: The Case for a Liberalized Legal Services Sector in Emerging Economies," Available at SSRN 2595844 (2015); Poul, F. Kjaer, "Global Law as Inter-contextuality and as Inter-legality," Poul F. Kjaer: Global Law as Intercontextuality and as Interlegality (2019): 302-18; Ibrahim Tanko, Muhammad, "Public Lecture: That This Profession May Not Die: The Need to Flush Out Miscreants from the Nigerian Legal Profession," *Journal of Sustainable Development Law and Policy* (The) 5, no. 1 (2015): 219-241; Osasona, Tosin, "Time to reform Nigeria's criminal justice system," *Journal of Law and Criminal Justice* 3, no. 2 (2015): 73-79; Ogunode, Sunday Abraham, "Criminal justice system in Nigeria: For the rich or the poor?," *Humanities and Social Sciences Review* 4, no. 1 (2015): 27-39.

¹⁹See Section 2(1) of the Legal Practitioners Act; I. L. I. Ikimi, "Fate of a legal practitioner in Nigeria adjudged guilty of professional misconduct," *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 10, no. 2 (2019): 131-140; Adangor, Z. "Globalization of Legal Practice in Nigeria: Challenges and Obstacles," *JL Pol'y & Globalization* 51 (2016): 7.

²⁰Section 260(1) and Section 275(1), Constitution of the Federal Republic of Nigeria, 1999 (As Amended); Ostien, Philip, and Albert Dekker, "Sharia and National Law in Nigeria," *Sharia incorporated: A comparative overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (2010): 553-612; Ibrahim, Hauwa, and Princeton N. Lyman, "Reflections on the New Shari'a Law in Nigeria," *Council on Foreign Relations* (2004).

Plateau.²¹ The Constitution provides in detail for their establishment, the appointment and removal of their judges.²² The Shariah Courts of Appeal are grouped with the Supreme Court, the Court of Appeal, the State and Federal High Courts, the Customary Courts of Appeal and, by the third Alteration, the National Industrial Court of Nigeria - they are Superior Courts of records.²³ The existence of Shariah Courts of Appeal implies the existence of courts inferior to them in which Islamic law is applied and from which appeals to them may be taken. These were the North's Native Courts, which in 1967-1968 were reconstituted as 'Area Courts'.²⁴

21Ajetunmobi, Musa Ali. *Shariah Legal Practice in Nigeria 1956-1983*. Kwara State University Press, 2018; Mwinyi, T. Haji, and Sambo, O. Abdulfatai, "The Influence of Common Law Advocates and Judges in the Shari'ah Adjudication: A Critical Exposition of the Experience in Nigeria and Zanzibar," *JL Pol'y & Globalization* 5 (2012): 1; Abdulmumini A. Oba, "Lawyers, Legal Education and the Shari'ah Courts In Nigeria," (2003): 7; Sambo, O. Abdulfatai and Abdulkadir B. Abdulkadir, "The continuing influence of common law judges and advocates in the adjudication of Islamic finance disputes in Nigeria," *Ethics, Governance and Regulation in Islamic Finance* (2015): 119. 22Sections 260-264 for Shariah Court of Appeal for the Federal Capital Territory and Sections 275-279 for the Shariah Court of Appeal for interested States, Constitution of the Federal Republic of Nigeria, 1999 (As Amended); Muhammed, Adisa Rasaq. "News framing of ethno-political issues and conflict Behaviours: Ethnic conflict pathways model." PhD diss., Universiti Utara Malaysia, 2016; Magaji, Chiroma, Mahamad Arifin, Abdul Haseeb Ansari, and Mohammad Asmadi Abdullah. "Shari'ah Court and the Role of Muftis in the Nigerian Judiciary: Mission on Reviving the Lost Glory of Its Past," *vol. 23 (S) OCT. 2015* (2015): 55; Ostien, Philip, "A Survey of the Muslims of Nigeria's North Central Geo-political Zone," Nigeria Research Network (NRN), Oxford Department of International Development, NRN Working Paper 1 (2012); Alkali, Muhammad Nur, Abubakar Kawu Monguno, and Ballama Shettima Mustafa. "Overview of Islamic actors in northeastern Nigeria." Nigerian Research Network (2012); Modibbo, Muhammad Sani Adam. "Survey of Muslim groups in Plateau state of Nigeria." NRN Background Paper 4 (2012).

23Musa, Ali, Ajetunmobi, " *Shariah Legal Practice in Nigeria 1956-1983*," Kwara State University Press, 2018; Juma't Dasuki, Muhammad, "An Examination of the Application of Islamic Law of Inheritance in Kwara State Shar'iah Juridical Courts, 1994-2015," (PhD diss., Kwara State University, Nigeria, 2018); Gunnar, J. Weimann, "An Alternative Vision of Sharia Application in Northern Nigeria: Ibrahim Salih's Hadd Offences in the Sharia," *Journal of Religion in Africa* 40, no. 2 (2010): 192-221; 2018; Abdulqadir, Ibrahim Abikan, and Ahmad Folorunsho, Hussein, "The Status of Shari'ah in the Nigerian Legal Education: An Appraisal of the Role of Madaris." *IJUM Law Journal* (2016); Abdulmumin A. Oba, *ibid*, 7; Appraisal' Yusufari "The application of Islamic law," (1998) 4 Yearbook of Islamic and Middle Eastern Law, 201; Kadouf, Hunud Abia, Umar A. Oseni, and Magaji Chiroma, "Revisiting the Role of a Mufti in the Criminal Justice System in Africa: A Critical Appraisal of the Apostasy Case of Mariam Yahia Ibrahim," *vol. 23 (S) OCT. 2015* (2015): A. A. Oba1, "Kadis (Judges) of the Sharia Court of Appeal: The Problems of Identity, Relevance, and Marginalisation within the Nigerian Legal System," *Journal of Commonwealth Law and Legal Education* 2, no. 2 (2004): 1.

24^{ibid}; Okpanachi, Eyene, "Ethno-religious Identity and Conflict in Northern Nigeria-CETRI, Centre Tricontinental," (2019); Okpanachi, Eyene. "Ethno-religious identity and conflict in northern Nigeria: understanding the dynamics of sharia in Kaduna and Kebbi states." *IFRA-Nigeria e-Papers* 7 (2010).

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It is however saddening that despite the importance and recognition given to the Shariah Law in the 1999 Constitution as amended; the Shariah law is not recognized in the curriculum of the Nigerian Law School. The Nigerian Law School curriculum currently has five courses embedded which include Criminal Litigation, Civil litigation, Property Law Practice, Corporate Law Practice and Professional Ethics and Skills. None of the above-mentioned courses has anything to do with Shariah law or procedures obtainable in the Shariah Courts. The following courses are pertinent and need to be included in the training of lawyers at the Nigerian law school for effective advocacy of lawyers in the Shariah courts.

5. MAQASID AL-SHARI'AH

Maqasid al-Shari'ah, or the goals and objectives of Islamic law, is evidently important theme of the *Shari'ah*. Generally, the *Shari'ah* is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth.²⁵ *Maqasid al-Shari'ah* is a very important subject in understanding the whole picture of Islamic law and without adequate knowledge of *Maqasid al-Shari'ah*, the practice of *Shari'ah* may not be understood and the beauty of Islam as *rahmah* (mercy) to the universe will not be appreciated. It comprises those benefits, welfare and advantages behind the revelation of Islamic law.²⁶ It also seeks to establish justice, eliminate prejudice and alleviate hardship. The teaching and learning of *maqasid al-Shari'ah* is of paramount importance in all human endeavour because it also seeks to promote co-operation and mutual support within the family and the society at large. Justice itself is a manifestation of God's mercy as well as an objective of the *Shari'ah*. Educating the individual (*tahdhib al-fard*) is another important objective of the *Shari'ah* and it is through educating the individual that the *Shari'ah* seeks to realise most of its social objectives.²⁷ The

²⁵Mohammed H. K., "Maqasid al Shariah: The Objectives of Islamic Law," ><http://islam101.net/index.php/shariah/141-maqasidalshariah>< accessed on 19 October 2018; Aziz, Muhamamd Ridhwan Abdul, and Mohd Shahid Mohd Noh, "The role of five major Shari'ah Legal Maxims (Al-Qawaid Al-Kubra) in the establishment of Maqasid Al-Shari'ah in Islamic financial products: a discussion on some cases," *European Journal of Business and Management* 6, no. 10 (2014); Aziz, Muhamamd Ridhwan Abdul, and Mohd Shahid Mohd Noh, "Tools of Usul al-Fiqh in Realizing Maqasid al-Shari'ah in Sukuk Structures in Malaysia: An Initial Analysis," *international Journal of Education and Research* 1, no. 10 (2013).

²⁶M. N. Fauziah, "Maqasid al Shariah," <http://www.slideshare.net/fauziahna/maqasid-al-shariah> accessed on 19th October, 2018; Mohammad, Mustafa Omar, and Syahidawati Shahwan, "The objective of Islamic economic and Islamic banking in light of Maqasid Al-Shariah: A critical review," *Middle-East Journal of Scientific Research* 13, no. 13 (2013): 75-84; Al-Mubarak, Tawfiq, and Noor Mohammad Osmani, "Applications of Maqasid al-Shari'ah and Maslahah in Islamic Banking practices: An analysis," In *International Seminar on Islamic Finance in India*, pp. 4-6, 2010.

²⁷Ibid; Tacettin, Calik, "Sığınma Hakkının Korunması," *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 23, no. 1 (2015): 117-146; Williams, Geoffrey, and John Zinkin, "Islam and CSR: A study of the compatibility between the tenets of Islam and the UN Global Compact."

Shari'ah encourages work and trading activities in order to enable the individual to earn a living, and it takes elaborate measures to ensure the smooth flow of commercial transactions in the market-place. The family laws of the *Shari'ah* are likewise an embodiment largely of guidelines and measures that seek to make the family a safe refuge for all of its members. The *Shari'ah* also encourages pursuit of knowledge and education to ensure the intellectual well-being of the people and the advancement of arts and civilization. In other words, *Maqāsis al-Shariah* constitutes an all-encompassing theme of the *Shari'ah* as all of its laws are in one way or another related to the protection of these benefits. These benefits are an embodiment of the primary and overriding objectives of *Shari'ah*.

Most Muslim scholars are of the opinion that the ultimate and primary objectives (*maqasid al-Shari'ah*) which are a necessity for mankind to be able to live peacefully in this world, according to al-Quran and al-Sunnah, include five main areas viz: Protection of *al-Din* (Islam), Protection of life (*nafs*), Protection of Intellect or Faculty of Reason (*aql*), Protection of Progeny or Offspring (*nasl*) and Protection of Material Wealth or Resources (*mal*).²⁸ The Muslim jurists have, however, classified *maqasid*, with respect to their need and strength, into: (1) the essential *maqasid* (*al-maqasid al-daruriyyah*) which are indispensable *maqasid* for the survival and well-being of mankind in this world and their success in the hereafter;²⁹ (2) the complementary *maqasid* (*al-maqasid al-hajiyyah*) which seek to establish ease and facility and to remove hardship and difficulty; and (3) the desirable *maqasid* (*al-maqasid al-tahsiniyyah*) which seek to attain refinement and perfection in all areas of human conduct.³⁰

An adequate knowledge of the *maqasid al-Shari'ah* equips the student of the *Shari'ah* with insight and provides him with a theoretical framework in which the

Journal of Business Ethics 91, no. 4 (2010): 519-533; Erik, Fribergh and Morten Kjaerum, "Handbook on European Law Relating to Asylum," *Borders and Immigration, edition* (2014).

²⁸Shaya'a Othman, "Shariah and Maqasid Al-Shariah, A Brief Overview," <<http://islamicstrategymanagement.blogspot.com/p/maqasid-al-shariah.html>> accessed on 20 October 2018.

²⁹These are the preservation and protection of the five fundamental values mentioned earlier as the primary and ultimate objectives of Islamic law viz: religion, life, Intellect or Faculty of Reason, Progeny or Offspring and Material Wealth or Resources; Mushir, Nikhat. "Ethics and Morality in Economic Life." *Journal of Islamic Economics, Banking and Finance* 113, no. 3142 (2015): 1-13.

³⁰<<http://islamicbankers.files.wordpress.com/2015/08/the-objectives-of-islamic-law-151.pdf>> accessed on 19 October, 2018; Masudul, Alam, Choudhury, "Tawhid, Al-Wasatiyyah, and Maqasid as-Shari'ah," In *Absolute Reality in the Qur'an*, (2018): 85-100. Palgrave Macmillan, New York, (2016): DOI: 10.1057/978-1-137-58947-7_5; Ibrahim, Abiodun, Oladapo, and Asma, Ab Rahman, "Maqasid Shari'ah: the Drive for an Inclusive Human Development Policy," *Jurnal Syariah* 24, no. 2 (2017).

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attempt to acquire detailed knowledge of its various doctrines can become more interesting and meaningful.³¹

5.1 Law of Evidence

A lawyer who wants to represent his or her client in Shariah Court must know the basic principles of law of evidence under Shariah law.³² This is the premises upon which Muslim jurists base their opinion on the testimony as opposed to the common law view. Hence the need for legal education council to key into her curriculum the Islamic law of evidence to prepare the lawyers ahead of his or client case in Shariah Courts.³³ In Islamic law, the nature of a case dictates the number of witnesses to be called. Usually, jurists derive their opinion on evidence from the provisions of the Holy Qur'an.³⁴ For instance, in case of financial transaction where Mr. A loans sum amount to Mr. B, Islam enjoins the transaction between them to be documented and witnessed by two just men or one man and two women as the case may be. Hence Allah says,

"And call two male witnesses from among your men (over the document of loan). And if two men cannot be found then one man and two women from among those whom you deem appropriate, so that if either of them gets confused the other reminds her."³⁵

The above verse of the Holy Qur'an provides for number of witnesses to give evidence when loan is taking and when parties are in dispute. This is not applicable in all cases. For instance, in the case of financial transaction, a case stands proven by the testimony of a just man and two women. This is unlike the number of witnesses required in the case of Hudud where the testimony of women is in no way acceptable. Although the opinions of jurists are differ on this. For instance, according to Malikis, the testimony of two female and a male are acceptable only in the bodily affairs in ordinary circumstances such as the crying of a baby at birth³⁶. In

³¹Mohammed H. K., 'Maqasid al Shariah: The Objectives of Islamic Law' <<http://islam101.net/index.php/shariah/141-maqasidalshariah>> accessed on 19 October 2018.

³²H. Ibrahim, & P. N. Lyman, "Reflections on the New Shari'ah Law in Nigeria," *Council on Foreign Relations*, (2004). A. N. B. Abbas, "The Islamic Legal System in Singapore," *PacRimLPolyJ*, 21 (2012): 163.

³³L. Zakariyah, "Beyond Textuality in Islamic Legal Exegesis: Intertextuality and Hypertextuality for Codifying Legal Maxims of Islamic Criminal Law," *American Journal of Islamic Social Sciences*, 31(4), (2014): 50-72; A. A. Oba, "Lawyers, Legal Education and the Shari'ah courts in Nigeria," *The Journal of Legal Pluralism and Unofficial Law*, 36 (49), (2004): 113-161; A. H. Yadudu, "Colonialism and the Transformation of Islamic Law: In the Northern States of Nigeria," *The Journal of Legal Pluralism and Unofficial Law*, 24(32), (1992): 103-139.

³⁴H. A. Ghani, "Urf-o-Adah (Custom and Usage) as a Source of Islamic law," *American International Journal of Contemporary Research*, 1(2), (2011); M. Z. Islam, "Interfaith Marriage in Islam and Present Situation," *Global Journal of Politics and Law Research*, 2(1), (2014): 36-47.

³⁵Q.2: 282.

³⁶Larson, S. (2012). *Bearing Knowledge: Law, Reproduction and the Female Body in Modern Morocco, 1912-Present* (Doctoral dissertation, UC Berkeley); M. S. Sujimon, "Istilhaq and its Role in Islamic Law," *Arab LQ*, 18, (2003): 117; Atighetchi, D., "Aspects of the Management of the Rising

case of zina (fornication), testimony is required only when the case has been filed on the basis of accusation and the accused are chaste and morally upright whom but alleged to have committed zina.³⁷ The provision of the Qur'an says,

"Those who accused chaste women and do not produce four witnesses as an evidence for their accusation, inflict eighty stripes upon them and never accept their testimony over them."

This shows that four witnesses are required for proof of commission of fornication. Shariah law practice and procedure requires special training and time to study its rules and procedure. A barrister or lawyer who is not versed in Shariah law cannot dabble into applying the rules without messing it up.

5.2 Muamalat (Islamic Law of Transactions)

Muamalat is the Islamic jurisprudence of transactions and the principles upon which Islamic finance is based. It is the legal framework within which economic transaction is conducted in Islamic settings. Any form of mutual dealings between two parties to solve their needs, in matters of trade and commerce as well as social relationship borders on economic or non-economic activities. The rules on conclusion of the contract of sale in Islamic law are stricter than the rules in any modern legal systems.³⁸ There is a right of withdrawal of the offer even after acceptance. The so called auctions, advertisement or displays of goods on shelves, and the like are treated as mere invitations to create an offer in common are referred to as valid offer in Islamic law of transaction which upon being accepted becomes binding by law once parties are involved in a transaction.³⁹ The general rule is that the price of goods and its description constitutes an offer and a display of such goods with its price on it also constitutes an offer.⁴⁰ There are certain things cannot be the subject of sale under the Islamic law of transaction and these are; pigs, alcohol and animals not ritually slaughtered. These are just few of the differences between common law of transaction and Islamic law of transaction, a tip of an ice berg of the study of Muamalat. Hence, the need to train lawyers on the practice and procedure

Life Comparing Islamic Law and the Laws of Modern Muslim States," *Droit et cultures. Revue internationale interdisciplinaire*, (59), (2010): 305-329.

³⁷In case of zina (fornication), testimony is required only when the case has been filed on the basis of accusation and the accused are chaste and morally upright whom but alleged to have committed zina.

³⁸Jeanne Asherman, "Doing Business in Saudi Arabia: The Contemporary Application of Islamic Law," *International Lawyer* (1982): 321-337; Gayle E. Hanlon, *International Business Negotiations in Saudi Arabia*, in James R. Silkenat, Jeffrey M. Aresty & Jacqueline Klosek eds., "The ABA Guide to International Business Negotiations (3rd ed.), Chicago, Illinois: American Bar Association, (2009): 851-229 of 918, ISBN978-1-60442-369-3; Michael Furmston, "Cheshire, Fifoot & Furmston's Law of Contract," (12th Edition, London: Butterworths), (1991)124.

³⁹Mohd Ma'sum Billah, "Applied Islamic Law of Trade and Finance," A Selection of Contemporary Practical Issues," Third Edition, Sweet & Maxwell Asia, (2012): 5; M.E. Hamid, "Islamic Law of Contract or Contracts," *Journal of Islamic and Comparative Law*, 3, (2009): 1-11.

⁴⁰Kourides, P. Nicholas, "Influence of Islamic Law on Contemporary Middle Eastern Legal Systems of Twelve Muslim Countries in Past and Present," (2010): 167, ISBN 978-90-8728-057-4.

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of Shariah courts in Nigeria in addition to practice and procedure of the common law courts.

6. NEED FOR INCLUSION OF SHARIAH LAW COURSES IN THE NIGERIAN LAW SCHOOL CURRICULUM

It is clear from the present arrangement that Shari'ah, whether as a non-ethnic customary law in Nigeria or as an internationally established legal system, was not within the contemplation of the Legal Practitioners Act.⁴¹ It is also clear that the practice and procedure in Shariah Courts is excluded from the curriculum of the Nigerian Law School.

However, it is humbly posited that same should be included due to the following reasons:

- i. To foster adequate knowledge of Shariah Courts' practice and procedure: teaching of Islamic law and the practice and procedure obtainable at the Shariah courts will foster the knowledge of Islamic law in Nigeria as it will open the eyes of many to the procedures obtainable at the shariah courts as many are ignorant of same and yet, appear in the courts to defend clients.
- ii. To ensure clients are adequately and competently represented: The teaching of the practice and procedures of the Shariah courts will facilitate adequate and competent representation of clients. With regards to representing clients competently, the Rules of Professional Conduct for Legal Practitioner, 2007 provides that a lawyer shall not handle a legal matter which he knows or ought to know that he is not competent to handle.⁴²

The question that begs for an answer is how will a lawyer trained in this current curriculum competently represent a client at the Shariah Court while he is bereft of the knowledge of its practice and procedure which was apparently denied him by the system? It may be argued that such lawyer can engage other lawyers to approach the matter together but another question still arises that why should the system deny such lawyer the knowledge, thereby creating an obvious loophole in the first instance?

It is humbly submitted that such loophole could be avoided altogether by preparing lawyers right from the training ground as they are being trained with the Common Law aspect of the law. Apart from the above arguments, a client also has the right to decide the lawyer who represents him. It is a Constitutional guaranteed right. It is therefore posited that all Lawyers being trained by the Council of Legal Education should possess adequate knowledge to represent their client as lawyers can only be as good as the system of legal education that produces them. The competence and

⁴¹Masud, Muhammad Khalid. "Teaching of Islamic Law in Nigeria: an Appraisal of the Teaching Methodology," (1998): 142-155 in Rashid S.K, (ed.) *Islamic Law in Nigeria* (1998) University of Sokoto Press 16.

⁴²Rule 16, Rules of Professional Conduct for Legal Practitioners, 2007.

expertise of lawyers depend heavily on the ability of the system of legal education that provides training to impact the necessary skills⁴³ to ensure a level playing ground for Shariah law and Common Law: it is obvious from the current setting that Islamic law as a source of Nigerian Law has been relegated to the back unlike its Common Law counterpart. In essence, a level playing ground should be adopted and both areas of the law be taught.

Throughout the colonial era, a rigid barrier was enacted against legal practitioners appearing in customary and Islamic courts.⁴⁴ Lawyers were statutorily prevented from appearing in Area Courts⁴⁵ and Shariah Courts of Appeal.⁴⁶ These provisions, even though not statutorily repealed as at then, Lawyers appear in both courts with such regularity that their right of audience may seem settled and beyond question.⁴⁷ The basis for their appearance being the decision of the Court in *Karimatu Yakubu and Anor v Yakubu Paiko and Anor*.⁴⁸ This issue was not adequately contested as there was no further appeal to the decision of the then Court of Appeal. However, by the coming into effect of the 1979 Constitution, legal practitioners have right of audience before any court of law, including the Shariah Courts.

7. OBSERVATIONS

There is an urgent need to include Shari'ah courses because of the Shari'ah courts that were established by the 1999 Constitution of the Federal Republic of Nigeria. These courts can only be functional when the judges are legally trained. In addition, those students who studied common and Islamic law and Shari'ah law would be able to practice freely without any form of hindrance. This will give room for employment of our young and vibrant Shari'ah and common and Islamic law professionals.

8. RECOMMENDATIONS

The paper recommended that the Shariah Law be fully incorporated into the Curriculum of the Nigerian Law School and generally the legal education at all levels or in the alternative, persons who opts not to study Shariah law together with Common law be prevented from appearing in Shariah Courts. This is necessary to ensure that a level playing ground be given to Shariah law and Common law.

9. CONCLUSION

The paper has been able to trace the history of the Nigerian Law School from 1960 till the very moment. It has also been able to identify an obvious loophole in Nigeria's Legal Education. Furthermore, it has discussed the impact of the absence of teaching of the practice and procedures of the Shariah courts in the curriculum of

⁴³L. H. Abdulrashid, Magaji Chiroma, and A. A. Muhammad, "Legal Education and Social Change: The Nigerian Experience," [3www.unimaid.edu.ng/oer-law](http://www.unimaid.edu.ng/oer-law) accessed on 08 October, 2018.

⁴⁴Abdulumuni A. Oba, "Lawyers, Legal Education and the Shari'ah Courts in Nigeria," (2003): 7

⁴⁵S. 28 (1) of Area Courts Edict (No. 2, 1976 of Kwara State.

⁴⁶S. 20(1), Shariah Court of Appeal Law, Cap 122, *Laws of Northern Nigeria*, 1963.

⁴⁷Abdulumuni A. Oba, *ibid*, 9.

⁴⁸*Karimatu Yakubu and Anor v Yakubu Paiko and Anor*. (1961-1989) 1 Sh.L.R.N. 126

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the Nigerian Law School. Hence the need for urgent inclusion of Shari'ah courses into the Curriculum of the Nigerian Law schools. Government should also assist to drive this proposal to fastrack the implementation.