

STUDY NOTES (2023) FOR AFRICAN CUSTOMARY LAW-

IND2601

BY NANGAMSO N

AN INTRODUCTION TO AFRICAN CUSTOMARY LAW

LECTURE 1

1.1 THE LAW AND HUMAN RELATIONSHIPS

Public law

- Any legal relationship between people –individuals or groups, or a government and its subjects creates responsibilities and obligations.
- The subject is obliged to abide by the laws enacted by the government.
- Government is obliged to protect the subject.
 - Legislative organs (Parliament) responsible for passing statutes.
 - Executive organs -responsible for the application of statutes and other public services.
 - Judiciary – refer to the courts.
- When two individuals enter into a contract, one is obliged to pay the price and the other to deliver.

Private law

- Legal relationships between individuals and groups in their capacity as private persons.
1. The aim of any legal system is to maintain order within the society concerned.
 2. Maintenance of order is supported by means of approving and disapproving legal sanctions.

1.2 THE NAME OF THIS SUBJECT

- a. In customary law, the emphasis tends to be on duties rather than on rights.
- b. The term "customary law" means "the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples" (section 1 of the Recognition of Customary Marriages Act 120 of 1998).

1.2 THE DIVISION OF CUSTOMARY LAW

- Initially, most of the indigenous African people in Africa had their own independent "states.
- Africans had their own authority under the supervision of the tribal chief.
- Some kingdoms consisted of several tribes and remnants of tribes, ruled by a king or a paramount chief.

Customary Public Law

- Customary public law governs the relations **between traditional authorities and subjects.**
- And the relations between these authorities within the tribe.

Subdivision of Customary Public Law

1. Customary Constitutional and Administrative Law
 - a. Relates to the **composition, powers and functions** of the public organs of authority.
 - b. In a Tribe, the highest authority is the tribal chief.
 - i. The tribal chief has various councils that help him to perform his duties.

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