NATIONALITY, CITIZENSHIP AND DOMICIL

IN THE

LAWS OF NIGERIA

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by

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ABSTRACT

This thesis deals with two topics of Nigerian Law: (1) the Nationality and Citizenship Laws and (2) the Law of Domicil.

The breakdown of the "common code" of British nationality heralded a new phase in the law of nationality and citizenship in the Commonwealth, and the evolution of its members into international relationships led to the enactment of divergent laws in States which previously shared a common nationality code. The emergence of Nigeria as a new independent power enabled the enactment of the first citizenship law.

The Introductory Part deals briefly with the historical and constitutional background of Nigeria and a general treatment of the concepts of nationality and citizenship. Part 2 outlines the British Nationality Laws operating in Nigeria prior to October 1, 1960. Part 3 is a comprehensive analysis of the legal provisions for Nigerian citizenship contained in the Constitution, Acts of Parliament and Legal Notices. "Nigerian Nationality" and the concept of nationality in customary law are also considered. The final chapter on Citizenship and Non-Citizenship attempts to analyse the differences in the local law between the possession and non-possession of local citizenship.

Part 4 deals with the second topic. Chapter 9 contrasts domicil with nationality and concludes with an analysis of the content of the law of domicil. Chapter 10 deals with the introduction into Nigeria of the concept of domicil and the scope of its operation, the effect of the federal legal structure on its application, proposals for the reform of the concept in England with a closing reconsideration of it.

Arthur Nylander.

Dedicated to the memory

of

my beloved father

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ABBREVIATIONS

A.I.R.	All India Reports
All N.L.R.	All Nigeria Law Reports
Ann. Dig.	Annual Digest and Reports of Public International Law Cases
C.L.P.	Current Legal Problems
E.A.C.A.	East African Court of Appeal
E.R.L.N.	Eastern Region Legal Notice (Nigeria)
E.R.L.R.	Eastern Region of Nigeria Law Reports
F.L.R.	Federal Law Report (Australia)
Federal Constitution	Nigeria (Constitution) Order in Council, S.I.1960 No. 1652, L.N. 159 of 1960, First Schedule
I.C.J. Rep	Reports of the International Court of Justice
J.A.L.	Journal of African Law
J.C.L.(N.S.)	Journal of Comparative Legislation (New Series)
L.C.N.(1954)	Laws concerning Nationality, United Nations, 1954
L.L.R.	Lagos Law Reports
L.N.T.S.	League of Nations Treaty Series
M.A.T.	Mixed Arbitral Tribunals
N.A.L.N.	Native Authority Legal Notice (Northern Region of Nigeria)
N.R.N.L.R.	Northern Region of Nigeria Law Report
O in C.	Order in Council
P.C.I.J.	Permanent Court of International Justice (Reports)

Rh & Ny L.R.	Rhodesia and Nyasaland Law Report
Ren.	Renners Gold Coast Reports, 1861-1914
Rpt. (where context permits)	Report of the Ad hoc Committee on Nigerian Citizenship
Republican Constitution	Constitution of the Federal Republic of Nigeria, Act No. 20 of 1963
S.A.L.J.	South African Law Journal
S.A.L.R.	South African Law Report
T.G.S.	Transactions of the Grotius Society
U.N.T.S.	United Nations Treaty Series
V.L.R.	Victoria Law Report (Australia)
W.R.N.L.R.	Western Region of Nigeria Law Report

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1946	Nigeria (Legislative Council) Order in Council, 1946 S.R. & O 1945 No.1370	10
1948	British Nationality Regulations.	93, 99, 106, 110.
	Registration of Births and Deaths (Consular Officers) Regulations	97
1949	British Protectorates, Protected States and Protected Persons Order in Council, 1949, S.I. 1949, No. 140	114, 115, 119, 134.
	s.2	117
	s.3	120
	s.4	120
	s.6	116
	s.7	102
	s.8	101
	s.9	116, 142, 143, 146, 151.
	s.10	116
	s.11	121
	s.12	116, 117
	s.13	117, 121, 127
1950	Deprivation of Citizenship Rules	110
1951	Nigeria (Constitution) Order in Council, S.R.& O. 1951, No. 1172	11

Year	Subject Matter	Pages
1954	Nigeria (Constitution) Order in Council, 1954, S.I.1954, No.1146	11, 12, 83, 84.
1955	Colonial Air Navigation Orders 1955-58, S.I. 1955, No. 711, as amended	267
1957	Nigeria (Constitution) Amendment Order in Council, 1957, S.I. No.1363	12
	Nigeria (Constitution) Amendment, No.2 Order in Council, 1957, S.I. No.1530	12, 84
1958	British Protectorates, Protected States and Protected Persons Order in Council, 1958, S.I. No.259	101
	British Nationality Regulations, S.I. 1958, No.655	99
1961	Sierra Leone (Constitution) Order in Council, 1961	31, 137, 191
	Jamaica (Constitution) Order in Council, 1961	31
	Trinidad and Tobago (Constitution) Order in Council 1961	31.
	NEW ZEALAND.	
1960	Western Samoa New Zealand Protected Persons Order	289.

PART I

INTRODUCTION

Chapter One

INTRODUCTION : THE HISTORICAL & CONSTITUTIONAL BACKGROUND

The Historical Background[1]

The creation of present-day Nigeria arose mainly from the political, administrative and legislative unity imposed on its component territories by the British. The significant dates are 1849, when a Consul was appointed for the Bights of Benin and Biafra; 1862 when Lagos was annexed as a Colony; 1893 when a Protectorate was declared over the Oil Rivers and the Niger Coast, which were later unified as the Protectorate of Southern Nigeria in 1900; at which time a Protectorate was declared over Northern Nigeria; 1914 when the Protectorates of Northern and Southern Nigeria were amalgamated; 1947 when the Constitution provided for the legislative union of the whole of Nigeria; 1954 when the Federation of Nigeria was established with its component regions. Finally 1960 when the British Government granted independence to the Federation of Nigeria.

The first European contacts were with the coastal strips, mainly for trade especially in slaves. Lagos became an important port in the traffic. With the Abolition Act of 1807, British energies were turned towards more legitimate channels of trade which extended to the region of the Oil Rivers. In 1849 a Consul was appointed for the Bights of Benin and Biafra to watch over the interests of the British merchants trading there. The slave trade

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1. For a full account of the history of Nigeria, see Burns, History of Nigeria 6th ed. 8th imp. (1963); also C.R.Niven, A Short History of Nigeria (1952); K.O.Dike, Trade and Politics in the Niger Delta (1956).

at Lagos still continued. In 1852 King Akitoye of Lagos signed a treaty for the abolition of the Slave Trade and a British Consul was appointed in Lagos the following year. Akitoye died in 1853 and was succeeded by his son, Docemo, who was unable to control those who favoured reviving the Slave Trade. As a result of pressure on him, Docemo signed a Treaty[1] in 1861 transferring the sovereignty of the port and island of Lagos to the British Crown. This was followed by the annexation of the port of Lagos as a "Colony and Settlement". Thus for the first time part of present-day Nigeria became British territory.[2] It is significant that the Treaty of 1861 described the "inhabitants of the said island and territories as the Queen's subjects, and under her sovereignty, Crown, jurisdiction, and government".[3] The boundaries of the Colony were extended to the east and west in various ways.[4]

When first created a "Settlement" in 1862, Lagos became a separate administration under a Governor who was also Consul of the Bight of Benin. In 1866, Lagos became part of the 'West African Settlement' under a Governor-in-chief resident at Sierra Leone but its separate Legislature was retained and an Administrator was responsible for its government. In 1874 it came under the Governor of the Gold Coast with a Lieutenant-Governor in charge

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1. For the text of the Treaty, see Burns, op.cit. 314.

2. Some account of the history of Lagos is given by Osborne C.J. in Att.-Gen. v. John Holt & Co. (1910) 2 N.L.R.1 at 2 et seq. and by the Judicial Committee of the Privy Council in Amodu Tijani v. The Secretary, Southern Nigeria [1921] 2 A.C.399 at 405 et seq.

3. Article 1 of the Treaty.

4. In 1863 Kosoko ceded Palma and Lekki; Badagry, Ado and Oke-Adan were acquired in the same year. Between 1883 and 1895, Appa, the Jekri country as far as Mollume, Ogbo, Mahin, Ijebu-Ro, Itebu, Aiyesan, Igbessa, Ilaro and Kotonu were included in the Lagos territories. Kotonu was however exchanged with the French in 1889 for Pokra, a district north of Badagry.

locally. In 1886 it was set up again under its own Governor.

Four years after the annexation of Lagos, a Select Committee of the House of Commons advised against any further extension of territory or new treaties offering any protection to native tribes and recommended the ultimate British withdrawal from all parts of West Africa with the exception of Sierra Leone.[1] This was found impracticable and British missionary and commercial influence extended inland from Lagos and along the Niger. A consulate was established at Lokoja in 1867 for a short period. In 1872 an Order in Council[2] based on the Foreign Jurisdiction Act empowered the Consul for the Bights of Biafra and Benin to implement any agreements made with the Chiefs. His jurisdiction was however confined to British subjects and to such natives or foreigners as consented to submit to his jurisdiction.

In 1877, the activities of Sir George Goldie resulted in the amalgamation of all firms trading in the Niger under the name of United African Company. This was reorganised and incorporated as the National African Company, Ltd. three years later. The Consul also concluded treaties with the chiefs of the Oil Rivers placing their territories under British protection. Similar treaties were made with the chiefs on either bank of the Niger and with the Fulani Sultans of Sokoto and Gando. These treaties were sufficient to secure recognition of the British claim to these districts of Nigeria at the Berlin Conference of 1885, subject to free navigation of the Niger. Accordingly, a British Protectorate was proclaimed over the 'Niger Districts' in June 1885.[3]

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1. This report was adopted by the House of Commons on 26th June 1865.
2. Extracts of the Order-in-Council reproduced in Burns, op.cit. 319.
3. The London Gazette, 5th June 1885.

Although the proclamation of the Protectorate satisfied international requirements, there was no real effective control and jurisdiction over such a vast territory. In 1886 the National African Company obtained a Royal Charter and became the Royal Niger Company. This move ensured that the rich hinterland of Nigeria would be brought under the British. The Company held a great and responsible position in the territories and made a considerable number of treaties of cession of territory with native chiefs from 1887 until the revocation of its Royal Charter at the end of 1899. In 1893, the Protectorate was extended by Order-in-Council and renamed the Niger Coast Protectorate.[1] On the revocation of the Company's Charter the territory was renamed the Southern Nigeria Protectorate[2] and the Government assumed the direct control of the Company's territories on January 1st, 1900.[3]

In 1892 and 1893 the Governor of Lagos secured a number of treaties with the Chiefs of Yorubaland. By 1897 the whole of Yorubaland was under control and attached as a Protectorate[4] to the Colony of Lagos. On May 1, 1906, the Colony of Lagos and its protected territory were amalgamated with the Protectorate of Southern Nigeria under one administration and designated the

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1. London Gazette, 16th May 1893 p.2835.

2. This included the delta of the Niger and the land on either bank of the river as far north as Idah. It was created by the Southern Nigeria O-in-C of 27th December 1899.

3. The Foreign Office had handed over the control of the Niger Coast Protectorate to the Colonial Office on the 1st April 1899.

4. In 1893 a treaty was signed providing for the independence of Egbaland. In 1904 a Judicial Agreement was signed giving British Courts jurisdiction in cases affecting non-natives in Egbaland. Similar judicial agreements were made with Oyo, Ibadan, Ife and Ijebu. It was not until 1914 that the Treaty of 1893 was abrogated and an Agreement signed placing the Egba Kingdom unreservedly under the Government of the Protectorate of Nigeria (Cmd.468 (1920) App.II p.75). Similar arrangements were made with Oyo and Ibadan without formal agreements as the abrogated treaties in these cases had not recognized these States.

Colony and Protectorate of Southern Nigeria, with Lagos as the seat of Government.[1]

The Royal Niger Company (as the National African Company) had made contact with Northern Nigeria as early as 1885 when an envoy was sent to Sokoto and subsequently a number of treaties of cession were made with the local chiefs. On the cancellation of the Company's charter a Protectorate was proclaimed over Northern Nigeria on January 1, 1900. The Company's territories south of Idah were included in the Niger Coast Protectorate (later Southern Nigeria) and the remainder including the vast hinterland became the new Protectorate. At the beginning British power did not extend very far from the banks of the Niger and Benue but military expeditions between 1901 and 1906 brought large areas of the territories from Sokoto to Yola under control.[2]

On January 1, 1914 the Protectorates of Southern Nigeria and Northern Nigeria were amalgamated and the Colony and Protectorate of Nigeria were set up by Letters Patent[3] and Order-in-Council.[4] The boundaries of the Colony of Lagos was formally defined.[5] Thus Nigeria became one country under one Government.

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1. The first Governor, Sir Walter Egerton, held the double post of Governor of Lagos and High Commissioner for Southern Nigeria as from 1904 in order to arrange for the amalgamation.

2. For a detailed account of the military expeditions, see Burns, op.cit. Ch.XI and XV. Some of the areas were Kontagora, Nupe, Yola, Kano, Sokoto and Hadejia.

3. Dated 29th November 1913.

4. The Nigeria Protectorate O-in-C dated 22nd November 1913.

5. Colony of Nigeria Boundaries O-in-C dated 22nd November 1913.

In July 1922, the United Kingdom received a Mandate from the League of Nations[1] to administer that portion of the Cameroons which had been assigned to the British.[2] The mandated territory was administered as an integral part of Nigeria.[3] The Mandate was replaced by a Trusteeship Agreement with the United Nations in 1947.[4] The Cameroons under United Kingdom Trusteeship remained an integral part of Nigeria until the grant of independence to the Federation of Nigeria in October 1960. As a result of the plebiscites held in the Cameroons by the United Nations, the Northern Cameroons joined the Federation of Nigeria on June 1, 1961. The Southern Cameroons opted to join the Cameroons Federal Republic.[5]

Constitutional Classification[6]

Before October 1, 1960, Nigeria comprised three types of British

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1. The Mandate was made under Article 22 of the Covenant of the League of Nations.

2. Ordinance 27 of 1930 provided that wherever the words 'British Cameroons' occur in any Nigerian Ordinance 'Cameroons under British Mandate' should be substituted.

3. The British Cameroons O-in-C 1923, dated June 26, 1923, S.R.& O.1923 No.1621.

4. For the Trusteeship Agreement, see Cmd. 6840 (1946).

5. Until October 1, 1960, Southern Cameroons was given a quasi-regional status in the Federation of Nigeria.

6. See generally Halsbury's Laws of England 3rd ed. Vol.5 tit. Commonwealth and Dependencies; Hood Phillips, Constitutional and administrative Law 3rd ed. (1962) Chap.35; M.Wight, British Colonial Constitutions (1947); Jenkyns, British Rule and Jurisdiction beyond the Seas (1902).

dependencies, viz. a colony, a protectorate and a trust territory.[1] What are the main features of these dependencies?

Colonies are dependencies annexed by the Crown and therefore part of Her Majesty's dominions. They have been defined as "any part of Her Majesty's dominions, exclusive of the British islands and of British India and of British Burma"[2] and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are to be deemed one colony. After the passing of the Statute of Westminster, 1931 the term 'colony' was limited so as to exclude a Dominion or any Province or State forming part of a Dominion.[3] Colonies are usually classified in accordance with their mode of acquisition i.e. by settlement, by conquest or by cession.[4] This classification[5] affects the constitutional position of the colony especially its legislative powers and the applicability of English law therein.

"A protectorate is a country which is not within the British dominions, but as regards its foreign relations is under the exclusive control of the King, so that its government cannot hold direct communications with any foreign power, nor a foreign power with that government".[6] It is a

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1. See Cmd. 6599 (1945) para.4.

2. Interpretation Act 1889 (52 & 53 Vict.c.63) s.18(3) as amended by the Government of India Act 1935 (s.311). The British Islands include the United Kingdom, the Channel Islands and the Isle of Man, 52 & 53 Vict. c.63 s.18(1).

3. 22 & 23 Geo.5 c.4 s.11. For a list of the present Dominions, see British Nationality Act 1948 s.1(3) as amended from time to time.

4. In order to acquire a good title to territory, there must be both a right to it (jus in rem) and possession of it (jus in re), see The Fama (1804) 5 C.Rob.106,115 per Sir W.Scott.

5. See Hood Phillips, op.cit. 716 for a more modern classification of colonies.

6. Jenkyns, op.cit. 165 cited with approval by Lord Haldane in Sobhuza II v. Miller [1926] A.C.524.

dependency that has not been annexed. The difference between a colony and a protectorate is not based on any legal principle. Protectorates were those presumably backward territories where annexation was inexpedient either because administration would be difficult or because it was not desired to give the inhabitants the status of British subjects, a status which annexation would confer on the inhabitants. Sometimes protection was extended over certain tribes to prevent the territory falling into the hands of another foreign Power.[1] The Crown has a discretion to treat a territory acquired by conquest as a protectorate instead of annexing it.[2] In certain cases the development of a Protectorate may lead to annexation.[3] The acquisition of protectorates was usually effected by formal treaties with the native chief or chiefs (in some cases under duress) or by the acquiescence of the tribes.

Trust territories, the former mandated territories,[4] were the outcome of the peace settlement following the First World War. In accordance with Article 22 of the Covenant of the League of Nations[5] the ex-enemy dependent territories were entrusted to nations able and willing to undertake the trust. The administering powers furnished reports to the League Council

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1. e.g. Solomon Islands Protectorate.

2. Re Southern Rhodesia [1919] A.C.211, P.C. at 240.

3. e.g. Kenya, Southern Rhodesia. Southern Rhodesia was constituted a colony by the Southern Rhodesia (Annexation) O-in-C, July 30, 1923 S.R.& O. Rev.1948 vol.XXI p.369 and responsible government granted under the prerogative by Letters Patent, Sept.1, 1923, S.R.& O.1923 p.1078.

4. See Oppenheim, International Law, 8th ed. Lauterpacht, v.1 (1955) 212 et seq. Hall, Mandates, Dependencies and Trusteeship (1948); Hall, "The Trusteeship System"(1947) 24 B.Y.I.L.33.

5. Cmd.2300.

and these were examined by the Permanent Mandates Commission. After the Second World War, the Charter of the United Nations[1] set up the Trusteeship System.[2] The Trusteeship Council took over the functions of the Permanent Mandates Commission and the League Council. All mandated territories in the British Empire except Palestine[3] and South West Africa[4] were placed under the Trusteeship System and administered in accordance with the trusteeship agreements approved by the General Assembly of the United Nations. Trust territories are not part of Her Majesty's dominions. Protectorates and trust territories are in practice administered as closely as possible as colonies and in some cases are associated in administration with them. The Protectorate of Nigeria and the Cameroons under United Kingdom trusteeship were administered as one with the Colony of Nigeria.

The Constitutional Background

The origins of representative government in Nigeria date as far back as 1861 when a small nominated Legislative Council was set up in the Colony of Lagos to advise and assist the Governor. It legislated for the Colony only. This Council continued in existence until 1922. The merger of the Colony of Lagos with Southern Nigeria in 1906 did not affect the Council.

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1. Cmd. 7015.
2. U.N.Charter, Chaps XII and XIII.
3. Palestine became independent in 1948.
4. South-West Africa, administered by South Africa was not placed under the Trusteeship System; see further I.C.J.Rep.1950 p.132.

At the amalgamation of Northern and Southern Nigeria in 1914 there was also set up a Nigerian Council which was a larger advisory and deliberative body.[1] Both the Nigerian Council and the Colony of Lagos Legislative Council were abolished in 1922 when there was established a Nigerian Legislative Council[2] under a new Constitution. This Constitution was effective until 1946 and it provided for the first time for a limited number of elected members. It had power to legislate for the Colony and Southern Nigeria. The Northern Provinces were not represented on the Council and they continued to be governed by proclamations issued by the Governor.

In 1945, the Governor of Nigeria put forward certain proposals 'to promote the unity of Nigeria; to provide adequately within that unity for the diverse elements which make up the country; and to secure greater participation by Africans in the discussion of their own affairs'.[3] From these proposals there emerged a new Constitution in 1946. It established a Legislative Council for the whole of Nigeria.[4] It provided a House of Assembly in each of the three Regions and a House of Chiefs in the Northern Region. These regional Houses had no legislative functions

Then came the Constitution of 1951 which though short-lived marked the beginning of semi-responsible government. While it gave a considerable amount of regional autonomy, it was specifically designed to preserve the

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1. S.R.& O.(1913) p.241.
"No resolution passed by the Council shall have any Legislative or executive authority and the Governor shall not be required to give effect to any such resolution unless he thinks fit and is authorised to do so."

2. Nigeria (Legislative Council) O-in-C 1922 dated Nov.21, 1922.

3. Proposals for the Revision of the Constitution of Nigeria; Cmd.6599 (1945) p.6.

4. Nigeria (Legislative Council) O-in-C 1946, S.R.& O.1945 No.1370.

unity of the country.[1] There was set up a House of Representatives for the whole country. The Regional Houses of Assembly were given legislative powers. The subjects on which these Regional Houses could make laws were mainly concerned with the local aspects of social services. They also had limited powers of taxation.

By 1953 it became clear that this Constitution could not work effectively. On May 21, 1953 the Colonial Secretary announced in the House of Commons that it must be withdrawn to provide "greater regional autonomy and the removal of powers of intervention by the Centre in matters which can, without detriment to other Regions, be placed entirely within regional competence".[2] A conference held in London in July and August 1953 established the basis of the Nigerian Federation.[3] The Conference reassembled in Lagos in January and February 1954.[4] The agreed proposals came into force on October 1, 1954 as the Constitution for the Federation of Nigeria.[5] It gave the three regions greater autonomy and carried the Eastern and Western Regions considerably towards self-government. Each region had its own Governor, Premier, independent civil service and judiciary. The Governor of Nigeria became Governor-General and continued to preside over the Council of Ministers. The Constitution provided for

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1. The Nigeria (Constitution) O-in-C 1951 came into operation in January 1952; S.R.& O.1951 No.1172.

2. House of Commons Debates, Vol.515 col.2263.

3. See Cmd.8934.

4. See Cmd.9059.

5. Nigeria (Constitution) O-in-C 1954 S.I.1954 No.1146.

certain defined matters to be allocated to the Federal Government[1] and all other matters, except those on the concurrent list on which both the Federal and regional governments could legislate, were left to the regions.

On March 26, 1957 the House of Representatives passed a unanimous resolution requesting independence for Nigeria in 1959. At the conference held in London later that year, few new issues were raised. The Eastern and Western Regions were granted internal self-government.[2] The Conference agreed to recommend the creation of the office of Prime Minister of the Federation.[3] It was also agreed that there should be provisions to safeguard fundamental rights.[4] At the resumed conference in September 1958, the date for internal self-government for the Northern Region and the provisions on fundamental rights to be included in the Constitution were agreed.[5] The Conference also considered the creation of a Nigerian citizenship and agreed to refer consideration of it to an ad hoc committee of the Conference which would meet in Nigeria.[6][7]

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1. Ibid., First Schedule. The decisions of the Conferences on this point are contained in Cmd.8934 Annex II p.15, Cmd.9059 Chap.IV p.32-33. The list was later amended by the Conference of May and June.

2. Cmnd.207 para.25. The Governor could no longer preside at the meetings of the Executive Council; Nigeria (Constitution). (Amendment) Order in Council, 1957, S.I.1957 No.1363.

3. Cmnd.207 para.35; Nigeria (Constitution) (Amendment No.2) O-in-C 1957, S.I.1957 No.1530 ss.88 and 88A.

4. Cmnd.207 para.67.

5. The date was 15th March 1959; Cmnd.569 para.18.

6. Cmnd.569 paras.6 and 7. See post p.307 et seq.

7. Cmnd.569. The ad hoc Committee met in Lagos on the 27th April 1959.

At its closing session the Secretary of State for the Colonies announced that the United Kingdom Government would grant independence on October 1, 1960 provided the new Nigerian Federal Parliament passed a resolution early in 1960 asking for independence.[1] The resolution was duly passed. The United Kingdom Parliament enacted the Nigeria Independence Act 1960[2] giving effect to the Secretary of State's announcement. The Act came into operation on October 1, 1960 at the same time as the provisions of a new Constitution for the Federation of Nigeria.[3]

On the third anniversary of independence, October 1, 1963, the Federation of Nigeria became a Republic within the Commonwealth. There was enacted a new Republican Constitution[4] which took effect from that date.

The extension of English law to British dependencies

In conquered and ceded territories,[5] the Crown has absolute power to introduce any executive, administrative and judicial arrangements it pleases. The general rule is that conquest or cession does not bring into operation the immediate and automatic application of the English common law. The ancient laws of these territories remain until new legislation is introduced.[6]

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1. Cmnd. 569 paras.82-85.

2. 8 & 9 Eliz.2 Ch.55.

3. The Nigeria (Constitution) O-in-C 1960, S.I.1960 No.1652.

4. Act No.20 of 1963.

5. As to the position in settled territories, see Pictou Municipality v. Geldert [1891] A.C.524; 1 Bl.Comm. 106.

6. Campbell v. Hall (1774) 20 St.Tr.239; Mayor of Lyons v. E.I.C. 1 Moo.Ind App.175; see also 5 Halsbury's Laws of England, 3rd ed. Part 5, sect. (2) p.693.

There are certain exceptions to the rule. It presupposes that there was some system of law in force in the territory.[1] Principles of the local law which were contrary to natural justice must be regarded as extinguished by the conquest or cession.[2] The local laws were not applicable to English settlers if the laws were based on local religions or ethical beliefs which could not be applied to those who did not share those beliefs.[3]

English law may be introduced into these territories by an enactment of the Imperial Parliament or that of a local legislature or by Proclamations[4] of the Governor in a territory where there is no local legislature.[5] Statutes or Orders-in-Council[6] of the Imperial Parliament apply to dependencies when they are so expressed or when that intention is clearly indicated. Statutes of the Imperial Parliament relating to nationality may be made applicable expressly or by manifest intention to dependencies. These statutes will repeal or override any local law of nationality which may be in force in a dependency.[7] Dependencies cannot therefore legislate with reference to nationality in a way inconsistent with an Imperial legislation on the subject. A local legislature may adopt specific English statutes[8] wholly or partially, specific branches of English law or

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1. See Yeap Cheah Neo v. Ong Cheng Neo (1875) L.R.6 P.C.381 at 394.
2. Fabrigas v. Mostyn (1775) 20 St.Tr.162.
3. Freeman v. Fairlie (1817) 1 Moo.Ind.App.305.
4. e.g. Protectorates Courts Proclamation No.4 of 1900 (Northern Nigeria Protectorate).
5. See further Elias,"Colonial Courts and the Doctrine of Judicial Precedent"(1955) 18 M.L.R.356; "Allott, The Authority of English Decisions in Colonial Courts"[1957] J.A.L.23.
6. The Tanganyika O-in-C 1920 Art.17.
7. By virtue of the Colonial Laws Validity Act 1865.
8. e.g. Imperial Statutes (Criminal Law) Adoption Ordinance (Sierra Leone).

provide for the adaptation or re-enactment of certain English statutes.[1] The Imperial Parliament[2] or local legislatures may also provide for a general reception of English law as existing at a particular date.[3] In this case, subsequent statute law will not apply unless expressly made applicable.[4]

As regards protectorates, the jurisdiction of the Crown to introduce legislation has been put on a statutory basis by the Foreign Jurisdiction Act 1890[5] as amended by a similarly entitled Act of 1913.[6] Under these Acts, whether the jurisdiction acquired was based on treaty, capitulation, grant, usage, sufferance or other lawful means, it can be exercised in as ample a manner as if the jurisdiction were acquired by cession or conquest of the territory.[7] The Acts also gave the Crown power to extend certain enactments with or without any exceptions, adaptations or modifications to such territories.[8] Orders-in-Council made under the Act have effect as if they were enacted in the Act and are only void if repugnant to Acts of

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1. The Companies Act, Cap.37 Laws of the Federation & Lagos (1958 ed.) is a re-enactment of the English Companies Acts 1929 and 1948.

2. See e.g. 9 Geo.IV c.83 s.24 applying all English "rules and statutes" to New South Wales (Australia).

3. See Interpretation Act, Cap.89 Laws of the Federation & Lagos (1958 ed.) s.45(1). Courts Ordinance Cap.4 Laws of Gold Coast (1951 ed.) s.83; Courts Ordinance Cap.7 Laws of Sierra Leone (1960 ed.) s.37. In some cases the provision applying English law is not limited by a specific date; then the current law of England would apply. e.g. Courts Ordinance (Gold Coast), supra, s.17.

4. R. v. Vaughan (1769) 4 Burr.2494.

5. 53 & 54 Vict. c.37.

6. 3 & 4 Geo. 5 c.16.

7. 53 & 54 Vict. c.37 s.1.

8. Ibid. s.5.

Parliament extending to Her Majesty's subjects in the territory or orders and regulations made under such Acts.[1] The Acts apply to trust (formerly mandated) territories. Under the powers conferred by the Acts, legislation has been introduced into protectorates and trust territories through proclamations[2] and Orders-in-Council of the Imperial Parliament[3] and new constitutions promulgated for these territories.

Application of English law to Nigeria

English law did not automatically apply to the Colony of Lagos on its annexation in 1862. But one of the first enactments of the local legislature was an Ordinance "applying the Laws of England to the settlement".[4] The provisions of this Ordinance were superseded by the Supreme Court Ordinance 1876,[5] section 14 of which provided that "the common law, the doctrines of Equity, and the Statutes of general application, which were in force in England at the date when the Colony obtained a Local Legislature, that is to say, the 24th day of July 1874 shall be in force within the jurisdiction of the Court". Section 17 provided that the application of such Imperial Laws should be subject to local circumstances

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1. Ibid. ss.11,12.

2. See R. v. Crewe (Earl) ex parte Sekgome [1916] 2 K.B.576 C.A.

3. See Tanganyika O-in-C 1920, Art.17(2); S.R.& O.Rev.1948. vol.viii,266, 272; British Central Africa O-in-C 1902 s.15(2), S.R.& O. Rev.1948 vol.viii 222,226 in respect of Nyasaland; Mphumeya v. R. (1956) Rh.& Ny L.R.240.

4. Ord.No.3 of 1863 (Lagos) repealed by Ord.No.8 of 1889.

5. Ord.No.4 of 1876 (Lagos and Gold Coast Colonies).

and to any existing or future Ordinances of the local legislature and section 18 provided for the observance of local laws and customs.

These Imperial laws which applied to the Colony of Lagos were extended by Proclamations[1] to the Protectorates of Southern Nigeria and Northern Nigeria.[2] The Statute law revision Ordinance of 1908[3] repealed and re-enacted with minor modifications these enactments. This arrangement was finally superseded by the Supreme Court Ordinance 1914,[4] which applied to the Colony and Protectorate of Nigeria. Section 14 provided:

> "Subject to the terms of this or any other Ordinance the common law, the doctrines of equity and the statutes of general application which were in force in England on the 1st January 1900 shall be in force within the jurisdiction of the Court"

Section 19 provided for the observance of any Native Law and Custom which was not repugnant to natural justice, equity and good conscience or incompatible with any law for the time being in force.

On the establishment of a Federal structure of government in Nigeria in 1954, the judiciary was regionalised. There was established a High Court in each of the three Regions, in the Federal Territory of Lagos and in the South Cameroons. The provision relating to the general reception of English law was included in the regional High Court Laws.[5] No such

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1. Firstly by Supreme Court Proclamation, No.6 of 1900 and by Supreme Court Ord. No.17 of 1906 on the merger of the Colony of Lagos with the Protectorate of Southern Nigeria.

2. Protectorate Courts Proclamation, No.4 of 1900 s.34, repealed by P.6 of 1902 (ss.13,14) which (as amended by P.3 of 1908) was repealed by Ord. No.6 of 1914.

3. Ord.No.3 of 1908 (Colony of Southern Nigeria).

4. Ord.No.6 of 1914 (Colony and Protectorate of Nigeria) replaced by Ord. No.23 of 1943, Cap. 211 Laws of Nigeria (1948 ed).

5. See High Court Law 1955 (Eastern Region No.27 of 1955) s.14; Northern Region High Court Law (N.R.No.8 of 1955) s.28; Law of England (Application) Law, Cap.60 Laws of W.R.of Nigeria, 1959 ed.

provision is found in the High Court of Lagos Act.[1]

The interpretation and practical application of the commonly used phrase "the common law, the doctrines of equity and statutes of general application" at a specified date give rise to two difficulties. The first relates the extent of the limitation imposed by the specific date and second is the exact content and meaning of the phrase "statutes of general application."

The view is current that the specified date not only limits the application of statutes of general application but also that of the rules of common law and the doctrines of equity.[2] Against this view there is the argument that the mode of punctuation[3] employed in the provision does not suggest that meaning and the specified date appears to limit the application of "statutes of general application which were in force in England" only.[4] The recent practice of the Western Nigeria Government also goes against the first view. After re-enacting all the statutes of general application in England applying to the region as local legislation, the Law of England (Application) Law 1959 was passed providing for the application throughout the Region of "any written law, the Common Law of England and the doctrines of Equity observed by Her Majesty's High Court of Justice in England".[5]

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1. Cap.80 Laws of the Federation and Lagos (1958 ed.). But the provision is to be found in the Interpretation Act, ibid. Cap.89 s.45(1).

2. See Allott, Essays in African Law (1960), 31.

3. The punctuation of the provision is not however uniform in the laws of the various territories.

4. e.g. the view expressed on a similarly-worded provision of the Supreme Court Ordinance 1876 in the Gold Coast Assize 1884 Vol.2 No.5 p.3.

5. W.R.Law No.9 of 1959, now Cap.60 Laws of W.R.of Nigeria, 1959 ed, s.3.

No date was inserted to limit the application of the common law and the doctrines of equity. This was not regarded as a change in the law but was considered a continuation of the previous position prevailing in the Region.[1] This conclusion is inevitable from the fact that the regional law was made inapplicable to any Imperial Acts relating to any matter within the exclusive legislative competence of the Federal Legislature[2] but no such saving was considered necessary in respect of rules of common law and the doctrines of equity which relate to matters exclusively within Federal legislative competence. The present wording of the provision applying English law to the Federation in respect of matters within the Federal legislative competence, though not free from uncertainty, tends to lean in favour of the view that the specified date (January 1, 1900) limits only the application of statutes of general application.[3]

Secondly what is the exact content of the term "statutes of general application"? The local legislation do not define this term and as such it is left to the Courts to decide in each case whether a particular Imperial Statute is included in the term. Imperial enactments applying to overseas dependencies usually relate to matters of general concern such as admiralty jurisdiction, aerial navigation, copyright, currency, enforcement of judgments, extradition, foreign enlistment, fugitive offenders, merchant shipping, nationality and naturalisation, official secrets, the removal of prisoners, the armed forces and jurisdiction in territorial waters.[4] This

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1. The previous position in the Region was s.14 of the Supreme Court Ord, Laws of Nigeria, 1948 ed, Cap.211 which applied throughout Nigeria until regionalisation.

2. Laws of W.R.of Nigeria, 1959 ed, Cap.60, s.7.

3. Interpretation Act, Laws of the Federation of Nigeria and Lagos, 1958 ed, Cap.89 s.45(1).

4. 5 Halsbury, 3rd ed. p.549.

however may not be relevant in assisting a Court dealing with a particular statute. It is clear that a statute may be of general application even though it does not apply throughout the United Kingdom but is only in operation in England.[1] In the unreported case of Re Public Lands Ordinance, Lawani, Bale, Claimant - Ex parte Joseh,[2] the Court laid down two preliminary questions as a "rough, but not infallible test" for determining statutes of general application. These questions are "(1) by what Courts is the statute applied in England? and (2) to what classes of the community in England does it apply?" If an Imperial Act is applied by certain courts or to certain classes of people, it would probably be held not to be a statute of general application but if it is applied by all courts and to all classes of the community, very likely it is of general application. Another determining factor may result from an enquiry into the object of the statute, whether it is a law of local policy enacted to apply to local circumstances and having merely a local operation or it is a general regulation of property equally applicable to any country in which property is governed by English law.[3]

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1. Chief Young Dede v. African Association Limited (1910) 1 N.L.R.130,133; Okpaku v. Okpaku (1947) 12 W.A.C.A.137; see also Young v. Abina (1940) 6 W.A.C.A. 180 and In re Sholu (1932) 11 N.L.R.37.

2. Judgment delivered on 26 January 1910, cited with approval by Osborne C.J. in Att.-Gen. v. John Holt (1910) 2 N.L.R.1, 21.

3. Att.-Gen. v. Stewart (1816) 2 Mer. 143, 160-161.

Chapter Two

THE CONCEPTS OF NATIONALITY AND CITIZENSHIP

The concepts of nationality and citizenship connote different aspects of the same relationship - membership of a state. Nationality deals with the international aspects and citizenship with the municipal. Nationality has however developed within municipal law rather than international law. Matters of nationality are in principle left within the domestic jurisdiction of States.[1] Nationality thus possesses both a municipal and an international aspect. As a concept within the domestic jurisdiction of a State, it serves to determine that the person upon whom it is conferred enjoys rights and is bound by obligations which the law of the State grants to or imposes on its nationals. In its international aspect, it is the principal link between an individual and the subjects of international law giving the individual the benefits of that law.[2] Whether nationality under municipal law has effect on the international plane is a matter to be determined by international law. The Hague Convention on Certain Questions relating to the Conflict of Nationality Law of 1930[3] recognised in its

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1. See the Adv. Op. on Nationality Decrees in Tunis & Morocco (1923) P.C.I.J. Series B. No.4, 24; also U.S. v. Wong Kim Ark 169 U.S. 649, 668 (1898); Convention of Nationality by Harvard Research, Art.1, (1929) 23 A.J.I.L.Sp.Supp.13.

2. Oppenheim, International Law, 8th ed. Lauterpacht v.1 (1955) 645.

3. 179 L.N.T.S. 89.

Article 1[1] the right of a State to determine its nationals under its own law but stipulated that such a law is "recognised by other States in so far as it is consistent with international conventions, international custom and the principles of law generally recognised with regard to nationality." Thus the link between nationality under municipal law and international law is international recognition. The International Court of Justice in dealing with these two aspects of nationality in the Nottebohm case[2] had to determine whether full international effect was to be attributed to the municipal nationality relied on for the application before the Court. It considered that the character recognised as pertaining to nationality in international law is in no way inconsistent with the fact that that law leaves it to each State to enact rules governing the grant of its own nationality. But such rules as are enacted are not entitled to recognition by another State unless they are in conformity with the general aim of making the legal bond of nationality accord with the individual's genuine connection with the State. The Court therefore described the character of nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties....Conferred by a State, it only entitles that State to exercise protection vis-a-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national."[3]

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1. This right is an attribute of sovereignty and governed by the same rules as the principle of sovereignty; see Weis, Nationality and Statelessness in International Law (1956) 65. However rules governing fundamental principles of international law other than that of sovereignty may have an impact on rules of nationality; see Schwarzenberger, International Law, 3rd ed. v.1 (1957) 361.

2. I.C.J. Rep. 1955, 4.

3. Ibid. at 23.

The position in Municipal law

Nationality or citizenship plays an important part in municipal law especially in such matters as immigration, deportation, diplomatic action, extraterritorial legislation, treaty rights and obligations. It was the absence of rules of citizenship for the different component parts of the British Commonwealth prior to 1949 that gave rise to difficulties in relation to such matters.[1]

As a politico-legal concept,[2] nationality denotes a legal relationship between a State and an individual consisting of a sum total of rights and obligations. Citizenship is a term commonly used as synonymous with nationality. Such usage, though not necessarily correct emphasises a real connection between the two terms. Nationality is membership of a nation, citizenship is one kind of membership of a State. Nationality and citizenship are synonymous concepts in States where their conception of citizenship is similar to that of the Roman Empire which included many nations in one State. They are also synonymous where the nation and State tend to coincide[3] e.g. in States which possess only one type of relationship with all individuals for whom they are internationally responsible. Where however there is a gradation in the State's relationship with such individuals, the synonymous usage of the two terms is, strictly speaking, incorrect.

The terminology employed in municipal law describing the legal relationship of nationality varies from one country to another. It has been

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1. See Cmd. 5482 (1937) p.24.

2. As opposed to the socio-historical concept of nationality, as to which see post p.268 et seq.

3. See Salmond, Citizenship and Allegiance (1901) 17 L.Q.R.270, 272.

described by such terms as "national", "citizen", or "subject".[1] These terms are sometimes used interchangeably. However the term "subject" may refer to all the inhabitants residing in a State whether they are citizens or aliens.[2] Rousseau described "subjects" as those subjected to the laws of the State and citizens as those participating in the sovereign authority of the State.[3] In England, the term "subject" is used to describe the relationship of an individual to the Crown. France and the United States discarded the use of the term "subject" after the revolutions of the eighteenth century on account of its associations with the monarchy and adopted the term "citizen".[4] The citizen denotes one who possesses the highest political status a state can confer. But there may be, in certain municipal systems, some citizens who cannot exercise certain political rights, for example women citizens may be denied the franchise. In the United States the contention that citizenship carried entitlement to the suffrage was rejected by the Supreme Court[5] and it took an amendment of the Constitution to give female citizens the franchise.[6] Similarly in the Federal Republic

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1. See Koessler, "'Subject', 'Citizen', 'National', and 'Permanent Allegiance'" (1946-47) 56 Yale Law Journal 61.

2. 1 Hale's Pleas of the Crown 542 "Though the Statute speaks of the King's subjects, it extends to aliens...for though they are not the King's natural-born subjects, they are the King's subjects when in England by a local allegiance." See also Lowe v. Routledge (1865) 1 Ch.App.42,47.

3. Rousseau, Contrat Social Bk 1 c.6 (trans.Harrington, 1893).

4. "He who before was 'a subject of the King' is now 'a citizen of the State'." State v. Manuel (1838) Dev & Nat 20, 24-26.

5. Minor v. Happersett 21 Wall 162; 88 U.S.(1874).

6. U.S.Const.Amend.XIX (1920).

of Nigeria, female citizens of Nigeria resident in the Northern Region are not entitled to the franchise.[1] The term "national" includes a citizen but there are nationals who may not be citizens. "Nationals" are all those for whom a State is internationally responsible and thus entitled to its protection as against other States. The term also includes such entities as corporations. The distinctions drawn by municipal law between the various categories of nationals are not material to international law and a State may claim the underprivileged categories as its nationals.[2] Such a gradation may be applied by a country which attaches to its sovereignty certain overseas territories in order to avoid granting the population of the latter a full share in the self government of the former. France and Italy distinguished between a citizen and a colonial subject. French law formerly distinguished between citoyens français who were entitled to full civil and political rights and sujets français who were inhabitants of certain colonial territories who do not possess such rights in metropolitan France. There are also proteges who are those who normally receive French protection. All these categories could be grouped under the comprehensive term "ressortissants".[3] The British nationality legislation distinguished between "British subjects" and "British protected persons". These two categories were British nationals. The word "national" is often employed as an equivalent of the French "ressortissants". In the English and French

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1. Electoral Act, No.31 of 1962, s.1 (3)(d); Republican Constitution s.44(b); Constitution of N.Nigeria s.8.

2. Oppenheim, op.cit., 644. See the decision of the Egyptian Mixed Court of Appeal in Romano v. Comma [1925-26] Ann.Dig. 265 which held that "the enjoyment of political rights which is a regular part of citizenship, is not essential to nationality which is principally based on the idea of subjection to the sovereign of the State".

3. The term "ressortissants" has been accepted by the French Cour de Cassation as including subjects and all dependants in relation to the State. See De Bourbon v. Aurox [1923-4] Ann.Dig.222.

texts of the Peace Treaties, these terms are used as the equivalent of one for the other.[1] The United States also makes the same distinction between nationals and citizens.[2] The Filipinos before the independence of the Phillipine Islands were American non-citizen nationals.[3] This would also have been the status of free American-born Negroes who were denied American citizenship but accorded American diplomatic protection.[4][5] Hitler's Nuremberg laws similarly differentiated between those who were simply Staatsangehörigen or nationals of the Reich, and those who possessed the racial qualities which were required for the possession of the privileged status of Reichsburger or citizen of the Reich.[6]

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1. See Kahane v. Parisi and Austria [1929-30] Ann.Dig.213 decided by the Austro-Roumanian M.A.T. It involved the interpretation of the word "nationals" ("ressortissants") used in the text of Art. 249(e) of the Treaty of St.Germain, 1919. See also Goldschmiedt v. Fremery & Co. (1923) 3 M.A.T.1020; Rosenwasser v. Kabis (1923) ibid. 1028; But see Simantor v. Bulgaria (1928) 8 M.A.T.686.

2. See U.S.Immigration and Nationality Act 1952, ss.301, 308. S.308 is entitled "Nationals but not citizens of the U.S. at birth". See further Hackworth, Digest of International Law III (1942), 4-5.

3. Filipinos were not aliens in the U.S.; see Gonzales v. Williams 192 U.S.1, 13 (1903); Toyota v. U.S. 268 U.S.402, 410 (1925).

4. Dred Scott v. Sandford 19 How 393 (U.S.1857).

5. See paraphrase of Secretary of State Marcey's instruction of Jany.18, 1855 in 3 Moore, International Arbitration 2461-2: "...in the view of high judicial authority (referring to the Dred Scott case) persons of African descent could not be regarded as entitled to full rights of citizenship....although...the consul could not certify that they were citizens of the United States...he might certify that they were born in the United States and were free, and that the government would regard it as its duty to protect them, if wronged by a foreign government, when within its jurisdiction for a legal and proper purpose."

6. See Garner, Recent German Nationality Legislation (1936) 30 A.J.I.L. 96.

Allegiance

Allegiance may be the source or consequence of nationality but it is not necessarily correlated with nationality or citizenship. To be a citizen implies allegiance[1] but to owe allegiance does not necessarily make one a citizen. Nationals and resident aliens alike owe allegiance to the State; permanent allegiance by nationals and temporary allegiance by resident aliens. Allegiance thus signifies a legal tie between an individual and the State and has a special technical meaning which might vary in different legal systems. A reference therefore to the duty of allegiance is unsuitable in the definition of nationality for international purposes.[2]

In common law countries, the concept of nationality implies allegiance. The common law of England adopted the conception of allegiance in its feudal aspect which signified "a true and faithful obedience of the subject due to his Sovereign". It became the source of nationality at common law and attached to an individual at the time and by virtue of birth. Such a duty of allegiance attracted the protection of the Sovereign. "Protectio trahit subjectionem et subjectio protectionem."[3] The allegiance of the national became permanent, personal and absolute.[4] The concept of allegiance in England has changed since the time of its elaborate discussion in Calvin's Case;[5] especially the opinion of Coke that permanent allegiance

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1. See Luria v. U.S. 231 U.S.9, 22, 23 (1913); Re Hoffman 3 F.Supp.907 (1936), [1935-37] Ann.Dig. 281.

2. See Koessler, op.cit.at 69; see the definition in the Harvard Draft Convention on Nationality, (1929) 23 A.J.I.L. Sp.Supp.23.

3. 7 Co.Rep. 1a, 5a.

4. See Inglis v. Trustees of the Sailor's Snug Harbour 3 Pet.99, 124 (1830).

5. 7 Co.Rep.1a,17a.

cannot be lost and that a person cannot owe allegiance permanently to two or more sovereigns. The rule of the indelibility of allegiance was abolished in the United Kingdom in 1870.[1] Allegiance however remained the source of British nationality until 1949 as the common status embodied in the Imperial British Nationality and Status of Aliens Act 1914-1943 defined the status of a British subject by reference to allegiance. The inclusion of allegiance in the definition was abandoned in the British Nationality Act 1948 and allegiance thereafter became the consequence and not the source of British nationality. Although nationality implies a duty of allegiance on the part of the national and a duty of protection on the part of the Sovereign, in modern states the duty of allegiance to the state is unconditional and not contingent upon the state's compliance with corresponding duties. It has been held in England that there was no legal duty on the part of the Crown to afford military protection to British subjects in foreign parts.[2]

Modes of acquisition and loss of nationality

In accordance with the principle of domaine reservé, each State has "to determine for itself and according to its own constitution and laws what classes of persons shall be entitled to citizenship".[3] The qualifications for nationality or citizenship are usually laid down in the Constitution or some other municipal law of the State. The rights and duties of

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1. Naturalisation Act 1870 s.4.

2. China Navigation Co. v. Att.-Gen. [1932] 2 K.B.197.

3. U.S. v. Wong Kim Ark 169 U.S.649, 668 (1898) per Gray J.

citizenship may also be embodied in the Constitution.[1]

The nationality or citizenship laws of a State must adopt basic rules that are suited to the mores, the institutions and conditions of the country and the population in general. Such rules must be simple to administer and avoid uncertainty and international complications. In formulating the general pattern of these rules, several factors have to be taken into consideration. These would include a consideration of the extent of the application of the two most common modes of acquiring citizenship or nationality - the jus soli and the jus sanguinis, the incidences of dual or plural nationality and statelessness and the extent to which they would be tolerated or avoided, the right of expatriation and the modes of deprivation, the national status of married women and the effect thereon of a change of a husband's nationality during marriage or of the dissolution of the marriage, the status of legitimate, illegitimate and adopted children and foundlings and the legal effects of legitimation.

The following are among those conditions which result in the acquisition of nationality of a State: birth within the territory of the State (the territorial principle, the jus soli), descent from certain parents - the principle of filiation, the jus sanguinis, naturalisation, domicile, redintegration or resumption, subjugation and cession, option, registration or privileged naturalisation, marriage, adoption, legitimation and recognition of paternity. The wide discretion granted to States to determine their own rules of nationality has produced a rich variety of nationality laws.[2] Of

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1. See e.g. the Constitution of the Republic of Cuba of Apr.4 1952 Arts.8,9.

2. See U.N.Legislative Series, Laws Concerning Nationality (1954) and its Supplement (1959) ST/LEG/SER.B/4 and B/9 for various citizenship legislation (cited as L.C.N.(1954)).

these conditions the principles of the jus soli and jus sanguinis or a combination of these two principles and naturalisation feature principally in the nationality laws of most States. Under the principle of the jus soli, nationality is acquired by the mere fact of birth within the territory of a State. The nationality of the parents of the child and its legitimacy are irrelevant factors. It is usual to except from the operation of this principle the children of persons who are not subject to the jurisdiction of the State. This excludes the children of foreign sovereigns, Heads of States, foreign ambassadors, high commissioners and their diplomatic staff born in the territory of the receiving State.[1] Foundlings are in some States presumed to have been born in the territory of the State where they are found.[2] Under the jus sanguinis, parentage is the determining factor and the place of birth is irrelevant. There are several variations of this principle. Nationality may descend to the child through a father or through a mother. It may be limited to legitimate children in cases of descent of citizenship through a father. It may also be limited to the first foreign-born generation. All States adopt the principles of the jus soli and jus sanguinis to some extent or a combination of them. Some States lean more in favour of the jus soli and others subject it to many limitations as regards the child's parentage. The rule of Europe was that the jus soli made the child a citizen only if the jus sanguinis would produce the same result. The citizenship laws of some of the new members of the

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1. This rule was codified by Art.12 of the Hague Convention 1930.

2. See Belgian Royal Decree of 14 Dec.1932 Art.1(2); L.C.N. (1954), 37. The presumption was codified by Art.14 of the Hague Convention 1930.

Commonwealth have adopted in their transitional provisions, the jus soli as conferring their citizenship only if a parent or grandparent of the individual was also born within their territory.[1] Citizenship acquired by virtue of the jus soli and jus sanguinis are, under certain municipal legislation, much more secure than citizenship acquired by other modes. Persons acquiring citizenship jure soli or jure sanguinis cannot be deprived of their citizenship.

In contrast to the other methods of acquiring nationality, naturalisation confers nationality by the application of a governmental act subsequent to birth. In its widest sense naturalisation includes all modes by which nationality is acquired otherwise than at birth. In this sense it could be voluntary or involuntary and collective. It is involuntary and collective in cases of incorporation of territories by subjugation or cession.[2] In the case of option, it is voluntary. Naturalisation however in its more technical and restricted meaning as a mode of acquiring nationality is the admission of an alien to the nationality of a State as a result of a voluntary application and at the discretion of the State. Statutory conditions for naturalisation differ from country to country. Residence is invariably among the conditions. Naturalisation usually applies to individuals who are residing within the

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1. See Ghana Nationality and Citizenship Act 1957 s.4(1); Republican Constitution s7(1); Constitution of Sierra Leone s.1(1). See however Constitution of Jamaica s.3(1) and Constitution of Trinidad and Tobago s.9(1).

2. Collective naturalisation may also arise in cases of the imposition of nationality on resident aliens. See e.g. the Mexican Constitution of 1857, Art.30. States are entitled not to recognise a naturalisation imposed on an individual when there is no particular bond such as birth or residence between the individual and the naturalising State; see Re Rau [1931-32] Ann.Dig.251.

State at the time of naturalisation. Such a residence is the only type of residence required in Germany as a condition for naturalisation.[1] Other nationality laws require in addition a substantial period of residence, or service under the government of, or public service to the naturalising country.[2] An alien seeking naturalisation may have no blood relations to the other citizens of the naturalising State. Some States lay stress on assimilation.[3] In some nationality laws naturalisation is restricted by racial or religious limitations. The first national law of naturalisation in the United States was limited to "free white persons".[4] Limitations also exist in the laws of Liberia[5] and Israel.[6] In Saudi Arabia naturalisation is open to all aliens but in practice a non-muslim has never been naturalised.[7] Redintegration or resumption of nationality is a special form of naturalisation applicable to former natural-born nationals who had become

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1. Nationality Act 1913 s.8 (West Germany); L.C.N.(1954) 178, 179.

2. Decree No.45-2441 of 19 Oct.1945 Art.63(3)(France); L.C.N.(1954)152,160

3. See ibid. art.69; L.C.N.(1954) 161.

4. 1 Stat.at L.103; As regards the interpretation of the term "white persons", see U.S. v. Ozawa 260 U.S.178 (1922) where the Supreme Court identified the term with "Caucasian". See further U.S.v. Bhagat Sind Thind 261 U.S.204 (1923).

5. Liberian Law of Naturalisation of Dec.14 1938 s.3 "The term Naturalizatio shall mean the act of clothing or adopting any alien Negro of the age of twenty-one years and upwards or any alien person of Negro descent of the age of twenty-one years and upwards with the privileges of a native citizen" L.C.N.(1954) 289.

6. Invariably only Jews can be naturalised. See the conditions imposed in s.5 of the Israeli Nationality Law of April 1,1952; L.C.N.(1954) 264.

7. This is because if a non-muslim becomes a Saudi Arabian, he will have the right to travel anywhere in the country including the Holy Towns of Mecca and Medina which non-moslems are not allowed to visit. See Explanatory Note to the English texts of the Nationality Ordinance of December 5, 1938 in L.C.N. (1954) 399.

aliens and desire to resume their former nationality.[1] Registration, called privileged naturalisation in certain countries,[2] is a mode which offers nationality to persons who have some special connection with the State on terms more favourable than the ordinary terms for naturalisation. It is a recent innovation in the countries of the British Commonwealth.[3]

The modes of losing nationality are also within the discretion of States. The laws of States vary considerably as to the modes of loss. Generally, loss may occur in five ways. These are release, deprivation, expiration, renunciation and substitution.[4] Loss of nationality may be voluntary or involuntary. Voluntary loss covers such modes as release, expiration, and renunciation. The most important mode of involuntary loss is deprivation. The nationality legislation of States recognise numerous grounds of deprivation. Certain States differentiate between natural-born and naturalised citizens as regards loss of nationality.[5]

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1. See Art.74 of Decree No.45-2441 of 19 Oct.1945 (France); L.C.N. (1954) 152, 161. A former German citizen may be naturalised even though resident abroad, s.13 Nationality Act of 22 July 1913 (West Germany); ibid. 178,180.

2. See Mexican Nationality and Naturalization Act of Jan.5, 1934 as amended, Chap.III; L.C.N. (1954) 310-312.

3. See British Nationality Act 1948 (U.K.) ss.6,7; also Republican Constitution ss.8,9.

4. Oppenheim, op.cit. 657.

5. See U.S.Immigration and Nationality Act 1952 ss.349, 352.

Dual Nationality and Statelessness

Out of the numerous complications caused by the existence of a plurality of nationality laws, the most important are those producing the dual or plural national and the stateless individual. These anomalies are caused by the divergence between the jus soli and jus sanguinis concurrently applicable to the same individual. They may also be produced by the combined operation of other modes of acquisition in different States. Dual nationality[1] is acquired at birth by an individual born in a State which has adopted the principle of the jus soli by virtue of which nationality is acquired by the mere fact of birth within the territory of the State, of parents who are nationals of another State applying the principle of the jus sanguinis, under which nationality is acquired by descent, irrespective of the place of birth. It also arises when an individual acquires a new nationality by naturalisation and does not lose his former nationality. The divergence in different domestic laws of the effect of marriage on nationality may give rise to dual nationality; for example when a spouse acquires the nationality of the other spouse while retaining a former nationality. A change of sovereignty may give rise to dual nationality as regards those residents of the territory concerned who obtain the nationality of their new sovereign while retaining the nationality of the State under whose territorial jurisdiction they were before the change. Nationality or citizenship may not only be dual but may also be plural.

Some States do not tolerate the incidence of dual or plural nationality and their constitutions and domestic laws provide rules for its avoidance.[2]

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1. See Orfield, The Legal Effects of Dual Nationality, (1949) 17 Geo. Washington L.R.427.

2. See Borchard, Diplomatic Protection of Citizens Abroad (1915) 590; Bar-Yaacov, Dual Nationality (1961) 44 et seq.

The laws of the United States[1] and the United Kingdom[2] recognise the fact of dual nationality. The laws of the United Kingdom encourage rather than discourage plural citizenship. A majority of the countries of the Commonwealth are against plural nationality i.e. a coincidence of local citizenship with the nationality of a foreign state and also plural citizenship within the Commonwealth-Republic of Ireland structure. The grant of independence to the new members of the Commonwealth led to the creation of the different citizenships of those territories. In order to avoid the incidences of dual nationality that would have been caused by the imposition of the new citizenship on the previous British nationality of the inhabitants of these territories, rules were adopted for depriving some of them of their British nationality. The rules did not however affect certain persons who had some special relationship with the United Kingdom or a colony.[3]

Dual citizenship presupposes rights of citizenship in each country and also subjects the individual to claims from both countries. The unfortunate position of a dual national arises when he is called upon simultaneously to to fulfil his duties, especially those of a military character towards his two States which are at war with each other. In the absence of a special agreement, he becomes a deserter to one or other of the countries concerned.

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1. McNair describes the statement that "dual citizenship...[is] unknown to our institutions" in Von Zedtwitz v. Sutherland 26 F 2d 525, 527 (1928) as difficult to understand, see Legal Effects of War, 3rd ed. 24 (1948).

2. For statements to the contrary, see Lord Coleridge C.J. in Isaacson v. Durant (1886) 17 Q.B.D.54, 63 and in the dissentient decision of Younger L.J. in Kramer v. Att.-Gen.[1922] 2 Ch.850, 878; see however Parry, Nationality and Citizenship Laws of the Comm.I (1957) 124 et seq.

3. In respect of Ghana, see the British Nationality Act 1958 s.2. For the other new members of the Commonwealth, see the various Independence Acts e.g. Nigeria Independence Act 1960, Sierra Leone Independence Act 1961 etc.

In Inouye Kanao v. The King[1] a person born of Japanese parents in British Columbia was convicted of treason for his service in the Japanese counter-espionage in Hong Kong. In rejecting his contention that he owed allegiance to Japan and none to the British Crown, the Court said:

> "...if a person possesses dual nationality...it does not mean that he owes any the less allegiance to this country than a person who is only a British subject. Dual nationality is not half one nationality and half another but two complete nationalities so far as our law is concerned...."

The combined operation of domestic laws may also produce the incidence of statelessness.[2] Statelessness may arise as a result of the divergence between the principles of the jus soli and jus sanguinis adopted by different countries; for example an individual born in a country which limits the operation of the jus soli by the jus sanguinis, of parents who are nationals of a country which does not apply the jus sanguinis in the particular circumstances.[3] Statelessness may also be caused by the divergencies in municipal laws of the effect of marriage on nationality and by mass denationalisation decree.[4][5]

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1. 31 Hong Kong L.R.66; [1947] Ann.Dig.103. See also the American case of Kawakita v. U.S. 343 U.S.717 (1952) which shows the difficulties of dual nationals in time of war.

2. Samore, Statelessness as a consequence of the Conflict of Nationality Laws (1951) 45 A.J.I.L.476.

3. E.G. an illegitimate child born either in France or Germany of a Nigerian mother is not a Nigerian citizen; he is neither French nor German citizen by French or German law.

4. E.g. an Ethiopian or Liberian woman marrying a Nigerian citizen, a U.S.citizen or a stateless person becomes stateless. For the effect of marriage on nationality of women in the different municipal laws, see Convention on the Nationality of Married women - Historical background and commentary (United Nations1962 - E/CN.6 (389) Annexe pp.72-75.

5. E.g. the Soviet and Nazis decrees (denationalizing Jews).

There have been attempts in the international field towards the reduction of the incidence of dual nationality and the elimination of statelessness. The Hague Codification Conference of 1930 adopted a Convention concerning Certain Questions relating to the Conflict of Nationality Laws[1] which aimed at these results. Its preamble spoke of "the general interest of the international community to secure...that every person should have a nationality and should have one nationality only" and it proceeded to lay down general rules for the determination of nationality, expatriation permits, nationality of married women[2] and children and adoption. In addition to the Convention, three Protocols were adopted. The first, the Protocol relating to Military Obligation in Certain Cases of Double Nationality,[3] adopted the principle of the effective nationality.[4] The Conference did not make an attempt to abolish dual nationality at birth but endeavoured towards the reduction of its incidences.[5] The Final Act of the Hague Conference recommended that "States should adopt legislation designed to facilitate in the case of persons possessing two or more nationalities at birth, the renunciation of the nationalities of the countries in which they are not resident, without

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1. 179 L.N.T.S.89. The Convention entered into force on July 1, 1937, ratified and acceded to by thirteen States.

2. Now dealt with by the Convention on the Nationality of Married Women 1957 adopted by the General Assembly of the United Nations. It aims at the elimination of all automatic effects of marriage on the nationality of the wife. By August 15, 1961, 25 States were parties to the Convention, 7 more have signed but not yet ratified it. See Convention of the Nationality of Married Women - Historical background and Commentary (United Nations, 1962; E/CN.6/389.)

3. 178 L.N.T.S. 227.

4. Ibid. art.2.

5. League of Nations Doc.C.228. M.115. 1930.V Art.4.

subjecting such renunciation to unnecessary conditions." The other two Protocols attempted the elimination of statelessness. The Protocol relating to a certain case of statelessness dealt with the nationality of a child of a father who is either stateless or of unknown nationality in a country where nationality is not conferred by the jus soli.[1] Such a child was to have the mother's nationality if the mother is a national of that State. The third Protocol, a special protocol concerning statelessness, dealt with the admission of a stateless person, who has lost his nationality after he entered a foreign state, into the state whose nationality he last possessed before becoming stateless.[2] More recently, certain organs of the United Nations have undertaken extensive consideration of the problem of statelessness resulting in the adoption of a Convention relating to the Status of Stateless Persons[3] at New York on September 28, 1954 and the preparation of the Draft Convention on the Elimination of Future Statelessness and Another Draft Convention on the Reduction of Future Statelessness.[4] Other attempts regulating principles of nationality on the international field were the Pan American Conventions.[5]

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1. 179 L.N.T.S.115, came into force on July 1, 1937 and ratified by eleven States.

2. League of Nations Doc.C.227. M.114. 1930. V. - not yet in force, ratified by nine States.

3. See Weis, op.cit. 171 et seq.

4. See Weis, op.cit. 252 et seq. For current efforts on these Draft Conventions, see Cmnd.1977 (1963).

5. For these Conventions, see L.C.N. (1954) 582 et seq.

THE ROLE OF NATIONALITY IN INTERNATIONAL LAW

Though the right to determine the nationality of an individual is a matter entirely left to the unilateral acts of a State, such unilateral acts may have international implications. As such, the concept of nationality has important functions in the field of international law.[1] It is not proposed here to venture into the wide field of the functions of this concept in international law but its important functions will be stated. The issues of dual nationality and statelessness have important repercussions in the international field. Naturalisation also, though governed by municipal law, may produce effects in the realm of international law.[2]

The right of diplomatic Protection.[3]

One of the important functions of the concept of nationality in international law is the right of diplomatic protection. States are subjects of international law and individuals are but objects under traditional international law.[4] A State possesses territorial jurisdiction over all persons within its territory whether they are nationals or aliens. The personal jurisdiction of a State over its nationals is unlimited and regulated purely by municipal law. As regards aliens, international law regulates the territorial jurisdiction to a substantial degree. Customary and conventional international law have rules whereby the treatment of resident aliens should accord with an international standard of justice in

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1. Nationality is one of the rights enumerated in the Universal Declaration of Human Rights.

2. See Schwarzenberger, op.cit. 367 et seq.

3. See further Borchard, Diplomatic Protection of Citizens Abroad (1915)

4. See Oppenheim, op.cit. 636, 639.

matters such as the administration of justice, property rights and taxation. Although an alien on entering a State comes under the territorial jurisdiction of that State, he nevertheless still enjoys the protection of his home State. A State has an interest in protecting its nationals abroad if they are not treated in accordance with the international standard of justice. The Permanent Court of International Justice recognised this right of a State to protect its nationals as an elementary principle of international law[1] and dealt with its nature as follows:

> "By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf a State is in reality asserting its own rights - its right to ensure, in the person of its subjects, respect for the rules of international law."[2]

In the Panevezys-Saldustiskis Railway case, the Court also described the right as being "necessarily limited to intervention on behalf of its own nationals because, in the absence of a special agreement, it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection, and it is as a part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged."[3] Nationality therefore becomes a test of protection and jurisdiction. This obviously suggests a certain correlation between nationality and protection. But it is inaccurate to equate a State's nationals with those whom it is entitled to protect or over whom it exercises jurisdiction. States in some

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1. See the Mavrommatis Palestine Concessions Case, P.C.I.J.Series A. No.2, 12 (1924).

2. Ibid.

3. P.C.I.J. Series A/B, No.76, 16.

cases extend their protection to individuals who are not their nationals.[1] Apart from these exceptional cases, the right of diplomatic protection is the right of a State to bring a claim against another State in case of injuries to its nationals.

The nature and extent of diplomatic protection varies in different countries. By Federal Statute, the President of the United States is bound to use means not amounting to acts of war to protect United States citizens.[2] The United States courts have also recognised the rights of foreign consular representatives to sue or intervene in the courts on behalf of their nationals.[3] Diplomatic protection is not a right of the individual but is exercisable at the discretion of the State.[4] In Gschwind v. Swiss Confederation[5] a Swiss national claimed damages from the Swiss Confederation because the Swiss Government had refused to take further diplomatic action against the British Government with regard to claims lodged by the plaintiff against that government. In rejecting the claim, the Court said:

> "Between the plaintiff and the defendant there was neither an agency nor any other contractual relationship....Accordingly the discretion of the political authority in charge of Swiss international relations must be unfettered and final....It also follows that the competent state authority must be able to make decisions independently of the wishes of the injured national, both as to whether diplomatic protection shall take place at all and as to how far it shall be pursued, for instance by invoking arbitration in case of a negative attitude of the foreign State."[6]

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1. See Oppenheim, op.cit. 646-647; also Weis, op.cit.42 et seq.
2. 15 Stat.224, R.S.2001, 22 U.S.C. para 1732 (1952 ed.).
3. See The Bello Corrunes (1821) 6 Wheat.152; Re Zalewski (1944) 292 N.Y. 322; (1944) 38 A.J.I.L.733, where the consular right was based on a treaty between Poland and the U.S.
4. A few States grant their nationals such a right, see e.g. the German Weimar Constitution of 1919, Art.112; "Against foreign State, all Reich nationals have both within and without the Reich a claim to the protection of the Reich."
5. [1931-32] Ann.Dig.242.
6. Ibid. at 243-246.

It is a rule of international law that a State may not, in the absence of treaty stipulations, present claims on behalf of individuals who are not its nationals. The nationality which would entitle a State to exercise diplomatic protection on behalf of an individual must be a genuine connection between the individual and the State. It is international law that determines whether such a genuine connection exists between the individual and a State in order that the State may be capable of espousing a claim on behalf of that individual. This test of a genuine connection was recently adopted by the International Court of Justice in the Nottebohm case,[1] Furthermore a State may be capable of presenting a claim only as long as the bond of nationality exists between the claimant and itself. Therefore the bond of nationality must exist at the time the claim originated and must continue throughout the presentation of the claim. The case of Hilson v. Germany before the United States-German Mixed Claims Commission shows the relevance of the issue of nationality for a successful presentation of a claim. The United States based its claim on personal injuries and loss of personal effects suffered by Hilson when the United States steamship, the Columbian, was sunk by a German submarine in November 1916. At that time, Hilson was a British subject who had already applied for naturalisation as a United States citizen which was granted in 1918. The United States submitted that Hilson was entitled to be regarded as a United States citizen for under the then law of the United States, a foreign seaman who had filed his declaration of intention for United States citizenship was

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1. I.C.J. Rep. 1955, 21, 23.

deemed for the purposes of protection to be a United States citizen. The Commission rejected this contention and in deciding that a declarant alien could not come within the meaning of "an American national" in the Treaty of Berlin said Hilson

> "owed allegiance to the United States while serving on an American ship. But such allegiance was limited to the duration of his service and was of a temporary nature. At the time of suffering the damage complained of, the claimant was a British subject. The fact that the United States had through its statutes extended to the claimant, an alien seaman, the measure of protection for the duration of his service on an American ship as that extended to an American citizen does not change the nationality status of the claimant...."[1]

It is also a rule of international law that a State cannot extend its diplomatic protection to one of its nationals against another State whose nationality that individual also possesses.[2] It follows that as regards the two States claiming a dual national, neither could bring an international claim against the other. In relation to third States, it might be difficult to determine which nationality should be ascribed to such an individual. In such cases a choice has to be made between the two nationalities. The test employed is that of the individual's effective nationality and this is determined by the relative strength of his association with one of the two States. In determining the real and effective nationality, several factors have to be considered. The habitual residence of the individual may be an important factor. Other factors are the centre of his interests, his family ties, his participation in public life and the attachment shown by him for a

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1. (1925) 19 A.J.I.L.810, 812-813. (The case turned on the interpretation of the compromis. For decisions to the contrary, see Falla-Nataf v. Germany [1927-28] Ann.Dig.44; Pablo Najera of the Lebanon [1927-28] ibid.52.

2. See Drummond's Case 12 E.R.492. The rule was codified in Art.4 Hague Convention of Nationality Laws 1930; Cf Canavero Case 1 Scott, Hague Court Reps, 284; see also Borchard, op.cit. 538 et seq.

given country and inculcated in his children.[1] This principle of the effective nationality is incorporated in the Hague Convention of 1930.[2] As long as a genuine connection exists between the claimant State and the individual, the respondent State cannot contest the right of the claimant State to grant diplomatic protection to the individual because he possesses the nationality of another State.[3]

Other functions

Another consequence of the concept of nationality in international law is the duty of a State to admit its nationals who are expelled from other States. This duty follows from the co-existence of sovereign States.[4] It is doubtful whether the duty extends to the admission of former nationals. This is of little practical importance in the case of voluntary expatriation as in most cases the individual usually acquires another nationality by naturalisation and the duty of admission falls on his new State of nationality. The question is however of importance in the case of a denationalised individual. It has been contended that the duty exists if the denationalisation was done when the person concerned was in a foreign State.[5]

Nationality imports allegiance and one of the principal incidences of allegiance is a duty to perform military service to the State to which such allegiance is owed. The permanent character of the allegiance of nationals would render them liable to the performance of military duties to the Stat

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1. See Nottebohm Case (Second Phase) I.C.J. Rep.1955 p.4, 21-22; Art.3(2) of the Statute of the I.C.J.
2. Art.5.
3. Mackenzie Claim (1925) (U.S.-Germany) 20 A.J.I.L.595 (1926); Salem Case (U.S.-Egypt) 2 R.I.A.A.1161, [1931-2] Ann.Dig.188.
4. Schwarzenberger, op.cit. 360.
5. See Weis, op.cit. 56 et seq. See also the Special Protocol Concerning Statelessness, Art.1.

whose nationality they possess. Enemy status in time of war may be determined by the nationality of the person concerned.[1] Nationality is also important for the purpose of defining in treaties the persons or classes of persons entitled to enjoy the benefit of stipulations in them. As a State is usually only concerned with the interests of its own nationals, it commonly stipulates in treaties for benefits restricted to such nationals. Treaties may however adopt tests other than nationality such as domicil and establishment.[2] Nationality may also be important in the field of extradition.[3]

Nationality of Corporations, Ships and Aircraft

The concept of nationality has also been extended by analogy to corporations, ships and aircraft since for certain purposes in international law they are allocated to particular States. It is a question of terminology whether this allocation of objects to States should be described as nationality.[4] Nationality in this sense is really a quasi- or pseudo-nationality.[5] States possess the same discretion in attributing their nationalities to these inanimate objects as they have in respect of physical persons but such attribution must conform to the general practice of States.

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1. See Halsbury's Laws of England, 3rd ed. v.1, 499.

2. See Adv.Op.on the Exchange of Greek and Turkish Populations, P.C.I.J. Series B.10, 19 (1925) on the Greco-Turkish Convention of 1923 which used the term 'established'.

3. See Oppenheim, op.cit. 698 et seq.

4. Schwarzenberger, op.cit. 418.

5. See Parry, op.cit. 133; also Boczek, Flags of Convenience, (1962) 121.

By analogy with individuals, corporations are regarded as capable of possessing nationality. International practice has employed several criteria in determining the nationality of a corporation. These are the siège social, domicil, incorporation or control.[1] As states have a discretion in exercising diplomatic protection on behalf of a national, they may limit their intervention to corporations which are effectively controlled by their nationals or intervene only in respect of the beneficial interest of their nationals in a corporation.

International law requires ships on the high seas to possess a nationality but does not provide rules for its attribution to them. It is left to each State to determine and regulate the conditions under which vessels may claim its nationality.[2] This principle was recognised by the Permanent Court of Arbitration in the Muscat Dhows case[3] between France and Great Britain. The Geneva Convention on the High Seas 1958 adopted this principle in the first sentence of article 5 but later limited it by stipulating that there must be a genuine connection between the State and the ship possessing its nationality.[4] The universal practice of States shows that registration with the appropriate documents issued by the competent

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1. See Schwarzenberger, op.cit. 388 et seq; Beckett, Diplomatic Claims in respect of injuries to companies (1932) 17 T.G.S.175, 180 et seq.

2. Oppenheim, op.cit. 595; Schwarzenberger, op.cit. 413 et seq; Boczek, op.cit.102; see also U.N.Legislative Series, Law Concerning the Nationality of Ships (1955) which compiles various municipal laws.

3. 1 Scott, Hague Court Reports (1916) p.93. The principle was stated by the U.S.Supreme Court in Lauritzen v. Larsen 345 U.S.571 (1953).

4. See Adv.Op.on the Constitution of the Maritime Safety Committee of the I.M.C.O., 1960 I.C.J. Rep.150, 171; see also infra p.48.

authorities of a State is the only test of a ship's nationality which gives t he ship the right to fly the flag of the registering State. Certain States require national ownership or national crew as a prerequisite of registration but such limitations are not essentials of international law.[1]

It is doubtful whether customary international law attributed the concept of nationality to aircraft. The Convention of International Civil Aviation[2] signed at Chicago in 1944 now embodies rules relating to the nationality of aircraft. Aircraft are regarded as having the nationality of the State in which they are registered. They must bear their nationality and registration marks.[3] This principle of registration importing nationality has been interpreted as a recognition that aircraft possess legal personality under municipal law and endowed the nationalities of their own.[4] The Convention obviates the incidence of dual nationality in respect of aircraft by providing that an aircraft cannot be validly registered in more than one State but its registration may be transferred from one State to another.[5] Registration or the transference of registration shall be in accordance with the State's laws and regulation.[6] The rights granted under the Convention are dependent on the nationality of the aircraft and not that

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1. See the Montijo case (U.S. v. Columbia) Moore, 2 International arbitrations (1898) 1421; Boczek, op.cit. 107 et seq.

2. Cmd. 6614 (1945) following the provisions of the Paris Convention 1919 relating to nationality of aircraft. Also Cmd. 8742.

3. Chicago Convention Art.20.

4. Cheng, The Law of International Air Transport (1962) 128. Cf. Cooper, The Legal Status of Aircraft (1949) who calls it a "legal quasi-personality".

5. Chicago Convention Art.18.

6. Ibid. Art 19.

of its owner. Article 77 of the Convention empowers the Council of the International Civil Aviation Organisation to determine in what manner its provisions relating to the nationality of aircraft are to be applied to aircraft operated by international operating agencies.[1]

In international judicial practice, the tests adopted for the attribution of nationality to corporations, ships and aircraft normally provide a sufficient genuine link of any of these objects with the State attributing its nationality. It has been suggested that the genuine link theory applied by the International Court of Justice with respect to individuals in the Nottebohm case could easily be utilized internationally to determine the national character of corporations, ships and aircraft.[2] The Geneva Convention on the High Seas 1958, while accepting in Article 5 the traditional exclusive competence of each State to determine the conditions for attributing its nationality to ships, restricted this competence by the inserting of a requirement for a genuine link between the ship and the State whose nationality it possesses. Thus for the purposes of an international claim, it may be open to an international tribunal to look behind the test adopted for attributing nationality to find whether there is in fact a "genuine link" between the object and the claimant State.[3]

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1. See Cheng, op.cit., 131 et seq.

2. Jessup,"The United Nations Conference on the Law of the Sea,"(1959) 59 Columbia Law Rev. 234, 256; Cheng, op.cit. 131.

3. See the arguments advanced against the adoption of the genuine link in Boczek, op.cit., 122; see also Sohn & Baxter's Draft Convention on the International Responsibility of States for Injuries to Aliens (Draft No.12) (1961), 184; McDougal, Burke & Vlasic, The Maintenance of Public Order at Sea and the Nationality of Ships (1960) 54 A.J.I.L. 25; the Adv.Op. on the Constitution of the Maritime Safety Committee of I.M.C.O., 1960 I.C.J.Rep.150,171.

P A R T 2

OUTLINE OF BRITISH NATIONALITY LAW IN NIGERIA

Chapter Three

BRITISH NATIONALITY LAW IN NIGERIA - I

A. IMPERIAL NATIONALITY

The Common Law to Act of 1870

The beginnings of British Nationality law in Nigeria may be considered from two aspects. Firstly, the effect produced on the nationality of the inhabitants of the territory by the change of sovereignty as a result of conquest by or cession to the Crown. Secondly, the effect of the introduction of English laws to the acquired territory.

On the effect produced by a change of sovereignty, Coke had expressed the view that conquest made the inhabitants of a conquered territory denizens of the King.[1] Bacon, on the other hand, regarded the conquered inhabitants not to be naturalised automatically by the conquest, though the status of subjects might be accorded them at discretion.[2] It would seem that Bacon's view prevailed during the growth of the British Empire. There were judicial statements in very early English cases enunciating the principle that a country conquered by British arms became a dominion of the Crown and the inhabitants of a conquered territory were considered subjects

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1. 2 St.Tr.559 at 616,639.

2. 2 St.Tr.559, 590-593. Bacon referred to the example of the Roman Empire where naturalisation never followed a conquest but the status of civis Romanus was conferred by the Emperor's charter until the time of the Emperor Antoninus Caracalla who conferred the rights of Roman citizenship on the whole Roman Empire. See Justinian's Digest lib.1 tit 5.

of the Crown.[1] In Mayor of Lyons v. East India Company[2], Lord Brougham qualified this principle by admitting the discretion of the Crown not to treat the inhabitants of an acquired territory as subjects.[3] The rule thus developed that conquest or cession would not have any effect on the nationality of the inhabitants unless the Crown manifested an intention to make them subjects. This intention might be shown by an act of annexation or in the terms of a treaty of cession.[4] This rule accounted for the distinction between the status of inhabitants of colonies and those of protectorates even though a colony and protectorate might have been acquired in the same manner.[5]

The history of British nationality law in the territories comprised in Nigeria may be said to begin with the provision in the Treaty of 1861 ceding the island and territory of Lagos to the British Crown and describing the inhabitants thereof "as the Queen's

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1. See Campbell v. Hall (1774) 1 Cowp.204, 208, per Lord Mansfield; see also Donegani v. Donegani 3 Knapp. 63,85.

2. (1836) 1 Moo. P.C. 175.

3. ibid., at 284.

4. See In re Southern Rhodesia [1919] A.C.211, 239 et seq. See further Parry, Nationality and Citizenship Laws of the Commonwealth etc. I. (1957) 433 Jones, British Nationality Law and Practice (1947) 41; British Nationality Law (1956) 12, 13.

5. The territories of Kenya and Southern Rhodesia did not form part of the Crown's dominions until their annexation which occurred a considerable period after they were acquired. See the Southern Rhodesia (Annexation) O-in-C, July 30, 1923; S.R. & O. Rev.1948 vol.XXI.369.

subjects, and under her sovereignty, Crown, jurisdiction and government."[1] Immediately afterwards the island and territory of Lagos was annexed and became a part of the Crown's dominions. The annexation produced a change in the legal order and gave the inhabitants of the Colony of Lagos the status of British subjects.[2]

The rules of the common law relating to the classes of inhabitants whose nationality would be affected on a change of sovereignty are not clear. It is controversial whether the basis of selection depends on residence alone or domicil alone or a combination of both.[3] No English decision has dealt exactly with this aspect of British nationality.[4] Dicey regarded an annexation as affecting only those nationals of the ceding Sovereign who were resident in the ceded territory.[5] Oppenheim limits the effect to such subjects as are domiciled and remain in the territory.[6] It is not clea

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1. See Art.1 of the Treaty.

2. Lord Brougham referred to such newly acquired subjects as denizens in Mayor of Lyons v E.I.C. (1836) 1 Moo P.C. 175, 285. See however Edwards, Common Law Naturalisation and Expatriation, 15 J.C.L. (N.S.) 108,111. The distinction between natural born subjects and other subjects was abolished by the British Nationality Act 1948, Fourth Schedule.

3. See McNair, Legal Effects of War, 3rd ed. (1948) 389.

4. There are however cases dealing with the converse situation, i.e. loss of territory by the Crown. These were considered in Murray v Parkes [1942] 1.A.E.R. 558.

5. Dicey, Conflict of Laws, 5th Ed. Keith (1932) 159, 173.

6. Oppenheim, International Law, 8th ed. Lauterpacht v 1 (1955) 551, 571. See however Lord Caldecote C.J. in Murray v Parkes [1942] 1.A.E.R. 558,561. See further F.A.Mann, The Effect of Changes of Sovereignty upon Nationality (1942) 5 M.L.R. 218, 223.

also whether the subjects of the ceded territory, resident and domiciled therein, could elect to retain their old nationality.[1] This right of election is advocated on account of the hardship that may be caused to an individual by the changed circumstances[2] and such a right may be given by treaty.[3] It is generally maintained that no right of election exists in English law in the absence of such treaty stipulations.[4] There are no English cases on this point[5] but certain South African cases tend to show that such a right exists.[6] Keith believed that the Judicial Committee of the Privy Council (to which these cases were not referred on account of the smallness of the amounts) would not have upheld their views.[7]

The extent of the application of English law to Nigeria is also relevant to a consideration of the introduction of British

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1. McNair, loc. cit.

2. Oppenheim, op.cit. 551 et seq.

3. See Jephson v. Riera (1835) 3 Knapp. 130.

4. Jones, British Nationality Law and Practice (1947) 45 et seq. see also Dicey, Conflict of Laws, 5th ed. Keith (1932) 159,173.

5. The American cases are also inconclusive, see Inglis v. Sailor's Snug Harbour 3 Pet 99 (1830); Boyd v. Thayer 143 U.S. 135(1892).

6. Queen v. Jizwa (1894) 11 S.C.Cape G.H. 387; Queen v. Geyer (1907) 17 S.C. Cape G.H. 501; Lehmkuhl v. Kock [1903] O.R.C.L. Rep 20. These cases are discussed in Van Pittius, Nationality within the British Commonwealth of Nations (1930) 73 and by Graupner, British Nationality and State Succession (1945) 61 L.Q.R. 161. But see R v. Ramage (1902) 23 Natal L.R. (N.S.) 45 where the right of election is stated to be conditional upon special stipulation in cases of cession of territory by the Crown

7. Theory of State Succession (1907) 47 et seq.

nationality therein, English law did not automatically apply on its acquisition. In 1863, an Ordinance[1] of the local legislature introduced "all laws and statutes which were in force in England on the 1st January, 1863", into the territory. The law relating to British nationality had grown out of English common law which was reinforced by subsequent enactments of the Parliament at Westminster. This local Ordinance therefore made the common law and statutes relating to British nationality applicable to the Colony of Lagos in so far as they relate to colonies.

The common law of England under the influence of feudalism adopted the place of birth (the jus soli) in determining the national character of a person. Any person born within the dominions and allegiance[2] of the Sovereign in his corporate or politic capacity were his natural-born subjects. The common law thus recognised only the jus soli[3] and made no provision for

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1. Ord. No.3 of 1863 (Lagos).

2. "Ligeance is a true and faithful obedience of the subject due his Sovereign. The ligeance and obedience is an incident inseparable to every subject." 7 Co. Rep. 4a. Coke excepted from the category of subjects children born in a castle or fort within the realm but in hostile occupation. This showed that something more than birth within the realm was required. ibid, 18a, 18b.

3. The common law recognised certain exceptions to the jus soli. Children born abroad of the King (Stat.25 Edw.III), of a British ambassador in a country to which the father was accredited provided the Ambassador was not a subject of that country (1 BL.Comm.373) were natural-born subjects. Presumably children born abroad of fathers in military service were also subjects (but see Kay J. in DeGeer v. Stone L.R. 22 Ch.D.243). Children born on a British public vessel wherever situated (Marshall v. Murgatroid L.R.6 Q.B.31) and on a British private vessel unless the birth took place in territorial waters of a foreign state not subject to the right of innocent passage, were regarded as subjects.

the jus sanguinis.[1] The locus classieus is Calvin's case[2] where it was held that a Scotsman born in Edinburgh after the accession of James VI of Scotland to the Crown of England but before the Union was not an alien in England. Similarly when the Crowns of the United Kingdom and Hanover were united in the same King, the Hanoverians were not aliens in England.[3] It followed that a person born in the Colony of Lagos after its annexation as a dominion of the Crown was a natural-born subject of Her Majesty.[4] Imperial nationality was therefore indivisible.[5] A person born in Lagos had the same national status as one born within the United Kingdom.

The Colony of Lagos was the only territory within the present Federal Republic that was annexed as a part of the Crown's dominions. The remaining vast portion of the Federal Republic became by 1914 the Protectorate of Nigeria under British protection. It was never annexed and therefore the common law rule relating to the acquisition

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1. See the rule as stated by the Royal Commission 1868.
2. 7 Co.Rep. 1a.
3. See Isaacson v. Durant (1886) 17 Q.B.D. 54.
4. See Craw v. Ramsey, Vaugh. 274.
5. See Imperial Conference, 1923, Cd.1988.

of the status of a natural-born subject did not apply to persons born within the Protectorate.

Prior to the annexation of Lagos, several statutes had been passed introducing the jus sanguinis into the law. These were:-

(i) The Statute 25 Edw. III St.1 made all children which from henceforth shall be born "outside the dominions of the King whose fathers and mothers were at the faith and legiance of the King" capable of inheriting within the realm. The statute was construed to confer this right on the children of English fathers and foreign mothers.

(ii) The Statute 7 Anne c.5 in 1708 conferred on the children of all natural-born subjects born out of the allegiance of the Crown the status of natural-born subjects for all purposes whatsoever.

(iii) The British Nationality Act 1730, 4 Geo.II c.21 was passed to elucidate a clause in the Act of Anne. It stated that all children born or who shall be born out of the dominions of the Crown of England or of Great Britain whose fathers were or shall be natural-born subjects of the Crown at the time of their births[1] shall be natural-born subjects of the Crown of Great Britain. The status of natural-born subjects was expressly withheld from the children of fathers attainted of treason or of fathers who could not return to the United Kingdom except by licence without incurring

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1. See Doe d.Thomas v. Acklam. 2 B & C 779

the penalties of treason or felony or who was at the time of the child's birth in the actual service of a foreign enemy.[1]

(iv) The Act of 13 Geo.III C.21, in 1772, further extended the jus sanguinis. It provided that all persons who were born or shall be born out of the dominions of the Crown of England or Great Britain whose fathers were or shall be entitled to the rights and privileges of natural-born subjects of the Crown by virtue of the Act 4 Geo.II C.21 were themselves declared to be natural-born subjects of the Crown to all intents and purposes whatsoever, as if they had been and were born in the kingdom.

Under these Acts the status of a natural-born subject could not be obtained through a mother. They enabled the children and grandchildren on the male side of every man who was a natural born subject by the common law to obtain such a status wherever they may be born. The status conferred by the Acts was personal to the individual and could not be transmitted to his descendants.[2] When three generations had been born abroad, the third generation would not be a natural-born subject. The status was not conferred on illegitimate children. Their legitimation per subsequens matrimonium would still not bring them within the Acts.[3]

Thus at the date of the annexation of Lagos into the Crown's dominions, the jus sanguinis had been introduced thereby enabling a child born out the Crown's dominions of a father born therein to claim to be a natural-born subject.

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1. See S.2 of the Act. Attainders were abolished in 1870.
2. De Geer v. Stone L.R. 22 Ch.D. 243.
3. Shedden v. Patrick 1 Macq. 535; 23 L.T. (O.S.) 194.

The Naturalisation Act 1870

On May 21, 1868, a Royal Commission was appointed[1] "to enquire into the laws of naturalization and allegiance". The Commission made an extensive study of the nationality laws of many countries and submitted its report on February 20, 1869.[2] In spite of its rule, the Naturalization Act 1870, in implementing some of the recommendations of the Royal Commission revised the law of nationality and naturalization in many respects. It provided for the implementation of the Conventions with the United States[3] and similar conventions with foreign states.[4] It abolished the old doctrine of the indelibility of allegiance[5] and

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1. The appointment of this commission was due to a desire of the British Government to settle controversies with the United States concerning the status of naturalised American citizens of British origin.

2. The following were among the recommendations of the Commission:- The abolition of the rule nemo potest exuere patriam so that a foreign naturalisation could terminate British nationality. The wife and minor children of a British subject naturalised abroad should also lose their British status provided they emigrated with him and acquired the new nationality. Children born of alien fathers within the realm could be registered as aliens. The range of the jus sanguinis should be limited to the first generation born abroad. Certificates of naturalisation should confer a full status of subject at the discretion of the Secretary of State after a period of residence in the United Kingdom or service under the Crown instead of the grant of limited or conditional certificates of naturalisation.

3. The Bancroft Treaties (G.B.- U.S.) concluded May 13, 1870 denounced by the U.K. on December 15, 1953.

4. Naturalisation Act 1870 S.3.

5. ibid. ss 4,6; see however R v. Lynch [1903] 1 K.B.444.

removed the incapacity of aliens to hold land in the United Kingdom.[1] It provided for the discretionary issue of certificates of naturalisation to aliens residing in the United Kingdom for at least five years or who had been in the service of the Crown for a similar period.[2] The certificate conferred on the alien while in the United Kingdom all the political or other rights and privileges and subjected him to all the obligations, to which a natural-born British subject was entitled or subject in the United Kingdom, but he was not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate, deemed to be a British subject unless he had ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.[3]

The Act made provision for the re-admission to British nationality of a natural-born British subject who had become an alien.[4] As regards the nationality of married women and children

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1. ibid. S.2

2. ibid. S.7

3. It was not clear whether such naturalisation had any extra-territorial effect. But it was interpreted as having merely intraterritorial effect. See Report of the Inter-Departmental Committee, 1901, Cmd.723 para 26. The Law officers also advised that a person naturalised under either the Act of 1844 or the Act of 1870 had no rights in Gibralter; see Circula-Dispatch of September 10, 1874, reproduced in Jones, British Nationality and Practice (1947), 94-95. See also In re Bourgoise 41 Ch.Div.310, where it was held that the child of a naturalised subject born in the state of which his father was previously a subject is an alien.

4. Naturalisation Act 1870, S.8.

the Act provided that a married woman should be deemed to be a subject of the state of which her husband was for the time being subject,[1] and that a widow who became an alien by her marriage could obtain a certificate of re-admission to British nationality.[2] Children who during infancy resided in a foreign state with a father or widowed mother naturalised therein were deemed not to be British subjects if they were similarly naturalised.[3] Children of a father or widowed mother re-admitted to British nationality should be similarly admitted if they were resident during infancy with such father or mother in the British dominions.[4] The children of an alien father or widowed mother naturalised in the United Kingdom were deemed to be similarly naturalised if resident during infancy with such father or mother in the United Kingdom or with such father while in the service of the Crown out of the United Kingdom.[5]

The naturalisation provisions of the Act mainly related to the United Kingdom but it expressly preserved the powers which British possessions[6] already had to make laws for imparting to any

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1. Naturalisation Act 1870 S.10(1).
2. ibid. S.10(2).
3. ibid. S.10(3).
4. ibid. S.10(4)
5. ibid. S.10(5) as amended by S.1(1), (2) of the Naturalisation Act 1895.
6. Defined as colonies, plantation, island, territory, or settlement within His Majesty's dominions; Naturalisation Act 1870. S.17.

person the privileges, or any of the privileges, of naturalisation to be enjoyed by such person within the limits of such possession (subject to confirmation or disallowance by Her Majesty).[1] The Act however left untouched the rules for the acquisition of nationality at birth. There were no provisions for the revocation of a certificate of naturalisation. It neither affected the incapacity of aliens to own British ships.[2]

The British Nationality and Status of Aliens Act 1914.

Apart from the amendment made by the Naturalisation Act 1895, the law of nationality was left untouched from 1870 until the passing of the British Nationality and Status of Aliens Act 1914, which formed the basis of the modern law. A Departmental Committee, set up by the Home Office in 1901, made recommendations for amendments in the nationality law,[3] which were referred to the different governments of the Empire for their views. At the Colonial Conference of 1907 it was resolved to hold an enquiry "to consider further the question of naturalisation, and, ... how far, and under what conditions, naturalisation in one part of His Majesty's dominions should be effective in other parts of these dominions," with a view to attaining uniformity as far as practicable.[4]

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1. ibid. S.16.
2. Naturalisation Act 1870, S.14.
3. Cmd. 723 (1901).
4. Cmd. 3523 (1907).

The criticisms of the 1907 Conference were considered by another Committee and a draft Bill was laid before the Imperial Conference of 1911.[1] The British Nationality and Status of Aliens Act 1914 was the outcome of resolutions adopted by that Conference.

The Act which repealed the Naturalisation Act 1870 and most of the earlier statutes was divided into three Parts. Part I consisted of a section defining natural-born British subjects. Part II related to the naturalisation of aliens, the adoption of which by the Dominions would create a uniform law on the subject throughout the Empire. Part III dealt with general provisions on the national status of married women and infant children, the status of aliens, the loss of British nationality and provisions relating to procedure and evidence. Parts I and III applied to all territories which formed part of the British Empire. The Act remained the law until the end of 1948 but was amended by similarly entitled Acts in 1918, 1922, 1933 and 1943.

The British Nationality and Status of Aliens Acts 1914-1943[2] provided a definition of a natural-born British subject. Any person born within the dominions and allegiance of the Crown would

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1. Cmd. 5746 (1911), Paper No.8

2. See Act of 1943 S.11(1) which provided for this method of citation.

be deemed to be a natural-born British subject.[1] This provision put into statutory form the rule of the common law, i.e. the principle of the jus soli. The rule required something more than birth within the dominions of the Crown; the persons must also be born within the allegiance of the Crown. The dominions of the Crown included all the self-governing Dominions, the colonies and a British ship in foreign territorial waters including any ports, harbour or dock,[2] but the term does not include protectorates, protected states or foreign ships in British territorial waters.[3] The requirements of birth within the allegiance of the Crown excluded children born within the dominions of foreign parents who were not under the allegiance of the Crown. The exclusion applied to children of foreign Sovereigns, Heads of States, foreign ambassadors, and members of a foreign invading army or enemy aliens if born within the occupied area. The exclusion did not apply to the children of consuls.[4] A person born out of the dominions of the Crown whose father[5] was at the time of the birth or at the father's prior death[6] a British subject

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1. Act of 1914 s.1(1)(a).
2. ibid. SS.1(1)(c), 27(1).
3. ibid. S.1(2).
4. See Parry, op.cit. 153 et seq.
5. i.e. father of a legitimate child; see Abrahams v. Att-Gen. [1934] p.17.
6. In the case of a posthumous child; see Act of 1943 S.3.

is deemed to be a natural-born British subject if the father[1] was born within His Majesty's allegiance or was a person to whom a certificate of naturalisation[2] was granted or had become a British subject by annexation of territory or was at the time of the birth in the service of the Crown.[3] Such a person was also deemed to be natural-born British subject if his birth was registered at one of His Majesty's consulates within one year of its occurrence (in the case of a person born after or within one year of the commencement of the Act of 1943) or at any time with the approval of the Secretary of State.[4] A person whose father[5] was at the time of his birth (or at his father's prior death) a British subject was also deemed to be a British subject if he was born in a place where His Majesty exercised jurisdiction by treaty, capitulation, grant, usage, sufferance or other lawful means over British subjects and such a person was deemed to be born within His Majesty's allegiance.[6] A person whose British nationality depended on registration at a British consulate was to

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1. See Footnote 5 on previous page.

2. A certificate of naturalisation granted under the Act as amended by the Act of 1943 SS.4,5,10(2) or under the Naturalisation Act 1870.

3. Act of 1914 S.1(1) (b).

4. Act of 1943 S.1(2).

5. See also Footnote 5 on previous page.

6. Act of 1943 S.2(1).

assert his British nationality by a declaration of retention within one year of attaining the age of twenty-one.[1] By the Act of 1943 he was not required to divest himself of any foreign nationality.[2]

The British Nationality and Status of Aliens Acts 1914-43 applied to Nigeria proprio vigore. By virtue of section 19(2) of the Act, any regulation made by the Secretary of State in respect of the imposition of fees was not applicable to any British possession. A local Ordinance[3] therefore provided for the collection of fees on the grant of a certificate of naturalisation and on doing acts under the Act of 1914 as amended from time to time. This Ordinance applied to the Colony and Protectorate of Nigeria but was later extended to the Cameroons under British mandate.[4] The powers conferred on the Secretary of State in the United Kingdom under the Act were exercisable by the Governor of

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1. ibid. S.6(1).

2. See ibid. S.11(2) repealing the second proviso of the Act of 1914, as amended, S.1.

3. Ord. No.17 of 1916; Laws of Nigeria, 1948 ed, Cap.22. Superseded by Ord.No.22 of 1949 and now repealed by Nigerian Citizenship Act, No.43 of 1960, S.19.

4. By Ord. No.1 of 1925, Laws of Nigeria, 1948 ed., Cap.27, First Sch.

a Colony. Thus the Governor of Nigeria was empowered to grant, with the approval of the Secretary of State, Imperial certificates of naturalisation, i.e. one having the same effect as that granted by the Secretary of State in the United Kingdom.[1]

The Act also provided for the loss of British nationality by foreign naturalisation[2] and by a declaration of alienage.[3] If a British subject, not subject to any disability, obtained naturalisation in a foreign state or made a declaration of alienage,[4] he ceased to be a British subject.

The Act of 1914, with its amendments,[5] remained the law in the United Kingdom and her colonies until the end of 1948 when the British Nationality Act, 1948, superseded the earlier legislation.

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1. Act of 1914 S.8.

2. ibid. S.13; But see R v Lynch [1903] I.K.B.444 and In re Chamberlain's Settlement [1921] 2 Ch.333.

3. Act of 1914 S.14. See however the decisions in Exp.Freyberger [1917] 2 K.B. 129; Vecht v. Taylor (1917) 116 L.T.446; Gschwind v. Huntingdon [1918] 2 K.B.420 which run counter to the words of this section.

4. But see the Act of 1943 S.7 which imposed a requirement of registration and a discretion for the registration to be refused in time of war.

5. The British Nationality and Status of Aliens Act 1918, 1922, 1933 and 1943.

B. COLONIAL NATURALISATION

At common law, an alien could not acquire the status of a natural-born subject except by virtue of an Act of Parliament.[1] The naturalised subject had more ample privileges than denizens who were created by Letters Patents under the prerogative. Special Acts of Parliament could be passed naturalising either particular individuals or classes of individuals. The privileges conferred by naturalisation were very valuable because of the substantial legal disabilities attaching to aliens. The Aliens Act 1844[2] introduced a new system of naturalisation by special Acts of Parliament.[3] The Secretary of State was empowered to grant certificates of naturalisation to aliens who should come to reside in the Kingdom "with intent to settle therein". An alien so naturalised enjoyed "all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit" except those of being a Privy Counsellor or a member of either House of Parliament.[4]

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1. Co.Litt. S.198.

2. 7 & 8 Vict C.66.

3. However private Acts of Parliament continued. A private Bill was introduced as late as 1911 according to Phillimore L.J. in R v. Speyer [1916] 2 K.B. 858, 871.

4. 7 & 8 Vict C.66 S.16.

In respect of nationality, no distinction existed between England and the colonies. There was no separate general law for the colonies. The position was different with regard to naturalisation. In 1847 an Act for the naturalisation of aliens[1] was passed dealing specifically with colonial naturalisation. It declared that the Aliens Act 1844 did not extend to the colonies and then provided for the exercise of the power of naturalisation in the colonies. It removed any doubt about the competency of colonial legislatures.to make provision for naturalisation of aliens resident within the colonies and validated any such "Acts, statutes and ordinances heretofore made".[2] The privilege conferred on the naturalised individual was to be exercised or enjoyed "within the limits" of the Colony conferring the privilege. The Act of 1847 was repealed by the Naturalisation Act 1870 which however expressly saved[3] the powers of British possessions[4] to make laws for the naturalisation of aliens having merely an interterritorial effect.[5]

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1. 10 & 11 Vict.C.83.

2. Some colonies had enacted, prior to 1847, special legislation naturalising particular individuals; some also had general naturalisation laws e.g. in 1683 Jamaica had enacted a law "for encouraging the settlement of the island" which gave the Governor general powers to issue instruments of naturalisation.

3. Act of 1870 S.16.

4. Meant any colony, plantation, island, territory or settlement within H.M.'s dominions and not within the U.K., ibid. S.17.

5. See Report of the Inter-Deptal Committee, 1901, Cmd.723 para. 26.

The Act of 1914, which repealed that of 1870, provided in Part II for the naturalisation of aliens on satisfying certain conditions.[1] British protected persons were placed in the same position as aliens.[2] Persons under disability could not be naturalised.[3] Such persons were married women, minors, lunatics and idiots.[4] However there were certain exceptions to this rule in relation to married women[5] and minors. The name of a minor could be included in a certificate of naturalisation given to his parents,[6] and the Secretary of State also had absolute discretion to grant a certificate of naturalisation to a minor child.[7] The adoption of this Part of the Act by the Dominions[8] and the provisions of section 8 in respect of the colonies enabled both the Dominions and the colonies to grant certificates of naturalisation having the same effect as those granted by the Secretary of State. The power to grant local certificates of naturalisation with limited effect in these British possessions was however expressly preserved.[9]

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1. See Act of 1914 S.2.
2. See the definition of aliens; ibid. S.27(1).
3. ibid. S.5(3).
4. See ibid. S.27(1)
5. ibid. SS.2(5), 10(6).
6. ibid. S.5(1); the child may make a declaration of alienage within one year of attaining majority.
7. ibid. S.5(2).
8. ibid. S.9
9. ibid. S.12; see Markwald v. Att-Gen. [1920] 1 Ch. 348.

Local naturalisation legislation

At first the naturalisation of aliens was effected in the Colony of Lagos by special Ordinances passed in favour of an individual alien who had "resided for upwards of five years in the Colony and Protectorate" of Lagos and from whom it was "expedient to remove within the Colony and Protectorate the disabilities to which aliens are by law subject". There appears to have been only two such Ordinances enacted in the Colony of Lagos.[1] Such special ordinance conferred on the individual all the rights and made him subject to all the liabilities of a natural-born subject of Her Majesty. These special ordinances conformed to the Imperial Act of 1870 as they provided that the naturalised persons should enjoy the privileges conferred on them "within the limits of the Colony and Protectorate of Lagos". The individuals were required to take the oath of allegiance and the Ordinance came into operation on the day the oath was taken.[2]

An ordinance relating to general naturalisation was disallowed in 1873.[3] It was not until 1906 that the first Ordinance relating to general naturalisation became law.[4] It applied to

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1. Ordinance No.5 of 1871 (C.F. Meyer), Ordinance No.8 of 1893 (Max Koenisberg).

2. See Ordinance No.8 of 1893 s.2.

3. Ordinance No.9 of 1873; see Naturalisation Act 1870 (Imperial) s.16., providing for the powers of disallowance.

4. Ordinance No.11 of 1906.

all aliens who were resident or who later came to be resident within the Colony of Southern Nigeria[1] "with intent to settle therein." Anyone who had resided therein for a continuous period of at least one year might memorialise the Governor in Council praying for the privileges of naturalisation to be conferred on him.[2] A successful memorialist on the grant of a certificate of naturalisation was required to take and subscribe to the oath of allegiance. Upon so doing, he was deemed a natural-born subject of His Majesty as if he had been born within the Colony and he was entitled within the Colony to all the rights, privileges and capacities of a subject of His Majesty born within the said Colony except such rights, privileges and capacities, if any, as might be specially excepted in the certificate.[3] This Ordinance also conformed to the Imperial Act of 1870 in limiting the privileges conferred on the naturalised persons to be enjoyed "within the said Colony".

The Imperial Act of 1914 repealed the Naturalisation Act of 1870 and empowered colonies to grant Imperial naturalisation, i.e. to grant certificates of naturalisation having the same effect as those granted by the Secretary of State in the United

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1. In 1906, the Colony of Lagos became the Colony of Southern Nigeria.

2. Ordinance No.11 of 1906 S.2.

3. ibid. S.9.

Kingdom.[1] It however preserved their former powers of granting certificates of naturalisation effective within the limits of their respective legislative competence.[2] Another Ordinance[3] was enacted in 1916 which repealed the former law of general naturalisation. Certificates of naturalisation granted under the Ordinance of 1906 are deemed to be granted under the 1916 Ordinance.[4] The new law dealt with naturalisation having merely a local effect and made no provision for the grant of Imperial naturalisation. Any alien residing in the Colony "with intent to settle therein" might give notice of his intention to present a memorial to the Governor in Council praying for the privileges of naturalisation. Such notice could only be given after a continuous residence of at least one year in the Colony.[5] At any time, not being less than two years or more than four years from the date of such notice, the alien might present his memorial if he had resided in the Colony for not less than two years within the last three years.[6] A successful memorialist

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1. Act of 1914 (Imperial) S.8.
2. ibid. S.26(2).
3. Ordinance No.54 of 1916; Laws of Nigeria, 1948 ed, Cap.146.
4. ibid. S.15.
5. ibid. S.2(1).
6. ibid. S.2.(2)

was required to take the oath of allegiance within fourteen days of his being notified otherwise the grant of naturalisation ipso facto became null and void.[1] The certificate of naturalisation conferred on the memorialist "within the said Colony" all the rights, privileges and capacities of a subject of Her Majesty born within the Colony, except such rights, privileges and capacities as are specially excepted.[2]

The question of the extraterritorial effect of such local naturalisation came before the courts in England in 1918 and 1920. A person of German origin became naturalised locally in Australia in 1908 and claimed to be a British subject in the United Kingdom. The King's Bench Division[3] and the Court of Appeal,[4] on appeal from the Chancery Division, held that such a person was an alien in the United Kingdom.

The Ordinance of 1916 was amended in 1918[5] to include provisions for the revocation of certificates of naturalisation in the light of the provisions of the (Imperial) British Nationality

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1. ibid. SS. 5,9.

2. ibid. S.8. See however S.6 which conferred on the memorialist "all the rights, privileges and capacities in the Colony of a naturalised British subject".

3. R v. Francis exp. Markwald [1918] 1 K.B.617.

4. Markwald v. Att-Gen. [1920] 1 Ch.308.

5. By Ordinance No.9 of 1918.

and Status of Alien Act of that year. The Governor in Council might by Order revoke a certificate of naturalisation if it appeared that it had been obtained by false representations or fraud. The Governor might order an inquiry before making the Order.[1] A certificate might, in addition, be revoked after an inquiry on any of the following grounds:-[2]

(a) that the grantee had shown himself by overt Act or speech to be disloyal to His Majesty.

(b) that within five years of the date of the grant he had been sentenced to imprisonment for not less than twelve months or to penal servitude by any court in His Majesty's dominions or in a British protectorate.

(c) that he was not of good character at the date of the grant.

(d) that since the grant, he had been ordinarily resident[3] out of the Colony for a period not less than seven years otherwise than as a representative of a British subject, firm or company carrying on business or an institution established in the Colony, or in the service of the Crown and has not maintained substantial connexion with the Colony.

In any of the above cases, the Governor must be satisfied that the continuance of the certificate was not conducive to the public good.

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1. Laws of Nigeria, 1948 ed. Cap.146 S.10(1).

2. See ibid. S.10(2).

3. The expression "ordinarily resident" was not defined in the Ordinance. See Gout v. Cimitian [1922] 1 A.C.105.

There were differences between the provisions relating to the revocation of certificates contained in this Ordinance and those of the Act of 1914 as finally settled by the amending Act of 1918. Under the Ordinance (as indeed was the case under the Act of 1914 as originally enacted), revocation of a certificate on any ground was at the discretion of the Governor[1] (or the Secretary of State[2]). The Imperial Act of 1918 extended the circumstances in which revocation may be made and left the Secretary of State with no option but to revoke a certificate on any ground when the facts have been proved to his satisfaction to exist.[3] The grounds of deprivation contained in the Ordinance were not entirely identical with those in the Act of 1918 and the Ordinance retained the discretion given to the Governor in Council.

The Ordinance adopted the procedure of an inquiry which was introduced into the law of the United Kingdom by the Act of 1918.[4] In the case of obtaining a certificate by false representation or fraud, the Governor might refer the matter to an inquiry before

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1. Laws of Nigeria, 1948 ed. Cap.146 S.10.

2. See Act of 1914 (Imperial) S.7.

3. See Act of 1918 (Imperial) S.1(1); Under the British Nationality Act 1948 these became mere discretionary grounds for deprivation; see Act of 1948 S.20(2), (3).

4. See Act of 1918 S.1(3), (4); see also Laws of Nigeria, 1948 ed, Cap.146 S.10(3).

ordering a revocation.[1] In respect of revocation on any other ground, the Governor could only order a revocation after an inquiry had been held.[2] The inquiry was held by a committee constituted by the Governor for that purpose. It was presided over by a judge of the Supreme Court appointed by the Governor and conducted in such a manner as the Govenor directed. The committee had the powers, rights and privileges of a judge in respect of compelling and enforcing the attendance of witnesses and punishing for contempt.[3]

The revocation of a certificate took effect from such a date as the Governor in Council directed. The Governor might also order that the certificate be surrendered for cancellation.[4] He might direct that the wife and minor children (or any of them) of a person whose certificate had been revoked cease to be British subjects and any such person would thereupon become an alien. If such a direction was not given, the nationality of a wife and minor children remained unaffected by the revocation. In that case, the wife might within six months of the revocation of her husband's certificate make a declaration of alienage[5] and thereupon she and any of the minor children of her husband and herself

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1. Laws of Nigeria, 1948 ed, Cap.146 S.10(1).
2. ibid. S.10(2).
3. ibid. S.10(3).
4. ibid. S.10(4).
5. As to declaration of alienage, see Act of 1914 (Imperial) S.14, Act of 1943 (Imperial) S.7.

ceased to be British subjects.[1] A person naturalised under the Ordinance who, when in a foreign state and under no disability, became naturalised therein, was deemed to have ceased to be naturalised in the Colony of Nigeria.[2]

The Act of 1914 was repealed by the British Nationality Act 1948 which introduced a scheme of citizenship into British nationality law. The status of a British subject (or Commonwealth citizen) is derived from any of the citizenships created by the independent countries of the Commonwealth.[3] It is therefore no longer possible for aliens to become British subjects directly by naturalisation. The effect of a naturalisation in Nigeria after 1948 was to confer on the alien the citizenship of the United Kingdom and Colonies. The Act of 1948 did not therefore preserve the powers of colonial legislatures to confer naturalisation having merely a local effect.[4]

Under this new scheme, the Ordinance which provided for the grant and revocation of certificates of naturalisation which were merely effective within the Colony of Nigeria became obsolete.[5]

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1. Laws of Nigeria, 1948 ed, Cap.146 S.11.
2. ibid. S.14 (added by Ordinance No.11 of 1928)
3. See Act of 1948 (Imperial) S.1(1),(2).
4. See Act of 1914 (Imperial) S.26(2).
5. The Ordinance has now been repealed by Nigerian Citizenship Act 1960 (No.43 of 1960) S.19.

It was superseded by the provisions of the British Nationality Act 1948 relating to naturalisation of aliens[1] and the deprivation of citizenship.[2] Persons who were naturalised in the Colony of Nigeria prior to January 1, 1949, became on that day citizens of the United Kingdom and Colonies.[3]

C. THE DECLINE OF THE COMMON CODE

The Act of 1914 and the corresponding enactments in other parts of the British Empire provided a common code which gave all subjects of His Majesty irrespective of the parts of the Empire to which they belonged the status of British subjects. Although Parts I and III of the Act were intended to apply as law throughout the Dominions proprio vigore, the Dominions proceeded to re-enact the whole Act instead of adopting only Part II of it. This method did not produce the uniformity intended for the common code especially as the enactments in the several dominions came into force on different

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1. Act of 1948 (Imperial) s.10 and Second Schedule.

2. ibid. ss.20-22; The Governor was empowered by s.29(3) to make rules for the procedure to be followed in referring deprivation matters to a committee of inquiry. See the Nigeria Deprivation of Citizenship Rules, Laws of the Federation of Nigeria and Lagos, 1958 ed., Vol. XI, p.78.

3. Act of 1948 (Imperial) ss.12(1)(b), 32(6).

dates. This lack of uniformity signalled the decline of the common code. There was also a desire in the Dominions for rules which would determine the part of the Commonwealth with which a particular person had a close connection, especially in such matters as immigration, deportation, diplomatic action, extraterritorial legislation and treaty rights and obligations. Such a desire brought into common use the terms "national", "nationhood" and "nationality" in connection with members of the Commonwealth.[1] Canada in 1921 enacted the Canadian Nationals Act which was the forerunner of her independent nationality legislation in 1946. The Union of South Africa followed in 1927 with the Union Nationality and Flags Act. The Conference on the Operation of Dominion Legislation of 1929 noted the constitutional development of the communities now forming the British Commonwealth and went on record as fully recognising that "the common status is in no way inconsistent with the recognition within or without the Commonwealth of distinct nationality possessed by the nationals of the individual states of the British Commonwealth".[2] The recommendations of the Conference were endorsed by the Imperial Conference of 1930.[3] The Imperial

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1. Report of the Conference in the Operation of Dominion Legislation, etc., Cmd.3479 (1930) para. 73.

2. ibid. para.78.

3. Imperial Conference 1930, Summary of Proceedings, Cmd.3717 (1930), 21-22.

Conference of 1937 came to the conclusion that it was for each Member of the British Commonwealth to decide which persons have with it a definite connection, though it was desirable to secure as far as possible uniformity in this determination by the members.[1]

After the Second World War the enactment by Canada of a Citizenship Act in 1946 completely shattered the "common code". This led to a conference of Experts from the Commonwealth countries in London in 1947. They agreed on new nationality legislation which on the whole followed a general scheme but had important local variations. The United Kingdom was the first to legislate under this new scheme, whose objects were set out in the official summary of the British Bill as follows:

> "A scheme... which.... has the advantage of giving a clear recognition to the separate identity of particular countries of the Commonwealth, of clarifying the position with regard to diplomatic protection, and of enabling a Government when making treaties with other countries to define with precision who are the persons belonging to its country and on whose behalf it is negotiating.... The essential features.... are that each of the countries shall by its legislation determine who are its citizens shall declare these citizens to be British subjects, and shall recognize as British subjects the citizens of other countries. For this last purpose there is need of 'a common clause' of which the substantial effect shall be the same in each country, to ensure that all persons recognized as British subjects in any part of the Commonwealth shall be so recognized throughout the Commonwealth."[2]

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1. Imperial Conference 1937, Summary of Proceedings, Cmd.5482 (1937), 25-26.

2. Cmd.7326.

The Bill eventually became the British Nationality Act 1948[1] which placed the whole law of British nationality on a statutory basis. The Act of 1948 made extensive repeals which included the British Nationality and Status of Aliens Act 1914-43.[2]

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1. 11 & 12 Geo.6 c.56.

2. The British Nationality and Status of Aliens Act 1914 ss.17, 18 which conferred important privileges on aliens were however saved but amended by deleting the words "natural-born" wherever they occur in those sections; see Act of 1948, Fourth Schedule, Pt.II.

Chapter Four

BRITISH NATIONALITY LAW IN NIGERIA - II

THE BRITISH NATIONALITY ACT 1948

The British Nationality Act 1948[1] came into operation on January 1, 1949 and was the first of a series of a scheme of legislation. Under this scheme, each Commonwealth country (the United Kingdom and Colonies being regarded as one country) was to create a new statutory concept of citizenship, select the classes of persons upon which it desires to confer citizenship and make permanent provision for its future acquisition. There was to be a reciprocal recognition of the citizenships thus created. Such citizenship would entitle the holder to the common status of British subject, a term synonymous with "Commonwealth citizen."[2]

Part I of the Act contained a definition of the common status and a provision for the limitation of criminal jurisdiction for extra-territorial offences over citizens of another Commonwealth country and of the Republic of Ireland who were not citizens of the United Kingdom and Colonies. These details have become a marked feature of Commonwealth citizenship legislation. There was also a transitional provision which enabled citizens of the Republic of Ireland to remain, by claim, British subjects. Finally it provided that British protected persons were not to be regarded as aliens for the purpose of the Aliens Restriction Acts 1914 and 1919.

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1. 11 & 12 Geo. 6 c.56
2. Act of 1948 s.1 (2)

Part II contained the definitive and transitional rules relating to the acquisition of citizenship of the United Kingdom and Colonies. There were also provision relating to the loss of citizenship. This part must however be read in conjunction with the supplemental provisions of Part III and the schedules to the Act.

It will be noted that although the concept of allegiance, on which the common law rules of nationality were based, was retained in the British Nationality and Status of Aliens Acts 1914-43, it was discarded in the British Nationality Act 1948. The purpose of retaining allegiance in the Acts of 1914-43 for the definition of a British subject was to exclude from that status persons born within Her Majesty's dominions who were the children of foreign sovereigns, diplomatic envoys and enemy aliens. This exclusion was achieved in the Act of 1948 by specifying such persons as exceptions to the general rule.[1] The status of a British subject could be acquired by virtue of the acquisition of the local citizenship which had no reference to allegiance. Allegiance became the consequence and not the source of the acquisition of British nationality.

The British Nationality Act 1948 together with the similarly-entitled Act of 1958[2] still forms the basis of the law of the United Kingdom and Colonies. These Acts[3] were applicable to the Federation

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1. See ibid s.4 provisos (a) and (b).
2. 6 & 7 Eliz. 2 c.10
3. For texts of the Acts, see Laws of the Federation & Lagos, 1958 ed., Vol XI pp.32, 63.

of Nigeria until September 30, 1960, after which date the Federation became an independent member of the Commonwealth. The Colony of Nigeria was included in the designation "United Kingdom and Colonies." The local application of the Act of 1948 was reinforced by the British Nationality (Offences and Fees) Ordinance[1] which made provisions for the imposition of penalties for offences. Section 2 of the Ordinance reproduced substantially the provisions of section 28 of the Act relating to offences. It also empowered the Governor in Council to make regulations for the imposition and recovery of fees under the Imperial Act, the implementation of which produced the British Nationality (Fees) Regulations.[2] The Act also delegated certain functions of the Secretary of State to the Governor of Nigeria.[3] The British Nationality Act 1958 amended the Act of 1948 in certain respects and provided for the loss of citizenship of the United Kingdom and Colonies or British protected status by certain persons who became citizens of Ghana.[4]

On the establishment of a Federation in 1954 with three regions, the Southern Cameroons and a Federal territory[5], there was a division of legislative powers between the Federal and Regional legislatures.[6] Matters over which the Federal legislature

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1. Ord. 22 of 1949; Laws of the Federation & Lagos, 1958 ed., Cap 25 now repealed by the Nigerian Citizenship Act, No. 43 of 1960, s.19.
2. Laws of Federation & Lagos, 1958 ed, Vol. VII, Cap. 25.
3. See Act of 1948 (Imperial) ss. 8 (1), 22.
4. Act of 1958 s.2.
5. Nigeria (Constitution) O-in-C 1954, S.I.1954, No. 1146, s.3.
6. For the Legislative Lists, see ibid, First Sch.

alone was competent to legislate were placed in the Exclusive Legislative List which included the following.[1]

Item 2. Aliens, including naturalisation of aliens.

Item 10. Citizenship of Nigeria.

The List was later amended by the deletion, interalia, of items 2 and 10 and the substitution therefor of items 25A "Nationality, including naturalisation of aliens and citizenship of Nigeria"[2]. All existing laws relating to matters under item 25A were regarded as laws of the Federal legislature[3] and therefore all the functions under the British Nationality Act of 1948 exercised by the Governor of Nigeria prior to October 1, 1954 were exercisable by the Governor-General of the Federation as from that date.

The establishment of the Federation did not affect the application of the rules in the Act of 1948. The division of the country into a Colony, Protecto-rate and trust territory still continued to apply in relation to the nationality laws. A person born after 1954 in that part of the Western Region which is included in the Colony[4] was regarded as a citizen of the United Kingdom and Colonies by birth and a person born in other parts of that Region was not such a citizen.

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1. ibid, Pt. I.
2. See Nigeria (Constitution) (Amn. No.2) O-in-C. 1957, S.I. 1957, No. 1530, s.50.
3. Nigeria (Constitution) O-in-C. 1954 s.57
4. See ibid s.2 (1) s.v. "Colony."

A. TRANSITIONAL PROVISIONS OF THE ACT.

The Act created a citizenship of the United Kingdom and Colonies and contained elaborate transitional provisions applying to persons who were or were deemed British subjects immediately before its commencement. Persons who were or were deemed British subjects on December 31, 1948 by virtue of their connection with the Colony of Nigeria became on January 1, 1949 citizens of the United Kingdom and Colonies.

The Act provided that any person who was a British subject prior to the commencement of the Act (i.e. January 1, 1949) became a citizen of the United Kingdom and Colonies on that date if he possessed any of the following qualifications:-

(a) Birth within the territories comprised in the United Kingdom and Colonies and if he would have been a citizen in virtue of section four of the Act had he been born after 1948.[1]

(b) if he was naturalised in the United Kingdom and Colonies.[2]

(c) if he became a British subject by the annexation of any territory included in the United Kingdom, and Colonies.[3]

Section 12 subsections(2) and (3) of the Act dealt with specific classes of persons who would have been citizens had the Act been in

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1. s. 12 (1) (a)

2. s. 12 (1) (b); s.32 (1) defined a "person naturalised in the United Kingdom and Colonies". S.32 (6) converted local naturalisation into "Imperial" naturalisation.

3. s. 12 (1) (c)

operation at an earlier date. Subsection (4) dealt with persons who were British subjects before 1949 and did not fall within any of the earlier subsections. It conferred citizenship of the United Kingdom and Colonies on such persons in cases where they were neither citizen nor potential citizens of any other country of the Commonwealth.[1] Citizenship of the Republic of Ireland would also exclude a person from the provisions of this subsection.

Section 12 subsections (5), (6) and (8) dealt with particular cases. Subsection (5) conferred citizenship on women (not otherwise qualified for citizenship) who before 1949 were married to persons who became, or but for their deaths, would have become citizens by virtue of the section. This was necessary as a woman who became a British subject before 1949 by reason only of marriage would not acquire citizenship under the provisions of section 12 sub-section (1), (2) or (3).

Subsection 6 created an exception to the rule that a citizen or potential citizen of another Commonwealth country, should not acquire citizenship of the United Kingdom and Colonies under the transitional provisions of the Act. It enabled such persons by reason of a close connection with the United Kingdom and Colonies to apply[2] to the Secretary of State to be registered with their infant children as citizens of the United Kingdom and Colonies. In addition to showing

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1. s. 32 (7) defined a potential citizen of a Commonwealth country.

2. The time limitation for applications contained in s.12 (6) was deleted by s. 3(1) (a) of the British Nationality Act 1958, But see infra p. 87-88.

an intention to reside in the United Kingdom and Colonies, an applicant must show that he is descended in the male line from a person born or naturalised in the United Kingdom and Colonies or who became a British subject by annexation of territory. This subsection was amended by the British Nationality Act 1958. The amendment extended the period within which an application for registration might be lodged to the end of 1962[1] and provided alternative qualifications[2] for a person applying for registration. These were that:

(i) the applicant was born or was descended from a male ancestor born in the Republic of Ireland, or

(ii) he became, or was descended from a male ancestor who became imperially naturalised in Canada, Australia, New Zealand, South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon, or

(iii) having been before 1949 or thereafter become by operation of law a citizen of any of the aforementioned countries, he had lost that citizenship otherwise than by his own act done for the purpose and had thereby ceased to be a British subject.

Where an application was based on the last alternative ground, it could be made at any time and the applicant need not show that he intended to make his ordinary place of residence within the United Kingdom

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1. British Nationality Act 1958 s.3 (1) (a)

2. ibid. s.3(1) (b)

and Colonies. Application made under any of the other grounds must be made before the end of 1962.

Section 12 subsection (8) of the Act of 1948 provided that persons acquiring citizenship under subsection (2) (4) or (6) of Section 12 were deemed to be citizens by descent for the purposes of section 5 subsection (1). Such persons could not therefore transmit their citizenship to their foreign-born children unless the provision of the Act relating to the acquisition of citizenship by descent were complied with.

It was the general intent of the Act that no person who was prior to 1949 a British subject should lose that status as a result of the changes made by the Act. Irish citizens who prior to 1949 had the status of British subject and did not otherwise retain that status (i.e. in virtue of the acquisition of citizenship of any Commonwealth country) were given the right at any time to make a claim to remain a British subject.[1]

Persons who were potentially citizens of a Commonwealth country did not acquire automatically the citizenship of the United Kingdom and Colonies. When they acquired citizenship of a Commonwealth country, they enjoyed the common status of "British subject" by virtue of their local citizenship. The fate of a potential citizen could not be known until all the Commonwealth countries with which he was closely connected have enacted

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1. Act of 1948 s.2.

citizenship legislation. If he then failed to become a citizen of any of the Commonwealth countries with which he was connected, he became a citizen of the United Kingdom and Colonies. Pending this determination, a potential citizen of a Commonwealth country was given the status of a British subject without citizenship.[1]
In virtue of the definition of a potential citizen of a Commonwealth country contained in the Act,[2] the class of British subjects without citizenship would include

(i) persons who, or whose nearest male ancestors who acquired British nationality otherwise than by reason of parentage, acquired that status by birth, or naturalisation within or by reason of annexation of territory included in, any Commonwealth country without a citizenship law on January 1, 1949 and

(ii) a woman (other than one enjoying in her own right the citizenship of a Commonwealth country or of the Republic of Ireland) who had been married to a person who was, or would but for his death have become, a British subject without citizenship on January 1, 1949.

Certain persons who were not British subjects immediately before January 1, 1949 but were deemed to be such by virtue of the provisions of the Act[3] may become British subjects without citizenship. The class was extended

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1. Act of 1948 s.13.
2. See ibid. s.32 (7)
3. ibid. s.s.14, 16, 23.

to include certain persons whose Irish citizenship was involuntary.[1]

Appropriate rules[2] were laid down in relation to British subjects without citizenship. In general the law in force on December 31, 1948 continued to apply to them with the following exceptions:

1. The rule that a British subject by marrying an alien woman conferred British nationality on her did not apply to a British subject without citizenship who married during the period he possessed such a status.
2. The rule that a British subject who became naturalised in a foreign state thereby ceased to be a British subject did not apply.
3. A woman, who was a British subject without citizenship, did not cease to be a British subject on her marriage to an alien.
4. The rule that the child of a British subject was also a British subject did not apply. Such a child would automatically have acquired citizenship of the United Kingdom and Colonies if and when his father became, or would but for his death had become, such a citizen, unless the child had previously become a citizen of another Commonwealth country. A male child who thus became a citizen of the United Kingdom and Colonies was deemed to be a citizen by descent for the purposes of section 5 (1) of the Act.

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1. Ireland Act 1949, s.5.
2. Act of 1948, Third Schedule.

A person may cease to be a British subject without citizenship before his status as a member of that class was extinguished by operation of law. This was so if he became a citizen of the United Kingdom and Colonies, or of a Commonwealth country or of the Republic of Ireland or an alien by any means other than by the operation of law. A British subject without citizenship was treated as a citizen of a Commonwealth country for the purposes of an application for registration as a citizen of the United Kingdom and Colonies under section 6 to 9 of the Act.

There were certain classes of persons who were not British subjects on December 31, 1948 but were deemed by the Act, for the purposes of its transitional provisions, to have been British subjects on that date. These classes were:-

1. Persons who were naturalized locally in territories which were colonies or protectorates on January 1, 1949 and continued to enjoy the privileges of naturalization within the territory on that date[1]. Such persons were placed in the same position as persons naturalised in the United Kingdom, who became citizens of the United Kingdom and Colonies on January 1,1949.
2. Women married before 1949 who ceased on or during the continuance of the marriage to be a British subject.[2]
3. Persons whose nationality depended upon their births having been registered at a consulate of Her Majesty and who ceased to be a British subject by failure to make a declaration of

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1. Act of 1948 s.32 (6); This excluded a territory such a Burma which became independent on January 4. 1948. Cf. the decision of Vaisey J. in Bulmer v. Att-Gen. [1955] 2 All E.R. 718
2. Act of 1948 s. 14

of retention at the age of 21 (as provided under the Acts of 1922 and 1943).[1]

In the case of a woman who had lost her British nationality by failure to make such a declaration of retention and would have lost it in any event by her subsequent marriage to an alien, such marriage was disregarded and she was deemed to be a British subject.[2]

4. Persons who would have become British subjects had their births been registered at a consulate of Her Majesty and whose births were in fact so registered after 1948.[3]

5. Persons born abroad out of wedlock who had become legitimated by the subsequent marriage of their parents before January 1, 1949 and would have been British subjects if born legitimate.[4]

The Act contained a provision relating to persons who ceased before 1949 to be British subjects during infancy by reason of the loss of British nationality by their parents.[5] This class arose as a result of the operation of section 12 of the Act of 1914. It did not apply to persons

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1. ibid. s.15, The Act dispensed with the necessity for a declaration of retention, see s.5 (1) proviso (b). For the former position see The British Nationality and Status of Aliens Act 1914, as amended by the Act of 1922 s.1 (1) (b) (v), and second proviso, Act of 1943 ss.1 (2), 6.

2. Act of 1948 s.15 (2).

3. ibid s.17

4. ibid s.23; see further infra p.111.For the difficulties of interpreting s.23, see Parry, Nationality and Citizenship Laws of the Commonwealth etc. I (1957) 332, 333.

5. See Act of 1948 s.16

who lost British nationality during infancy upon the revocation of a certificate of naturalisation. The marriage of a woman to an alien which would cause her to lose her British nationality was disregarded in the application of this section. Any person in this class who made a declaration[1] within a year of the commencement of the Act of 1948 or of his attaining the age of 21 became, on registration of the declaration, a citizen of the United Kingdom and Colonies or a British subject without citizenship as the case may be.[2]

Lastly, section 18 treated applications for naturalisation pending at the commencement of the Act as applications for certificates of naturalisation or for the registration of minor children[3] under the Act. If a certificate of naturalisation had already been granted before January 1, 1949 but the applicant took the oath of allegiance after the commencement of the Act, he was deemed to be naturalised on December 31, 1948.

B. THE PERMANENT PROVISIONS

B1 Acquisition of Citizenship

The Act provides five modes of acquiring citizenship of the United Kingdom and Colonies. These are (i) By birth (ii) by descent (iii) by registration (iv) by naturalisation and (v) by incorporation of territory.

Citizenship by birth

Every person, whether legitimate or illegitimate, born on or after January 1, 1949 in the United Kingdom and Colonies, of whatever

1. As prescribed by the British Nationality Regulations, 1948, reg. 1 and Fifth Sch.
2. Act of 1948 s.16 (2)
3. A minor child cannot be naturalised under the Act, see ibid s.10 (1)

parentage, became a citizen of the United Kingdom and Colonies by birth.[1] This was the same principle of the jus soli which formerly governed the acquisition of the status of a British subject. Prior to 1949 every person born within the dominions and allegiance of the Crown was a British subject by birth. After 1948 a person becomes a citizen of the United Kingdom and Colonies if he were born within the dominions of the Crown comprised in the United Kingdom and Colonies.[2] By virtue of his citizenship of the United Kingdom and Colonies, such person was also a British subject (or Commonwealth citizen). Persons born within the Colony of Nigeria became citizens of the United Kingdom and Colonies by virtue of this provision.

There were two exceptions to this general rule. The first is that a person whose father possessed at the time of that person's birth such immunity from suit and legal process[3] as is accorded to the envoy of a foreign sovereign and whose father is not a citizen of the United Kingdom and Colonies. The second exception related to those persons whose fathers were enemy aliens at the time of the birth:

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1. Act of 1948 s.4.

2. The colonies comprised those territories which were colonies on January 1, 1949 and which after that date were colonies at the time of a person's birth. These included the Channel Islands and the Isle of Man but did not include any self-governing country of the Commonwealth, protectorates, protected states, mandated and trust territories; see ibid s.s. 32 (1), 33(1)

3. Those entitled to such immunity are foreign heads of states, foreign ambassadors and others whose names are on the Diplomatic List; officials of international organisations designated in Orders made under the Diplomatic Privileges (Extension) Ord., Cap.53, Laws of the Fed. & Lagos, 1958 ed, the High Commissioners of Commonwealth countries, the Ambassador of the Republic of Ireland, their official and domestic staff and families; Diplomatic Immunities and Privileges (Commonwealth Countries and Republic of Ireland) Ord., ibid Cap. 52.

and the birth of such persons occurred in a place then under enemy occupation. Thus a child, legitimate or illegitimate, whose father was not an enemy alien at the time of his birth, and who was born in a place within the Colony of Nigeria under enemy occupation became a citizen of the United Kingdom and Colonies. An illegitimate child of an enemy alien born in a similar place is also a citizen of the United Kingdom and Colonies. But if such an illegitimate child were legitimated per subsequens matrimonium, he will thereafter be deemed not to be a citizen of the United Kingdom and Colonies.[1]

The Act contained a special provision for persons born aboard ships or aircraft. It provided that a person born aboard a registered ship of aircraft, or aboard an unregistered ship or aircraft of the government of any country was deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.[2] The case of a birth on an unregistered private merchant vessel or aircraft was not dealt with. In such a situation, the national status of a person born aboard such a vessel or aircraft would have depended on its location at the time of the birth.

Citizenship by birth and citizenship by descent are both acquired at birth. Citizenship by birth denoted that citizenship which is acquired by one born with-in the territorial limits of the United Kingdom and Colonies. It differred from citizenship by descent as it was always transmissable to the first foreign-born generation.

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1. See Act of 1948 s.23.

2. ibid. s.32 (5)

Citizenship by descent.

A person born on or after January 1, 1949 acquired citizenship of the United Kingdom and Colonies by descent if his father[1] at the time of the person's birth was a citizen of the United Kingdom and Colonies[2] A person born abroad became a citizen by descent automatically if his father was, at the time of the birth, a citizen of the United Kingdom and Colonies by birth, by registration, naturalisation or by incorporation of territory. If the father was, or was deemed,[3] a citizen by descent at the time of the birth, then his child born abroad would not acquire citizenship automatically but he may become a citizen by descent on certain conditions.[4] These conditions are

(a) that the child or his father was born in a protectorate, protected state, mandated territory or trust territory or any place in a foreign country[5] where by treaty, capitulation, grant, usage, sufferance, or other lawful means, Her Majesty then had jurisdiction over British subjects.

(b) that the child was born in a place in a foreign country[5] other than one in which Her Majesty exercised jurisdiction such as referred to in (a) above, and his birth was registered

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1. i.e. father of a legitimate child; see Act of 1948 s.32 (2); As to legitimated children; see ibid. s.23

2. Act of 1948 s.5.

3. Persons acquiring citizenship of the United Kingdom and Colonies by virtue of the transitional provisions of ibid ss. 12(2), 12(4), 12 (6), 13(3) and Third Schedule para 3 are deemed to be citizens by descent for this purpose.

4. ibid. s. 5(1) proviso.

5. For definition, see ibid. s.32 (1)

at a United Kingdom consulate[1] within one year of its occurrence, or, with the permission of the Secretary of State later.

(c) that the child's father was at the time of the child's birth in Crown Service under Her Majesty's government in the United Kingdom.[2]

(d) that the child was born in any Commonwealth country mentioned in section 1 (3) of the Act in which a citizenship law[3] has then taken effect, under which he did not become a citizen thereof on birth.

Under these conditions persons born in a foreign country would need to register their births to acquire citizenship by descent. If the Secretary of State so directed, a birth was deemed to be registered with his permission notwithstanding that such permission was not obtained before registration.[4] Persons born in a place mentioned in (a) above did not need to register their births to acquire citizenship.

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1. For definition, see ibid. s. 32 (1) and Registration of Births and Deaths (Consular Officers) Regulations 1948.

2. Included service under the Government of Northern Ireland, or of any colony, protectorate, protected state, or any U.K. trust territory, whether such service is in any part of Her Majesty's dominions or elsewhere. Act of 1948 s.s.32(1), 27 (4)

3. For definition, see ibid. s.32 (8)

4. See ibid s.5 (2)

Citizenship by registration.

This method of acquiring citizenship had no parallel under the old law. The functions and discretionary powers of the Secretary of State were exercisable by the Governor-General of the Federation. Citizenship by registration was obtainable by residence only within the United Kingdom, a colony, a protectorate or a United Kingdom trust territory. Residence in another Commonwealth country, the Republic of Ireland, a protected state or a Commonwealth trust territory would not suffice.[1] The Secretary of State was also empowered by the Act to make arrangements for the entertainment of applications for registration within the other Commonwealth countries by the High Commissioner for the Government of the United Kingdom.[2]

This method of acquisition of citizenship applied to citizens of any Commonwealth country or of the Republic of Ireland, wives and minor children of citizens of the United Kingdom and Colonies. Under the Act, citizens of a Commonwealth country or of the Republic of Ireland, of full age and capacity[3] were entitled to be registered as citizens of the United Kingdom and Colonies if they were (i) ordinarily resident[4] in the Federation and have been so resident for twelve months (or such shorter period as the Governor-General allowed) immediately preceding the application or (ii) if they were in Crown service under Her Majesty's government of the Uni ed

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1. Act of 1948 s.8 (1)
2. ibid. s. 8 (2); Act of 1958 s.3 (2)
3. For definition see Act of 1948 s.32 (9), (10).
4. The Act does not define this expression; see Gout v. Cimitian [1922] 1 A.C.105

Kingdom.[1]

The British Nationality Act 1958 provided an alternative qualification for registration by citizens of a Commonwealth country or of the Republic of Ireland.[2] Such a person could seek registration if he was serving either under an international organisation of which Her Majesty's government in the United Kingdom[3] was a member or he was in the employment of a society, company, or body of persons established in the United Kingdom (or any colony, protectorate or United Kingdom trust territory). Registration[4] on this alternative ground was discretionary and the Governor-General must deem it fit that the person concerned should be registered by reason of his close connection with the United Kingdom and Colonies. He must also show that he would have been entitled to be registered if the period of his service had been a period of ordinary residence in the United Kingdom.

A woman who was married to a citizen of the United Kingdom and Colonies was also entitled to registration[5] as a citizen of the United

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1. Act of 1948 s.6 (1) read in conjunction with ibid s. 8 (1). For definition of Crown service under H.M's government in the U.K., see s.32 (1). As to evidence of Crown service, see s.27 (4). The provisions of s.6 (1) were amended after the Act of 1948 ceased to operate in Nigeria; see Commonwealth Immigrants Act 1962 (U.K.) s.12.
2. Act of 1958 s.3 (2)
3. For definition, see ibid. s.5 (3)
4. For the form of application, see the British Nationality Regulation 1958, regs. 3, 4, 5, and Sch. III, S.I. 1958 No. 655.
5. See British Nationality Regulations 1948, reg. 2. and Second Sch.

Kingdom and Colonies; but if she was a British protected person or an alien she had to take the oath of allegiance.[1] The Governor-General might[2] cause to be registered as a citizen of the United Kingdom and Colonies a minor child of a citizen of the United Kingdom and Colonies upon application by either parent or guardian of the child, or in special circumstances any minor child.[3]

A person who had renounced[4] or had been deprived[5] of citizenship of the United Kingdom and Colonies was not entitled to be registered as of right but he might[6] be registered with the approval of the Governor-General.[7]

Citizenship by registration took effect from the date of registration.[8]

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1. Act of 1948 s.6 (2) the form of the oath of allegiance is in the First Sch., see also Act of 1958 s. 2 (5) for women married to persons who cease to be citizens of the United Kingdom and Colonies.

2. See Act of 1948 s.26 for the absolute discretion of the Governor-General.

3. ibid. s.7

4. In accordance with ibid. s.19

5. Under any of the provisions of ibid. ss. 20-22.

6. See Act of 1948 s.26 for the absolute discretion of the Governor-General.

7. ibid. s.6 (3) read in conjunction with s. 8 (1)

8. ibid. s.9.

Citizenship by naturalisation.

An alien[1] or a British protected person[2] of full age and capacity[3] could acquire citizenship of the United Kingdom and Colonies by naturalisation.[4] A married woman was treated for this purpose as though she were a feme sole and thus eligible for naturalisation. Naturalisation could be obtained in the United Kingdom, any colony, protectorate[4A] or United Kingdom trust territory. The function of the Secretary of State were exercisable by a Governor in the case of naturalisation outside the United Kingdom.[5] The period of residence immediately preceding the application should be residence in the particular territory in which naturalisation was sought.[6]

An applicant for naturalisation might[7] be granted a certificate of naturalisation by the Governor-General if he satisfied the qualifications laid down in the Second Schedule to the Act. The Governor-General had to obtain the approval of the Secretary of State

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1. For definition, see ibid. s.32 (1)

2. For definition see ibid. s. 32 (1), also s.30 and the British Protectorates etc. Order 1949-60; also Act of 1958 s.1 (1), (3) for Northern Rhodesia and Nyasaland.

3. For definition, see Act of 1948 s.32 (9), (10). There is now no power to naturalise minors though they may become citizens by registration.

4. ibid s. 10 (1)

4A. This term includes New Hebrides and Brunei, British Protectorates etc. Orders 1949-60 s.8; see also S.I. 1958 No. 259.

5. Act of 1948 s.10 (2)

6. ibid. Second Sch. para.4.

7. As to the absolute discretion of the Governor-General, see ibid s.26

before granting a certificate.[1] A successful applicant had to take the oath of allegiance, otherwise the certificate was of no effect. Citizenship took effect from the date on which the certificate was granted.[2]

The qualifications for naturalisation laid down in the Second Schedule to the Act were as follows: In the case of an alien, the conditions were

(a) residence in the Federation or Crown service under Her Majesty's Government in the United Kingdom[3] or partly the one or partly the other, throughout the twelve months preceding the application and

(b) residence during the seven years immediately preceding the above period of twelve months for periods amounting in the aggregate to not less than four years in the United Kingdom, any colony, any protectorate[4], United Kingdom mandated or trust territory or have been in Crown service as aforesaid and

(c) good character

(d) sufficient knowledge of the English language and

(e) intention to reside in the United Kingdom, a colony

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1. ibid s.10 (2)

2. ibid s.10 (1). For the form of the oath, see ibid First Schedule.

3. For definition, see Act of 1948 s.32 (1); also Act of 1958 s.1 (3)

4. The term "protectorate" includes all protected states in the Second Schedule to the British Protectorates etc. Order 1949-60; see s.7 of the Order; see also Act of 1948 s.30(3). By s.30(2) of the Act and s.7 of the Order, the term also includes New Hebrides and Canton Island. See further Act of 1958 s.1 (1) (b), 1(3)-(5).

a protectorate, a United Kingdom trust territory or Anglo-Egyptian Sudan[1] or to enter into or continue in Crown service under the Government of the United Kingdom, the government of the Anglo-Egyptian Sudan[1] or service in an international organisation of which Her Majesty's government in the United Kingdom was a member[2] or service in the employment of a society, company or body of persons established in the United Kingdom or in any colony, protectorate or United Kingdom trust territory.

The Governor-General could relax these conditions in special circumstances and allow a continuous period of twelve months ending not more than six months before the date of the application, to be reckoned as if it had immediately preceded the application. He may also allow residence in any Commonwealth country or in the Republic of Ireland, or in any mandated or trust territory or in the Anglo-Egyptian Sudan[1] or in Burma (before January 4, 1948) to be reckoned in calculating the seven years period specified in (b) above. He could treat service under the government of any Commonwealth country, under the government of the Anglo-Egyptian Sudan[1] or service under the government of Burma, before January 4, 1948 as through it were service under Her Majesty's government in the United Kingdom. Periods of residence or service earlier than eight years could be

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1. Later became inapplicable.

2. For definition, see Act of 1958 s.5 (3)

taken into consideration in computing the aggregate period of four years specified in (b) above.

In the case of a British protected person the conditions were:[1]

(i) ordinary residence in the Federation and being so resident throughout a period of twelve months (or such shorter period as the Governor-General accepted in special circumstances) immediately preceding the application.

(ii) Crown service under Her Majesty's Government of the United Kingdom.[2]

and in addition he should possess the qualifications relating to aliens set out in (c) (d) and (e) above except that any other language in current use in the Federation was accepted in lieu of the English language.

Citizenship by incorporation of territory.

This provision for the acquisition of citizenship left the matter at the discretion of the Crown. If any territory became a part of the United Kingdom and Colonies, an Order-in-Council might specify the categories of persons who would become citizens of the United Kingdom and Colonies by reason of their connection with that territory. They would become citizens as from the date specified in the Order.

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1. Act of 1948, Second Schd. para 3. The provisions of this paragraph were amended after they ceased to operate in the Federation. See Commonwealth Immigrants Act 1962 (U.K.) s.s. 12(2), 20(2)

2. For definition, see Act of 1948 s.32 (1); also Act of 1958 s.1 (3)

This provision avoided many of the uncertainties of the common law with respect to the effect of a change of sovereignty on the nationality of the inhabitants. The Act did not provide for the effect of a transfer of territory from the United Kingdom and Colonies to another self-governing country of the Commonwealth.[1]

Citizenship by adoption.

This mode of acquiring citizenship was not dealt with in the Act of 1948. It is provided by Adoption Act 1958.[1A] When an adoption order is made in respect of an infant who is not a citizen of the United Kingdom and Colonies, if the adopter, or in the case of a joint adoption, the male adopter, is a citizen of the United Kingdom and Colonies, the infant becomes a citizen of the United Kingdom and Colonies as from the date of the order.[2] An adoption order includes an order authorising an adoption under any enactment in force in Northern Ireland.[3] The adoption of an infant citizen of the United Kingdom and Colonies by an alien does not cause that infant to lose his citizenship.

This mode of acquisition applies to the United Kingdom and had no application to the Federation of Nigeria.

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1. See further Parry, op. cit. 275, 1039. The Nigerian Independence Act 1960 deprived certain categories of persons becoming citizens of Nigeria of their citizenship of the United Kingdom and Colonies.

1A. As amended by the Adoption Act 1960 (Imperial)

2. Adoption Act 1958 s.19 (Imperial)

3. ibid. s.19 (2).

B.2. LOSS OF CITIZENSHIP

Renunciation and Deprivation.

The law before 1949 recognised a variety of circumstances which produced the loss of British nationality. Loss of British nationality would result from the voluntary naturalisation within a foreign state, by a declaration of alienage, by the marriage of a woman British subject to an alien. The introduction of the new concept of citizenship of the United Kingdom and Colonies required a revision of these modes in which citizenship could be lost. Naturalisation in a foreign state and the marriage of a woman British subject to an alien were considered not necessary to produce such a loss. After 1948, citizenship of the United Kingdom and Colonies was lost in one of two ways: either by renunciation or by deprivation.

By renunciation.

A citizen of the United Kingdom and Colonies of full age and capacity[1] who was also a citizen of any other Commonwealth country or of the Republic of Ireland or a national of a foreign country[2] may make a declaration of renunciation of his citizenship of the United Kingdom and Colonies in the prescribed manner.[3] Such a declaration was not effective unless and until it was registered.

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1. For definition, see s.32 (9)
2. For definition, see s.32 (1)
3. British Nationality Regulations 1948 reg. 11 and Sixth Schedule

Upon its registration the declarant ceased to be a citizen of the United Kingdom and Colonies. The Secretary of State might withhold registration of a declaration made by a national of a foreign country in time of war.[1] A married woman was regarded to be of full age for the purposes of making a declaration of renunciation.[2]

By deprivation

The functions of the Secretary of State relating to deprivation were exercisable by the Governor-General but he could not make an order depriving a person of his citizenship of the United Kingdom and Colonies without the approval of the Secretary of State.[3]

A person who was a citizen by registration or naturalisation might be deprived by Order of his citizenship of the United Kingdom and Colonies.[4] A citizen by registration[5] was subject to deprivation of citizenship if the registration was obtained by fraud, false representation or the concealment of a material fact.[6]

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1. Act of 1948 s. 19 (1); see the discussion on the Nigerian provision, infra p. 201 et seq.
2. ibid. s. 19 (2)
3. ibid. s. 22;
4. Act of 1948 s. 20 (1)
5. In virtue of ibid. ss. 6, 7, 8, or 12 (6)
6. ibid. s. 20 (2)

He could also be deprived of his citizenship on other grounds pertaining to naturalised persons if he belonged to that category of persons who acquired citizenship of the United Kingdom and Colonies by registration after being naturalised in another Commonwealth country or in the Republic of Ireland.[1]

Naturalised persons[2] could be deprived of their citizenship not only upon the grounds applicable to citizens by registration but also upon any of the following grounds.[3]

(a) disloyalty or disaffection towards the Crown.

(b) unlawful trading, communication with an enemy or assistance to an enemy by association in business.

(c) a sentence in any country to imprisonment for not less than twelve months within five years of being naturalised.

A person naturalised in the United Kingdom and Colonies[4] could also be deprived of his citizenship if he had resided in a foreign country[5] for a continuous period of seven years without having been at any (i)

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1. ibid. ss.6(1) and 32(1) s.v. "naturalised person."

2. For definition see ibid s.32(1). The certificate of naturalisation might have been granted in the U.K., a colony, a protectorate, mandated territory, U.K. trust territory, a Commonwealth country or the Republic of Ireland.

3. See ibid. s.20(3)

4. I.e. (i) a person naturalised under the Act in the U.K., a colony, protectorate or U.K. trust territory (but did not include an alien infant registered under s.7)(ii) a person naturalised in the U.K. under the Naturalisation Act 1870 or deemed to be so naturalised by reason of residence during infancy with a naturalised parent, ss.7, 10(5) of the Act of 1870; (iii) a person naturalised within the U.K. or colony under the Act of 1914 or included in a certificate granted to his parents (iv) a person who immediately before 1949 enjoyed the privileges of naturalisation within a colony and protectorate; s.32(6) of the Act of 1948.

5. For definition, see Act of 1948 s.32(1)

time in the service of the Crown or of an international organisation of which the government of any part of Her Majesty's dominion was a member or (ii) having registered annually his intention to retain his citizenship at a United Kingdom consulate.[1]

The Secretary of State and the Governor-General have absolute discretion in the exercise of their functions.[2] They must not, however, exercise their powers of deprivation unless they were satisfied that it was not conducive to the public good that the citizen should continue to retain his citizenship.[3] There were provisions giving the citizen concerned an opportunity to be heard. Before an order was made, the person concerned must be given a notice in writing informing him of the grounds on which the deprivation was proposed to be made and of his right to an inquiry in certain cases.[4] The Governor-General was bound to institute an inquiry if the person concerned demanded it, except in the case of a person naturalised in the United Kingdom and Colonies being deprived of his citizenship on the ground of continuous absence in foreign countries. In the absence of a demand, the Governor-General could refer the matter to a committee of inquiry.[5] The Governor-General was empowered to make rules for

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1. ibid. s. 20(4)
2. ibid. s. 26
3. ibid. s. 20(5)
4. ibid. s. 20(6)
5. ibid. s. 20(7)

referring such matters to a committee of in-quiry[1] and accordingly the Nigeria Deprivation of Citizenship Rules 1951 were made.[2]

A naturalised person[3] who was a citizen of another Commonwealth country or the Republic of Ireland and who had been deprived of his citizenship in that Commonwealth country or in the Republic of Ireland on any ground which in the opinion of the Governor-General was substantially similar to those in force in the United Kingdom and Colonies could be deprived of his citizenship of the United Kingdom and Colonies if the Governor-General was satisfied that it was not conducive to the public good that he should continue to retain it.[4] The person concerned was to be notified in writing of the grounds on which it was proposed to make the order of deprivation and the Governor-General might refer the matter to a committee of inquiry.[5]

The citizenship of wives and children of persons deprived of their citizenship remained unaffected.

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1. ibid. s. 29(3)

2. See Laws of the Federation & Lagos, 1958 ed. Vol XI p. 78; c.f. British Nationality Regulations 1948 regs. 12-14 and the Deprivation of Citizenship Rules (U.K.) 1950.

3. For definition, see Act of 1948 s.32(1). Such a person could have obtained citizenship of the United Kingdom and Colonies by registration.

4. ibid. s. 21(1)

5. ibid. s. 21(2); see also the Nigeria Deprivation of Citizenship Rules 1951.

C. MISCELLANEOUS PROVISIONS OF THE ACT

Prior to 1949 legitimation had no effect upon nationality. The Act of 1948 contained a provision[1] which treated legitimated children as legitimate ones for its purposes. The provision only provided for legitimation by subsequent marriage but its consequence attached to both kinds of such legitimation viz that at common law and that under the Legitimacy Ordinance.[2] Where e.g. a citizen of the United Kingdom and Colonies who is the fatherof an illegitimate child marries the mother of his child while domiciled in Italy, the child would from the date of the marriage become a citizen of the United Kingdom and Colonies by descent.[3] This provision was not only relevant with respect to the definitive provisions of the Act but also to its transitional provisions. It was applicable in determining whether a person was a British subject prior to 1949 for the purposes of the transitional provisions. Thus an illegitimate child born in a foreign country of a British subject himself born in Lagos and legitimated by the subsequent marriage of its parents before 1949 was regarded as from the commencement of the Act to be a British subject immediately before that date and therefore became on that date a citizen of the United Kingdom and Colonies.

1, Act of 1948 s.23

2. Laws of the Federation & Lagos, 1958 ed, Cap. 103.

3. Act of 1948 s.5 (1). Cf Abraham v. Att-Gen. [1934] P.17

In the application of rules contained in British statutes of nationality in Nigeria, the English concept of legitimacy as embodied in the Legitimacy Ordinance would be supplemented by rules of native law and custom on that subject.[1] Under certain customary laws, legitimacy is not confined to children born in wedlock.[2] The decision in Abraham v. Attorney-General[3] would only have applied in the Nigerian context if the child was illegitimate at birth both under the general law and the relevant customary law. Section 23 of the Act which assimilated legitimated children to the status of legitimate children applied to children legitimated under the general law as well as those legitimated under customary laws.

Section 24 of the Act provided that a posthumous child was to be deemed to have been born in his father's lifetime. This rule was first introduced with retrospective effect by the Act of 1943[4]. In regard to a child born after January 1, 1949 of

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1. See Coleman v. Shang [1961] A.C. 481, 494. P.C., Hawji v. The Queen [1957] A.C. 126. For the status theory of legitimacy, see Re Goodman's Trust (1881) 17 Ch.D. 266; Bamgbose v. Daniel [1954] 3 A.E.R. 263; Alake v. Pratt 15 W.A.C.A. 20.

2. Lawal v. Younan & Sons (1961) 1 All N.L.R. 245, 250 per Ademola F.C.J., see further infra p. 241 et seq.

3. [1934] P.17.

4. See its s.3.

a father dying before that date, that child was treated as if his father survived that date.

Section 25 gave the Secretary of State a discretion to certify that a person on whose citizenship a doubt existed whether on a question of fact or of law was a citizen, of the United Kingdom and Colonies. The certificate was conclusive in the absence of fraud, false representation or concealment of any material fact. It could only have been issued on the application of the person concerned.

Section 27 provided for the evidential value of documents granted or made under the Act or the British Nationality and Status of Aliens Acts 1914-43 and any Acts repealed by them. Section 28 dealt with Offences and their punishment.

D. BRITISH PROTECTED PERSONS

British nationality legislation before 1949 applied mainly to the United Kingdom, the Dominions and Colonies. It had no application to the Protectorates or to the other territories not regarded as being within Her Majesty's dominions. One of the failures of the British Nationality and Status Of Aliens Acts 1914-43 was that while they enacted rules governing the status of a British subject, they failed to recognise and define the status of certain persons who were not British subjects[1] but who for the purposes of international law were regarded as British nationals and enjoyed British protection. Such persons, loosely termed British protected persons, included persons naturalised in the colonies, persons belonging to protectorates, protected states and mandated and

1. See The King v. Campbell ex parte Moussa [1921] 2K.B. 473, R v. Ketter [1940] 1.K.B. 787.

trust territories. Before 1949, the status of a British protected person was largely undefined and was generally regulated by the prerogative. But in certain protected states[1] and mandated territories[2] there was already in existence a concept of local citizenship or nationality to determine persons belonging to such territories. As regards the protectorates and mandated territories under United Kingdom administration in Africa certain rules were laid down by the British Protected Persons Orders 1934-1944[3] to determine the persons who were considered British protected person by virtue of their connection with those territories.

There were, in addition, other classes of persons who enjoyed British protection abroad and whose number is rapidly diminishing. The practice arose in the past for certain European pbwers, including the United Kingdom, to extend the privilege of subjects to persons who were not their subjects residing in independent Oriental states. At first this practice of making protégés within independent Eastern countries was freely exercised and extended to a large variety of persons, but it was largely curtailed during the late nineteenth century.[4]

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1. e.g. Tonga, Kuwait and more recently Zanzibar, Bahrain.

2. e.g. see the Palestinian Citizenship Orders 1925-1942.

3. S.R. & O. 1934, No. 499; S.R. & O. 1944 No. 1128. These Orders were revoked by S.I. 1949 No. 131.

4. See Hall, Foreign Jurisdiction of the British Crown (1894) 136-142; also Parry, op cit. 89-91

These protégés enjoyed the protection of the British Crown and were under its capitulatory jurisdiction. There were also persons who had been naturalised in a Dominion, India or a colony. Such local naturalisation conferred on the person the status of British subject only within the limits of the particular territory and not elsewhere.[1] If such a naturalised person were to travel abroad he could not be described in his passport as a British subject but would be treated as a British protected person.[2]

The British Nationality Act 1948 for the first time provided a statutory definition of "British protected person." The Act defines him as"a person who is a member of a class of persons declared by Order in Council made in relation to any protectorate, protected state, mandated territory or trust territory to be for the purposes of this Act British protected persons by virtue of their connection with that protectorate, state, or territory."[3] The classes of persons who became British protected persons within the meaning of the Act of 1948 were declared by the British Protectorate, Protected States and Protected Persons Orders in Council 1949-1962[4]. The Order applied to those

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1. See R. v. Francis exparte Markwald [1918] 1 K.B. 617; Markwald v. Att.Gen [1920] 1 Ch. 348. The adoption by the Dominions of Part II of the Act of the Act of 1914 and the application of s.8 of that Act to the Colonies enabled Dominions and Colonies to grant "Imperial" naturalisations. The power to grant local naturalisation was however saved by s.26 of the Act.

2. For the various classes of British protected persons, see Jones, British Nationality Law and Practice (1947) 289-296; also Jones, "Who are British Protected Persons?" (1945) 22 B.Y.I.L. 122.

3. Act of 1948 s.32 (1); see also s.30

4. Dated January 28, 1949, S.I. No. 140, as amended. See S.I. 1962 No. 1333 for this form of citation.

territories specified in its Schedules. It laid down rules determining the requisite connection for those persons who could acquire the status of British protected persons by virtue (i) of their connection with protectorates and United Kingdom trust territories specified in its schedule and (ii) of being a national or citizen of a protected state under the local law. The rules however blurred the distinction between protectorates and protected states. For example, Zanzibar protectorate was treated as a protected state.[1] In virtue of the power conferred by the Act,[2] the Order treated New Hebrides and Canton Island, which were in fact condominia,[3] as though they were protected states but provided special rules for determining the requisite connection with Canton Island.[4]

In the case of the specified protected states and Zanzibar, the status of a British protected person was dependent on the local law of nationality and citizenship. Any person who was a national or citizen of such a territory in virtue of the local law became a British protected person.[5] Where no such local nationality or citizenship law was in force,

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1. British Protectorates etc. Orders 1949-62, ss. 9 (4) and 12(4).
2. See Act of 1948 s. 30(2)
3. British Protectorates etc. Orders 1949-62 s.6.
4. ibid. s.10
5. ibid. s. 12(1)

the rules determining the requisite connection in relation to a protectorate or trust territory applied also to the protected states.[1] If any question had arisen whether any such nationality or citizenship law was in force, the certificate of the Secretary of State on the question was conclusive.[2]

A person of full age and capacity[3] who was a national of any foreign country[4] and was also a British protected person in virtue of his connection with a protectorate (other than Zanzibar), Canton Island or a United Kingdom trust territory might make a declaration renouncing his status as a British protected person. Such declarations should be registered but the Governor might withhold registration of a declaration made when the Crown is at war. Upon registration, the person ceased to be a British protected person.[5]

No person who is an enemy alien at the date of the Order could have become a British protected person by virtue of his connection with a protectorate (other than Zanzibar), Canton Island or a United Kingdom trust territory unless the Governor so ordered, on an application made to him.[6]

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1. ibid. s. 12(2)
2. ibid. s. 12(3)
3. For definition, see ibid. s.2(2)
4. For definition, see Act of 1948 s.32(1)
5. British Protectorates etc. Orders 1949-62 s.13(1) and proviso.
6. ibid. s.13(2)

It will be noticed that the Order in Council limited the classes of British protected persons to persons belonging to protectorates, protected states and trust territories for which the Government of the United Kingdom was responsible. The Act of 1948 did not contain such a limitation.[1] Thus persons who belonged to a protected state, mandate[2] or trust territory of another Commonwealth country did not come within the operation of the Order and were not declared to be British protected persons. Such persons, prior to 1949, would have been regarded as members of that undefined class of British protected persons. The result of the omission of such persons from the Order was that they fell under the definition of aliens for the purposes of the Act and the laws of the United Kingdom generally. The laws of other Commonwealth countries could however make provisions for their own protected persons.[3]

Protectorate of Nigeria and the Cameroons under United Kingdom Trusteeship

Persons connected with the Protectorate of Nigeria and the trust territory of the Cameroons were regarded as British protected persons. They had been regarded as such under the provision of the British

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1. See Act of 1948 s.32 (1)

2. South-West Africa is the only remaining mandated territory administered by South Africa.

3. e.g. New Zealand, see the British Nationality and N.Z. Citizenship Act 1948 (1948 No. 15) s. 2(1) for definition of N.Z. protected person and Western Samoa N.Z. Protected Persons Order 1950. Western Samoa is now independent.

Protected Persons Order 1934[1] which laid down rules determining those persons who had British protected status by virtue of their connection with British protectorates and mandated territories in Africa. The Protectorate of Nigeria and the Cameroons under British mandate were specified in the Schedule to the Order. Any person born within the Protectorate or mandated territory and who was not a British subject or the national of another State was a British protected person. Persons born outside these territories not possessing the status of a British subject or the nationality of another State of fathers who at the time of the births belonged there and were also born there, were regarded as British protected persons. Under this Order, it was not possible to be both a British protected person and a national of a foreign state or a British protected person and a British subject. The British Protectorate, Protected States and Protected Persons Orders in Council 1949-1960[2] which declared the classes of persons who were British protected persons included the Nigeria Protectorate and the Cameroons under United Kingdom trusteeship in its schedules. Any person connected with these two territories became a British protected person if

(a) he was born at whatever date within these territories, or

(b) he was born elsewhere than in these territories before the date of the Order.[3] of a father born therein or

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1. S.R. & O. 1934, No. 499; S.R. & O. 1944 No. 1128. These Orders were revoked by 1949 S.I. No. 131.

2. 1949 S.I. 140 as amended. See 1960 S.I. No. 1366 for this form of citation.

3. i.e. January 28, 1949

(c) he was born elsewhere than in these territories after the date of the Order of a father born there and who himself was a British protected person at the date of the birth.[1]

A person born out of wedlock and legitimated by the subsequent marriage of his parents was treated as from the date of the marriage or the Order (whichever was later) as if born legitimate.[2] Posthumous children were treated as being in existence at the date of death of their fathers.[3] Under these provisions it was possible to be at birth both a British protected person and a national of a foreign state or a citizen of the United Kingdom and Colonies. This was not possible under the former British Protected Persons Order in Council, 1934[4] and if a British protected person became a national of a foreign state he ceased to be a British protected person.[5] Under the 1949 Order a British protected person who possessed foreign nationality might make a declaration renouncing his status of British protected person and upon registration of the declaration, he ceased to be a British protected person. The Governor had power to withhold a registration of a declaration made in

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1. British Protectorates etc. Orders 1949-60 s.9.
2. ibid. s.3.
3. ibid. s.4.
4. Order of 1934 s.2.
5. ibid. s.4.

time of war.[1] A woman married to a British protected person might apply to the Governor to be registered as a British protected person.[2]

The problem of nationality in mandates and trust territories.

The national status of persons connected with mandates and trust territories evoked considerable attention. The United Kingdom accepted from the Principal Allied and Associated Powers in 1922 the mandate over a portion of the ex-German territory of the Cameroons, which was "administered under the laws of the Mandatory as an integral portion" of the Protectorate of Nigeria in accordance with Article 22 of the Covenant of the League of Nations. The Cameroons became a Class B Mandate.

By the cession of the territories from Germany to the Principal Allied Powers, the inhabitants lost the German nationality they had. The Peace Treaty with Germany[3] and the mandate instruments did not provide for the acquisition of a new nationality by the inhabitants. The mandate instruments also made no reference to independence for the inhabitants or diplomatic protection. But Article 127 of the Treaty provided that the native inhabitants of these territories are to be "entitled to the diplomatic protection of the governments exercising authority over those territories."

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1. British Protectorates etc. Orders 1949-60 s.13.

2. ibid. s.11

3. The Treaty of Lausanne between the Allied Powers and Turkey provided definitely for the nationality of inhabitants of Class A mandates.

During the life of the League, it was a burning question where the sovereignty over the mandated territories lay. The nationality of the inhabitants of these territories would depend on the solution of the question of sovereignty. Many theories have been formulated as solutions to this question.[1] One theory was that sovereignty was shared between the Mandatory and the League.[2] Others maintained that sovereignty resided with the Mandatory Power,[3] or with the League of Nations, or with the Principal Allied and Associated Powers.[4] The theory that sovereignty lay with the Mandatory Power would have extended the status of British subject to the inhabitants of the Cameroons under British mandate. This thesis however is untenable as British nationality is only extended to the inhabitants of an annexed territory.[5]

When the question of sovereignty in the mandated territories came before the Permanent Mandates Commission in 1921, a sub-committee of the Commission, appointed by the Council of the League, obtained the views of member states. The Government of the United Kingdom maintained that neither the Mandate nor the "integral administration" of the territory had any effect on the nationality of the inhabitants.[6]

1. See Oppenheim (ed Lauterpacht) International Law v. 1 (8th ed. 1955) at 220 Sayre, "Legal Problems arising from the U.N. Trusteeship System" (1948)42 A.J.I.L. 263 at 268-272; Hales, "Some Legal Aspects of the Mandates System (1937) 13 T.G.S., 85.
2. Lauterpacht, Private Sources and Analogies of International Law (1927) para 86 (residing in the League but exercised by the Mandatory); Wright, "Sovereignty in the Mandates" (1923) 17 A.J.I.L., 691 at 698 (in the Mandatory, but acting with the consent of the Council of the League). See however Judge McNair's Separate Opinion in the International Status of South-West Africa, I.C.J. Rep. 1950, 128 at 150
3. Baty, "Protectorates and Mandates" (1921-22) 2 B.Y.I.L. 109.
4. Fanchille, Traité de Droit International Public v. 1 (Pt. II)(1925) 849
5. Westphal & Westphal v. Conducting Officer [1948] 2 S.A.L.R. 18
6. League of Nations Off. J 3rd Ass. (1922) 595. The Dominions of Australia and

The Council of the League resolved in 1923 that the status of the native inhabitants of a mandated territory is distinct from that of the nationals of the Mandatory Power.[1] This resolution did not however resolve the difficulties attached to the problem.[2]

The Courts too have tended to the same conclusion. In R. v. Ketter,[3] it was held that a person born in Palestine, a mandated territory was not a British subject. The defendants in Attorney-General v. Goralswhili[4] were also held not to have become British subjects as the Mandate did not establish sovereignty in the British Crown. This was also the decision reached by the High Court of Australia in Mong Man On v. Commonwealth of Austmlia.[5] In R. v. Christian[6], the South African Court,

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New Zealand considered the inhabitants as "British protected persons" ibid. The Belgian delegate at first opposed this view in relation to Ruanda-Urundi but later adhered to it; ibid at 607

1. League of Nations Off.J. 4th Ass. (1923) 604. The Permanent Mandates Commission had recommended that "A special law of the Mandatory Power should determine the status of the native inhabitants, who might be given a designation such as "administered persons under mandate" or "protected persons under mandate" of the Mandatory power; see ibid at 567, 568 para 2.

2. Wright, "Status of the Inhabitants of Mandated Territories" 18 A.J.I.L. (1924) 306, 314

3. (1940) I.K.B. 787, (1939) 1 All E.R. 729.

4. [1925-26] Ann. Dig, 47.

5. (1952-53) 86 C.L.R. 125.

6. [1924] A.D. 101; See further Wright, "Sovereignty in Mandated Territories" 14 Jour. of Comp. Leg. 3rd Series (1932) 125.

however, came close to the view that sovereignty in a mandated territory lay with the Mandatory power. In that case Innis C.J. said that the Union possessed sufficient internal majestas within the mandated territory of South-West Africa to enable her to found a charge of high treason committed therein by a native inhabitant.

The United Kingdom regarded the inhabitants of mandate territories as British protected persons.[1] As we have seen, the Cameroons under British mandate was included in the British Protected Persons Orders in Council 1934-44. The description used in the passports of native inhabitants of British mandated territories in Africa was "British protected person, native of the mandated territory of the British Cameroons, British Togoland and Tanganyika."[2] It was possible for individual inhabitants to become British subjects by naturalisation. This was not against the resolution of the Council of the League.[3]

After the Second World War, the Charter of the United Nations set up the Trusteeship System,[4] which is not considered the legal

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1. The inhabitants of the French mandates were designated as "administrés sous Mandat français", "administrés français," "protégés", "indigènes" or "indigènes sous mandat". The Belgians used the description " "ressortissants de Ruanda-Urundi."

2. Upthegrove, Empire by Mandate (1954) 35.

3. See para 3 of the Resolution, League of Nations Off. J. 4th Ass. (1923) 604.

4. Charter of U.N. Chaps XII, XIII.

successor to the Mandates System.[1] There are however similarities between the two systems[2]. All the territories then remaining under mandate with the exception of South-West Africa[3] were placed under the new system. The controversy about sovereignty and nationality of the inhabitants of mandated territories was not clarified by the Trusteeship System. Only two of the ten trusteeship agreements had clauses dealing with nationality.[4] The trusteeship agreement relating to the Cameroons[5] did not contain such a clause and British practice in relation to that territory as regards nationality matters remained unchanged.[6] The inhabitants of the territory were still regarded as British protected persons[7]

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1. Kelsen, the Law of the United Nations (1950) 592-598; see also 1950 I.C.J. Rep. 127

2. See Resolution of the Assembly on April 18, 1946 para 3 stating "The Assembly.....recognises that on the termination of the League's existence, its functions with respect to the Mandated territories will come to an end, but notes that Chapters XI, XII, and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant of the League" League of Nations Off. J.21st Ass, Spec. Supp. No. 194 (1946) 278.

3. See the Adv. Op. in 1950 I.C.J. Rep.127.

4. Trusteeship agreement for the Pacific Islands under U.S. administration (Art 11), 8 U.N.T.S. 189 and that for Somaliland under Italian administration (Annex, art 1) 118 U.N.T.S. 255, 276.

5. 8 U.N.T.S. 119

6. The British Prime Minister in a statement to Parliament on January 23, 1946 regarding the nationality in Tanganyika, Togoland, Cameroons said "They are not British Colonies and the inhabitants are not, therefore, as such British subjects. They are, however, and will continue to be "British protected persons" of exactly the same status as the inhabitants of any British Protectorate not under mandate or trusteeship". Cmd. 6480 p.5. House of Commons Deb. Vol. 418, Column 151.

7. Compare the position of the French Cameroons, which was one of the

and were so defined in the British Protectorate, Protected States and Protected Persons Orders-in-Council 1949-60. The British Nationality Act 1948 exempted them from the provisions of the Aliens Restriction Acts 1914 and 1919[1] and also made provisions for them to naturalise as citizens of the United Kingdom and Colonies.[2]

Status of the British Protected Person.

For the purposes of the law of the United Kingdom the British protected person was not a British subject and his position, prior to 1949 differed in many respects from that of British subjects. He was an alien for the purposes of the Aliens Order 1920. He could not therefore have entered the United Kingdom without special permission.[3] He could not exercise the political rights of a British subject within a British dominion and had not the benefit of the provisions of the Foreign Marriages Act 1892 as that Act only applied

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"territoires associès" under Art.60 of the Constitution of the Fourth Republic. The inhabitants were citizens of the French Union but did not possess French nationality proper and were not subject to military service. Their status was described as "administrés français". In April 1957 a decree established a Cameroonian citizenship. The Constitution of the Fifth Republic left the situation unchanged. Cameroons under French trusteeship became independent on January 1,1960.

1. Act of 1948 (Imperial) s.3(3). This exemption had already been made by the Aliens Order 1943.

2. Act of 1948 (Imperial) s.10 and Second Schedule.

3. This disability was removed by the Aliens Order, 1943; S.R. & O. 1943 No. 1378.

to British subjects.

The British Nationality Act 1948 provided that the British protected person was not to be considered an alien for its purposes nor for the purposes of the Aliens Restriction Acts 1914-1919 and Orders made thereunder.[1] He remained an alien for other purposes unless expressly exempted or he also possessed the status of a British subject.[2] For example, he could not become a citizen of the United Kingdom and Colonies by registration as of right, as was the case with any citizen of another Commonwealth country or the Republic of Ireland.[3] He might seek such citizenship by naturalisation.[4] Upon naturalisation, he had to take the oath of allegiance in the same manner as an alien. He might not, under the law of the United Kingdom, be guilty of treason in respect of acts done outside the dominions of the Crown[5]. The unrepealed sections of the Act of 1914[6]

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1. Act of 1948 s.3(3). This change had already been made by the Aliens Order 1943; see also the Aliens' Employment Act 1955 (Imperial).

2. A British protected person may also be a British subject or a foreign national; see British Protectorates etc. Orders 1949-62 s.13(1).

3. See Act of 1948 s. 6(1) now amended by the Commonwealth Immigrants Act 1962 (U.K.)

4. See Act of 1948 s.10 andSecond Sch. para. 3, now amended by the Commonwealth Immigrants Act 1962 (U.K.)

5. A British protected person in possession of a British passport may be guilty of treason committed abroad; see Joyce v. D.P.P. [1946] A.C.347. As to the power of courts of a mandated territory to try treasonable acts committed locally, see R. v. Christian [1924] A.D. 101.

6. s.s. 17, 18 and that part of s.27 which defines "aliens," see Act of 1948, Fourth Schedule, Pt. II

applied to British protected persons.

As regards the Crown's protection, the position of the British protected person was unique. While abroad in foreign countries, although he was not a British subject, he was considered as a British national[6A] and entitled to the same protection as was accorded a British subject. In relation to the defence of act of state, the British protected person appeared to be in a less advantageous position than was a British subject. The defence of act of state cannot be pleaded against a British subject in respect of acts committed against him wherever he may be.[1] It is also not a valid defence against anyone, be he alien or subject, while he is in the Crown's dominions.[2] Therefore while a British protected person was resident in a dominion of the Crown, the defence of act of state would not avail against him. It appears however from dicta in R. v. Crewe ex parte Sekgome[3] and Sobhuza II v. Miller[4] that an act done by the Crown against a British protected person in a place other than the Crown's dominions, e.g. in his own protectorate,

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6A. See National Bank of Egypt v. Austro-Hungarian Bank [1923-24] Ann. Dig. 23, 24

1. Walker v. Baird [1892] A.C. 491; Johnstone v. Pedlar [1921] 2 A.C. 262

2. Buron v. Denman (1848) 2 Ex. 167; West Rand Gold Mining Co. v. R. [1905] 2 K.B. 391.

3. [1910] 2 K.B. 576.

4. [1926] A.C. 518

would be an act of state and consequently the defence would bar any redress obtainable from the courts.[1] This applied to British protected persons in protectorates as well as those in trust territories. The legal position of a trust territory was no different from that of a protectorate.[2] While a British protected person was in a protectorate or a trust territory, his position was very precarious. Being a British national, no foreign power can exercise diplomatic protection on the international level on his behalf against the Crown[3] and domestically he could not seek redress in the courts against the Crown, against whom he might be in real need of protection.

A recent decision which might affect the position of British protected persons in a protectorate was that of the Court of Appeal in England in Ex p. Mwenya.[4] Mwenya, a native of Northern Rhodesia, asked the Divisional Court of the High Court in England for a writ of habeas corpus directed to the protectorate of Northern Rhodesia. The Court of Appeal, reversing the Divisional Court, held that the fact that a territory was labelled a protectorate was not sufficient

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1. This is now generally stated by text writers to be the law on the subject; see Halsbury's Laws of England, 3rd ed, vol. 5 p. 545.

2. See Jerusalem Jaffa District Governor v. Suleiman Murra [1926] A.C. 321.

3. The inhabitants of trust territories can petition the Trusteeship Council of the United Nations.

4. [1959] 3 W.L.R. 767. For notes on the case, see E.C.S. Wade in [1960] C.L.J. 1; L.J. Blom-Cooper in (1960) 23 M.L.R. 73; R.F.V. Heuston in (1960) 76L.Q.R. 25 and G.I.A. Draper in ibid. 211

to determine whether there was jurisdiction to issue the writ of habeas corpus. The issuance would depend on the extent to which the Crown (or the Crown and Parliament) had exercised jurisdiction within the territory. If the nature and extent of the Crown's jurisdiction in a protectorate were found to be indistinguishable in legal effect from those enjoyed in colonies, then the court would have jurisdiction to issue the writ as it would have in respect of a colony.[1] It was assumed by the court that Mwenya was a British subject[2], and not, as was most likely, a British protected person. It is doubtful what the decision would have been if Mwenya had been taken to be a British protected person.

Perhaps this decision might give rise to the possibility that the courts would regard the defence of act of state as not being available to the Crown for acts done against persons, who still possess British protected status and reside in protectorates[3] especially in protectorates where the nature and extent of the Crown's jurisdiction are indistinguishable from that in a colony. This possibility, is

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1. See the judgment of Evershed M.R. in [1959] 3 W.L.R. 767, 778, 781, 783. This argument is particularly significant in respect of the former Protectorate of Nigeria, the administration of which was indistinguishable in legal effect from that of the Colony of Nigeria.

2. By virtue of the local citizenship laws of the Federation of Rhodesia and Nyasaland.

3. See further Polack, "The Defence of Act of State in relation to Protectorates" (1963) 26 M.L.R. 138, 154, et seq.

fortified by the fact that the British Nationality Act 1948 defined the status of a British protected person and no longer regarded him as an alien. For the purposes of that Act, protectorates are not deemed to be foreign countries.[1]

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1. See Act of 1948 (Imperial) s.3 (3), 32 (1) s.v. "British protected person" and "Foreign country." See also Hood Phillips, Constitutional and Administrative Law. 3rd ed. (1962) 263.

P A R T 3

CITIZENSHIP OF NIGERIA

Chapter Five

CITIZENSHIP OF NIGERIA - I - ITS CREATION, AQUISITION AND LOSS.

Creation of Nigerian Citizenship

The Colony and Protectorate of Nigeria gained a fully responsible status and became an independent country within the Commonwealth on October 1, 1960 by virtue of the Nigeria Independence Act 1960.[1]

Prior to independence, it was not competent for the local legislature in Nigeria to create a local citizenship or enact any legislation relating to matters of nationality in a manner inconsistent with the provisions of an Imperial statute applying to the Federation.[2] The term "Nigerian" was however evolved and employed in various statutes but the term usually had the same meaning as "native of Nigeria."[3] The creation of a Nigerian citizenship had been under consideration since September 1958 when the resumed Nigerian Constitution Conference meeting in London gave preliminary consideration to arrangements for creating a Nigerian citizenship and the qualifications for it. That Conference recommended

"(a) that the existing position concerning nationality and citizenship should remain unaltered until independence

(b) that there should be included in the Constitution for independence provisions governing the qualifications and disqualifications for citizenship of Nigeria and

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1. 8 & 9 Eliz. 2 ch. 55.
2. By virtue of the Colonial Laws Validity Act.
3. See Customary Courts Law, Cap. 31 Laws of W.R. Nigeria, 1959 ed.

(o) that the constitution for independence should provide that no Nigerian citizen should be liable for deportation or exclusion from Nigeria."

The Conference referred detailed consideration on the subject to an ad hoc committee representing the various delegations of the Conference. This Committee was to meet in Lagos and submit its recommendations by the end of April 1959. The United Kingdom delegation was invited to assist the committee by submitting materials which should take into account the memoranda submitted to the Conference.[1]

The ad hoc Committee met in Lagos on April 27, 1959. After considering the various schemes of citizenship laws in Commonwealth countries, they noted that such laws were based on the principles that each Commonwealth country decided the qualifications for its citizenship, and also decided what rights other Commonwealth citizens should have within its territory and that in general they provided for reciprocity.[2]

On October 1, 1960 when Nigeria attained independence, there came into operation a Constitution for the Federation[3] which included provisions relating to citizenship of Nigeria[4] based on the proposals made by the

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1. See Cmnd. 569 Annex II.

2. For the recommendations, see Report by the Ad hoc Committee of the Resumed Nigeria Constitutional Conference meeting in Lagos in April 1959 (Lagos, Federal Government Printer, April 1959).

3. The Nigeria (Constitution) O. in C., 1960, Second Sch; S.I.1960 No.1652; L.N.159 of 1960.

4. ibid Chap. II s.s. 7-16.

ad hoc Committee. The Nigeria Independence Act 1960[1] provided that the Colony and Protectorate as respectively defined by the Nigeria (Constitution) Orders in Council, 1954-1960 shall together constitute part of Her Majesty's dominions under the name of Nigeria. The colony of Nigeria therefore ceased to be a part of the United Kingdom and Colonies for the purposes of the citizenship laws of the United Kingdom and Colonies.[2] Among other changes effected by the Act was the inclusion of Nigeria in the list of Commonwealth countries in section 1(3) of the British Nationality Act 1948 thereby conferring upon a person who became a citizen of Nigeria the status of a "Commonwealth citizen".[3] The British Protectorates, Protected States and Protected Persons Orders 1949-60 ceased to apply to the Protectorate of Nigeria.[4]

On October 1, 1963 Nigeria became a Federal Republic within the Commonwealth.[5] The new Republican Constitution reproduced, with

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1. 8 & 9 Eliz 2 ch. 55.

2. See ibid s. 2. Other changes were that no Act of the U.K. Parliament passed on or after October 1, 1960 shall extend or be deemed to extend to Nigeria or any part thereof; the Colonial Laws Validity Act 1865 shall not apply to any laws made after that date by any Nigerian legislature which also has full powers to make laws with extra-territorial operations (s.1(2) and First Sch.); the Interpretation Act 1889, the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 were modified to exclude Nigeria from the expression "colony" as used therein and to include Nigeria in the definitions of "Commonwealth force" in the said Acts of 1955 and 1957.

3. See Act of 1948 (U.K.) s.1(1), (2)

4. Nigeria Independence Act s.2.

5. Act No. 20 of 1963.

minor amendments, the provisions relating to citizenship of Nigeria[1] in the Federal Constitution 1960. The citizenship provisions of the Republican Constitution were deemed to have come into force on October 1, 1960.[2]

Relevance of the earlier law of Nigeria to citizenship of Nigeria.

The British Nationality Acts 1948 and 1958 and the British Protectorate, Protected States and Protected Persons Orders-in-Council 1949 to 1960 ceased to have effect as the law of the Federation with effect from October 1, 1960.[3] The Ordinances which provide for the local adaptations of British Nationality Acts have also been repealed.[4] Before October 1, 1960 persons connected with the Federation were, by virtue of these Acts and Orders in Council, citizens of the United Kingdom and Colonies or British protected persons as the case may be. This earlier law has no relevance in determining the status of any person born after September 30, 1960[5] or, in relation to the Northern Cameroons, after May 31, 1961[6]. It is however relevant for the purpose of the transitional provisions in the Constitution and the Nigerian Citizenship Act. These transitional provisions operate only in respect of persons who were either citizens of the United Kingdom and Colonies

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1. ibid. Chap II. s.s. 7-17
2. ibid. s. 166 (2)
3. See Nigeria Independence Act s. 2(1)
4. See Nigerian Citizenship Act 1960 s.19.
5. See Federal Constitution ss. 10, 11; Republican Constitution s.11, 12.
6. Federal Constitution s. 12A; Republican Constitution s. 10.

or British protected persons immediately prior to the commencement of the citizenship legislation. The earlier law is also relevant to determine those persons who are entitled to register as citizens of Nigeria as of right. One of the qualifications for such registration is the possession of citizenship of the United Kingdom and Colonies or the status of a British protected person at the commencement of the citizenship legislation.[1] For these purposes, the earlier law of the Federation is exactly the same as the law in fofce in the United Kingdom before October 1, 1960.[2]

The Citizenship Legislation of Nigeria.

In accordance with the recommendations of the ad hoc committee, the Constitution of the Federation contained the transitional and certain definitive provisions relating to citizenship of Nigeria.[3] These provisions followed in general the pattern of Commonwealth citizenship laws and incorporated two usual features of such legislation. Firstly, it contained the "common clause" which recognised a commonwealth citizenship[3A] and the non-alienage of Commonwealth citizens.[4] The status of a Commonwealth citizen was also conferred on a British subject without citizenship.[5] Secondly it contained a limitation of criminal

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1. See Republican Constitution ss. 8(1), (2), (4); also Nigerian Citizenship Act 1960, as amended, ss. 3A, 3B, 3D, 3E.

2. or June 1, 1961 in relation to the Northern Cameroons.

3. Federal Constitution, Chap II s.s. 7-16.

3A. ibid s. 13(1); see also Act of 1948 (U.K.) s.1; Ghana Nationality and Citizenship Act 1957 s.9; s.7.

4. See the definition of "alien" in Federal Constitution, s.16; see also, Sierra Leone Constitution, s.10, Sierra Leone Nationality & Citizenship Act 1962 s.2(1); the Ghana Act of 1957 s.2(1); Act of 1948(U.K.) s.32(1)

5. Federal Constitituion s.13(2); see further Act of 1948 (U.K.) s.13 and

jurisdiction over citizens of another Commonwealth country or of the Republic of Ireland (who are not local citizens) for extraterritorial offences.[1]

The citizenship provisions of the Constitution followed broadly the recommendations of the ad hoc committee. They maintained the distinction between persons in being at the commencement of the citizenship law i.e. October 1, 1960 who acquired citizenship of Nigeria by operation of law and those acquiring such citizenship at birth on or after that date.[2] There were also included provisions for the acquisition of citizenship of Nigeria by registration[3] and for the loss of Nigerian citizenship by dual citizens who fail to renounce citizenship of the other country.[4]

These constitutional provisions contemplated the enactment of further legislation relating to citizenship. By section 16, Parliament was empowered to make provisions for the acquisition of citizenship of Nigeria by other modes not provided for in the Constitution, for the renunciation of citizenship of Nigeria and for the deprivation of certain persons of their citizenship. Parliament was also to prescribe

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Third Schedule; For the position in Sierra Leone, see the Constitution s. 7(2). Ghana does not confer commonwealth citizenship on British subjects without citizenship, see the Ghana Act 1957 s.9.

1. Federal Constitution s.14; see also Act of 1948 (U.K.) s.3(1). For the position in Sierra Leone, see the Constitution s.8; Ghana does not include in its provisions citizens of the Republic of Ireland, British subjects without citizenship, see the Ghana Act of 1957 ss 9, 10.

2. Compare Federal Constitution s. 7 with ss.10, 11.

3. Federal Constitution ss. 8, 9.

4. ibid. s.12.

the manner in which persons are to be registered as citizens of Nigeria[1] or in which citizens of Nigeria are to renounce a foreign citizenship.[2] Under these constitutional powers, Parliament enacted the Nigerian Citizenship Act 1960[3] and the Nigerian Citizenship Act 1961[4].

The provisions of the Federal Constitution relating to citizenship with the amendment made by the Nigeria Constitution First Amendment Act 1961 were incorporated in the new Republican Constitution.[5] These provisions[6] together with the Nigerian Citizenship Acts 1960 and 1961 form the present citizenship laws of the Federal Republic of Nigeria which provide for the acquisition and loss of Nigerian citizenship.

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1. See ibid ss. 8, 9.
2. ibid s.12.
3. Originally enacted as Nigerian Citizenship Ordinance, No. 43 of 1960 but now designated Nigerian Citizenship Act 1960; see Designation of Acts Act 1961 (No. 57 of 1961).
4. Act No. 9 of 1961 amending the Nigerian Citizenship Act 1960.
5. Act No. 20 of 1963.
6. ibid Chap. II, ss. 7-17; also ibid. s.166(2).

A. ACQUISITION OF CITIZENSHIP

Citizenship of Nigeria can be acquired:-

1. By operation of law.
2. At birth.
3. By registration.
4. By naturalisation.

1. CITIZENSHIP BY OPERATION OF LAW

The transitional provisions of section 7 of the Constitution confer citizenship of Nigeria by operation of law on October 1, 1960 on two categories of persons in being immediately before that date. The Constitution makes no distinction between these two categories though they fall neatly into the categories that are usually designated as "citizens by birth" and "citizens by descent". Its provisions do not employ such designations but combine the two categories under the description "Persons who became citizens on 1st October 1960". However the Nigerian Citizenship Act 1960 as amended by the similarly-entitled Act of 1961 contemplates the use of such designations[1] and actually makes use of them in its provisions to describe these two categories of citizens.[2] Although the Constitution does not employ different designations for these two categories, it provides important differences between them. It empowers Parliament to make provision for the deprivation of citizenship, which would apply to citizens in the second category, i.e. citizens by descent but not to those in the first category, citizens by birth.[3] Citizens by descent cannot transmit

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1. See the preamble to the Act (No. 43 of 1960) which recited that "the Constitution will contain.....provisions for the acquisition of citizenship by birth and by descent." The Act however does not deal with the acquisition of citizenship by birth or by descent.

2. See ss. 3(2), 3A, 3B. Persons acquiring citizenship by virtue of ss.7(1) and 11 of the Republican Constitution will be regarded as citizens by birth (see Republican Constitution s.16(b)). Similarly those under ss.7(2) and 12 are citizens by descent. For the position in Ghana where the designations are expressly employed, see Ghana Act 1957 ss.4(2) 5(2), 7, 8.

3. Republican Constitution s.16 (b); see also Nigerian Citizenship Act 1960, as amended s.8(1).

their citizenship to their foreign-born children; citizens by birth can do so.[1]

Provisions in the Ceylon Citizenship Act 1948 almost similar to these transitional provisions were challenged in Govindan Sellapah Nayar Kodakan Pillai v. Punchi Banda Mundanayake and others[2] as being ultra vires the Ceylon (Constitution and Independence) Order-in-Council 1946 on the grounds of being restrictive and discriminatory. The Judicial Committee of the Privy Council in rejecting the contention took the opportunity of stressing that it is "a perfectly natural and legitimate function of the legislature of a country to determine the composition of its nationals." The Board also considered that "standards of literacy, of property, of birth or of residence are.....standards which a legislature may think it right to adopt in legislation on citizenship, and it is clear that such standards, though they may operate to exclude the illiterate, the poor and the immigrant to a greater degree than they exclude other people, do not create disabilities in a community as such since the community is not bound together as a community by its illiteracy, its poverty or its migratory character but by its race or its religion."[3] The structural difference between the Ceylon and Nigerian Constitutions would make such a challenge of the transitional provisions inapplicable within the context of the latter Constitution.

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1. Republican Constitution s. 12 and Nigerian Citizenship Act 1960 s.3(2)
2. [1953] A.C. 514
3. ibid. at 530.

(a) Citizens by birth

Section 7 (1) of the Constitution relates to the first category and confers citizenship of Nigeria on October 1, 1960 on any person born in the former Colony or Protectorate[1] of Nigeria and who was a citizen of the United Kingdom and Colonies[2] or a British protected person[3] immediately before that date and either of whose parents or any of whose grandparents was also born there.[4]

It will be noticed that in addition to birth within Nigeria, two other requirements must be satisfied. The first is that the person concerned should possess citizenship of the United Kingdom and Colonies or British protected status on September 30, 1960, and the second that either of his parents or any of his grandparents should also have been born within the former Colony or Protectorate of Nigeria. This transitional provision employs a combination of the principles of the jus soli and the jus sanguinis. The jus soli influences the requirement that the person concerned should possess citizenship of the United Kingdom and Colonies or British protected status immediately before the commencement of the Constitution. A person born within the Colony

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1. The Protectorate did not include the trust territory of the Northern and Southern Cameroons. The Northern Cameroons became part of the Federation of Nigeria on June 1, 1961; see Nigeria Constitution First Amendment Act 1961 and Republican Constitution s.10

2. Under and by virtue of the provisions of the Acts of 1948 and 1958 (Imperial)

3. For definition, see Republican Constitution s. 17(1); see further the British Protectorates etc. Orders 1949-1960 s. 9 and Schedules I and II.

4. See Republican Constitution s.7(1) and proviso.

of Nigeria between January 1, 1949 and October 1, 1960 became a citizen of the United Kingdom and Colonies by birth,[1] (subject to certain exceptions[2]). Any person born in the Colony of Nigeria before January 1, 1949 became a British subject at birth[3] (subject to the same exceptions) and if he remained such a subject immediately before that date, he became a citizen of the United Kingdom and Colonies on that date.[4] Similarly any person born at whatsoever date in the former Protectorate of Nigeria or the trust (formerly mandated) territory of the Cameroons under United Kingdom administration became a British protected person on January 28, 1949 or at his birth if born after that date[5]. Possession of that citizenship or status on September 30, 1960 is all that the requirement calls for. It follows that a person who had lost such citizenship or status but regained it before October 1, 1960 would satisfy the requirement.

The second requirement imports the jus sanguinis into the determination of persons falling within this category. This element of the jus sanguinis

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1. Act of 1948 (Imperial) s.4.

2. The exceptions are children born of fathers possessing diplomatic immunity and of fathers being enemy aliens, the birth of whose children occurs in a place under enemy occupation; see ibid, proviso.

3. Act of 1914 (Imperial) s. (1) (a)

4. Act of 1948 (Imperial) s.12 (1)(a); see also s.14 in relation to married women.

5. ibid s.32 (1) and the British Protectorate etc. Orders 1949-60 s.9(1) and Schedules I and III.

is not confined to the male line and a person may therefore claim through his mother. If the claim to be a Nigerian citizen of this category is based on the birth of a male ancestor in Nigeria, the legitimacy[5A] of the claimant is essential. Thus a person claiming through his father must be a legitimate child of that father or must have been legitimated before September 30, 1960.[5B] Legitimacy would be irrelevant if he claims solely through females.

Certain persons were added to this category of citizens of June 1, 1961 by the Nigeria Constitution. First Amendment Act 1961[1] on the admission of the former territory of the Northern Cameroons under United Kingdom trusteeship into the Federation of Nigeris.[2] The same provisions which operated to confer citizenship of Nigeria on persons connected with the former Colony or Protectorate of Nigeria were made applicable to the Northern Cameroons with the necessary modifications.[3] There was a slight inconsistency in the wording of the amendment. Section 12A specified that for a person to be a citizen of Nigeria, he should possess citizenship of the United Kingdom and Colonies or British protected status immediately before the commencement of the amending Act.

5A As to legitimacy in Nigerian law, see infra p. 241 et seq

5B. The date as regards the Northern Cameroons is May 31, 1961; see Republican Constitution s.10.

1. Act No. 24 of 1961.

2. Persons acquiring citizenship by virtue of this Amendment Act of 1961 can also be classified as "citizens by incorporation of territory. Cf. British Nationality Act 1948 (U.K.) s.11.

3. Federal Constitution s. 12A.

Subsection (3) further provided that references to a particular date in the original citizenship provisions should be extended for a period of nine months in the cases of persons connected with the Northern Cameroons. The Act came into force on June 1, 1961 and therefore the relevant date for the possession of the qualifying citizenship or status was May 31, 1961. This date was eight months later than the corresponding date, September 30, 1960, contained in the original provisions, and the extension of nine months provided for in section 12A(3) is a miscalculation. If it were otherwise, it would mean that the Northern Cameroons became a part of the Federation on June 1, 1961, but Northern Cameroonians did not become citizens of Nigeria until July 1, 1961. Such a conclusion would be absurd and would affect the election or selection of members representing the Northern Cameroons in the Houses of Representative or Assembly or the Senate during the month of June 1962.[1] This slight inconsistency has now been rectified when the citizenship provisions of the Federal Constitution 1960, as amended, were reproduced in the Republican Constitution. In interpreting the original provisions, the relevant date in relation to the Northern Cameroons was stated to be eight months later than the particular date mentioned in those provisions.[2]

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1. See e.g. Federal Constitution s. 39 which required members to be citizens of Nigeria.

2. See Republican Constitution s. 10 (1) (a).

By this amendment a person born within the Northern Cameroons who was or was deemed to be a citizen of the United Kingdom and Colonies or a British protected person on May 31, 1961 and either of whose parents or any of whose grandparents was born in the former Colony or Protectorate of Nigeria or the Northern Cameroons became a citizen of Nigeria of this category on June 1, 1961.[1] It also made a person having citizenship of the United Kingdom and Colonies or British protected status on May 31, 1961, who was born in the Colony or Protectorate of Nigeria of parents and grandparents born in the Northern Cameroons, a citizen of Nigeria on June 1, 1961. Prior to that date such a person was not a citizen of Nigeria but could have acquired such citizenship by registration.[2] Such a person did not also lose his citizenship of the United Kingdom and Colonies or British protected status on October 1, 1960.[3] A person having British protected status on September 30, 1960 and was born in the Northern Cameroons, of a father born in the Colony or Protectorate of Nigeria who himself had citizenship of the United Kingdom and Colonies or British protected status on that date became a citizen of Nigeria on October 1, 1960 under and by virtue of section 7(2) of the Constitution.

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1. Republican Constitution ss. 7(1); 10.
2. Under ibid s. 8(1); also Nigerian Citizenship Act 1960, as amended s. 3A.
3. See Nigeria Independence Act 1960 s. 2.

As a result of this constitutional amendment, such a person became a citizen of Nigeria by virtue of section 7 (1) of the Constitution on June 1, 1961,[1] if he retained his British protected status immediately prior to that date.

ILLUSTRATIONS

1. A was born in the former Colony of Nigeria in 1900. His son, B, was born there in 1925. B's son, C, was also born there in 1950. B and C remained citizens of the United Kingdom and Colonies on September 30, 1960. B and C became citizens of Nigeria on October 1, 1960.

2. A was born in the former Colony of Nigeria in 1900. Her daughter, B, was born there in 1925. B's daughter, C, was also born there in 1950. B and C remained citizens of the United Kingdom and Colonies on September 30, 1960. B and C became citizens of Nigeria on October 1, 1960.

3. As in Illustration 1 except that C was illegitimate. C did not become a citizen of Nigeria on October 1, 1960.

4. As in Illustration 2 except that C was illegitimate. C became a citizen of Nigeria on October 1, 1960.

5. A was born in the Protectorate of Nigeria in 1900, his/her child, B, was born in Dahomey in 1925. B's child, C, was born in the former Colony of Nigeria in 1950 and remained a citizen of the United Kingdom and Colonies on September 30, 1960. C became a citizen of Nigeria on October 1, 1960.

6. A was born in the Northern Cameroons in 1930. His son, C, was also born there in 1950 and remained a British protected person on May 31, 1961. C became a citizen of Nigeria on June 1, 1961.

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1. The difference is important. A citizen by virtue of s. 7(1) cannot be deprived of his citizenship but a citizen by virtue of s.7(2) can be. See Republican Constitution s. 16; also Nigerian Citizenship Act 1960 s. 8.

7. A was born in the Protectorate of Nigeria in 1900. His son B, was born in the Southern Cameroons in 1930. C, B's son, was born in the Northern Cameroons in 1950 and remained a British protected person on May 31, 1961. C became a citizen on June 1, 1961.

8. As in Illustration 7 except that B was illegitimate. C does not become a citizen of Nigeria.[1]

9. A was born in the Northern Cameroons in 1900. His son, B, was born there in 1925. B's son, C, was born in the Colony of Nigeria in 1950. C became a citizen of Nigeria on June 1, 1961.

10. A was born in the Protectorate of Nigeria in 1900 and his son, B, in the Colony of Nigeria in 1930. B's son, C, was born in the Northern Cameroons in 1955. B and C retained their citizenship of the United Kingdom and Colonies on September 30, 1960. B and C became citizens on October 1, 1960. C became a citizen on that date by virtue of section 7 (2) of the Constitution (i.e. a citizen by descent). If C retained his British protected status (by virtue of his birth in the trust territory) on May 31, 1961, he then became a citizen by virtue of sections 7 (1) and 10 of the Constitution (i.e. a citizen by birth).[2]

11. A was born in the Protectorate of Nigeria in 1900 and his son, B, in the Northern Cameroons in 1930. A and B retained their British protected status on September 30, 1960. B became a citizen of Nigeria on October 1, 1960 by virtue of section 7 (2) of the Constitution (i.e. citizen by descent). If B retained his British protected status on May 31, 1961, he became on June 1, 1961 a citizen of Nigeria by virtue of sections 7 (1) and 10 of the Constitution (i.e. a citizen by birth) 2

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1. C continued to retain his British protected status until December 9, 1961 when he was deprived of that status; see Tanganyika Independence Act 1961 s. 2(1) (b), see infra p. 256 Thereafter if C did not already possess the nationality of the Cameroons Republic, he became stateless.

2. See however, Republican Constitution s. 10(2). The effect of this subsection which was not in the original s.12A of the Federal Constitution, 1960, would not seem to produce a different result.

(b) Citizens by descent

The second category of persons who became citizens of Nigeria on October 1, 1960 is the citizen by descent (though the Constitution does not refer to them as such). It relates to those persons born outside the territorial limits of the present Federal Republic before the commencement of the citizenship legislation. Section 7 (2) of the Constitution conferred citizenship of Nigeria by operation of law on any person who was a citizen of the United Kingdom and Colonies[1] or a British protected person[2] on September 30, 1960 and born outside the former Colony or Protectorate of Nigeria of a father who was born therein and was a citizen of the United Kingdom and Colonies or a British protected person on September 30, 1960. If the father died before that date, he should have been such a citizen or person at his death or would have become such a citizen or person but for his earlier death.[3]

By virtue of the Nigeria Constitution First Amendment Act 1961, section 12A of the Constitution of 1960[3A] added to this category certain persons connected with the Northern Cameroons. Citizenship of Nigeria was conferred by operation of law on June 1, 1961 on a

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1. Under and by virtue of the provisions of the Acts of 1948 and 1958.

2. For definition see Republican Constitution s. 17 (1); see further British Protectorates etc. Orders 1949-60 s.9 and Schedules I and III.

3. In relation to a father who died before January 1, 1949. Cf. Ghana Nationality & Citizenship Act 1957 s.5 (1).

3A. Now incorporated in s. 10 of the Republican Constitution.

person having the citizenship of the United Kingdom and Colonies or British protected status on May 31, 1961 and born outside the present Federal Republic of a father born in the Northern Cameroons who was himself a citizen of the United Kingdom and Colonies or a British protected person on May 31, 1961 or if he died before that date, was such a citizen or person, or would have been such a citizen or person but for his earlier death.

As regards the qualification of being a citizen of the United Kingdom and Colonies or a British protected person on September 30, 1960 or May 31, 1961, a person born outside the present limits of the Federation before 1949 of a father born in the Colony of Nigeria and being at the time of the birth a British subject, became a British subject at birth.[1] If both he and his father retained their status of a British subject until the end of 1948, they became on January 1, 1949 citizens of the United Kingdom and Colonies.[2] If the father died a British subject before 1949, he is regarded as a person who would have become on January 1, 1949 such a citizen but for his earlier death. A person born outside the limits of the present Federal Republic between January 1, 1949 and October 1, 1960 of a father who at the time of the birth was a citizen of the United

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1. Act of 1914 (Imperial) s. 1(1) (b) (i), Act of 1943 s. 2(2)
2. Act of 1948 (Imperial) s.12 (1), (2), (4).

Kingdom and Colonies and who was born in the former Colony of Nigeria, became a citizen of the United Kingdom and Colonies by descent.[1] Similarly a person born outside the limits of the present Federal Republic before January 28, 1949 is a British protected person if his father was born in the former Protectorate of Nigeria or in the Northern Cameroons.[2] If such a person was born after that date of a father born in the Protectorate or in the Northern Cameroons and being a British protected person at the time of the birth, he became a British protected person at birth.[3] Citizenship of the United Kingdom and Colonies or British protected status may also have been acquired by persons born in other parts of the Crown's dominions, British protectorates and trust territories under United Kingdom administration not included within the Federal Republic.

Citizenship under this provision of the Constitution is derived through a father who was born within the territorial limits of the Federal Republic and who possessed citizenship of the United Kingdom and Colonies or British protected status immediately before the commencement of the citizenship legislation[4] or at his earlier death.

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1. ibid. s. 5(1).
2. British Protectorates etc. Orders 1949-1960 s.9(1) (b)
3. ibid s. 9(1) (c).
4. i.e. October 1, 1960; in relation to the Northern Cameroons, June 1, 1961.

The jus sanguinis is thus confined to the male line. Unlike the element of the jus sanguinis under section 7 (1) of the Constitution, citizenship in this case cannot be transmitted through a mother. Citizenship does not descend to a person who or whose father had divested himself of his citizenship of the United Kingdom and Colonies or British protected status without regaining such citizenship or status by September 30, 1960.[1] It does not also descend to an illegitimate child. A person deriving citizenship under this provision must be a legitimate child of the father or have been legitimated at the material date.[2] It follows therefore that a person who was born in the former Colony of Sierra Leone of a father born in the former Colony of Nigeria became a citizen of Nigeria on October 1, 1960 if both he and his father were citizens of the United Kingdom and Colonies on September 30, 1960. If the father had divested himself of his citizenship of the United Kingdom and Colonies prior to September 30, 1960, his son did not become a citizen of Nigeria on October 1, 1960. Similarly, if the son was illegitimate, he did not become a citizen of Nigeria.

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1. May 31, 1961 in relation to the Northern Cameroons.

2. The word "father" in this provision means the father of a child born legitimate or legitimated by the material date. Cf. Abrahams v. Att.-Gen. [1934] P.17. As to the wider concept of legitimacy in Nigerian law, see infra p. 241 et seq.

ILLUSTRATIONS.

1. A was born in the former Colony of Nigeria in 1920. His son, B, was born in Dahomey in 1950. A and B remained citizens of the United Kingdom and Colonies on September 30, 1960. B became a citizen of Nigeria on October 1, 1960.

2. As in Illustration 1 except that B was illegitimate. B did not become a citizen of Nigeria.

3. A, a woman, was born in the former Colony of Nigeria in 1920. Her son, B, was born in the former Colony of Sierra Leone in 1950. Both retained their citizenship of the United Kingdom and Colonies on September 30, 1960. B did not become a citizen.

4. A was born in the former Colony of Nigeria in 1910. His son, B, was born in England in 1940. A ceased to be a citizen of the United Kingdom and Colonies before September 30, 1960. B did not become a citizen of Nigeria.

5. A was born in the former Colony of Nigeria in 1920. His son, B, was born in the former Colony of the Gold Coast in 1940. A died in 1947. B remained a citizen of the United Kingdom and Colonies on September 30, 1960. [1] B became a citizen of Nigeria on October 1, 1960.

6. A was born in the Northern Cameroons in 1930. His son, B, was born in the Southern Cameroons in 1955. A and B remained British protected status on May 31, 1961. B became a citizen of of Nigeria on June 1, 1961.

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1. A would have become a citizen of the United Kingdom and Colonies on January 1, 1949 but for his prior death.

2. CITIZENSHIP AT BIRTH

This mode of acquisition is provided for in sections 11 and 12 of the Republican Constitution and embraces two categories of persons born after September 30, 1960 or in relation to the Northern Cameroons, after May 31, 1961.

The inclusion of the special provisions relating to the Northern Cameroons as section 10 in the Republican Constitution may produce an unintended effect. When this provision was first introduced as section 12A into the Federal Constitution of 1960 by the Nigeria Constitution First Amendment Act 1961, it provided for the modification, in relation to the Northern Cameroons, of any reference to dates not only in the transitional provisions but also in other sections in the chapter of the Constitution relating to citizenship.[1] Thus the reference to September 30, 1960 in the provisions for the acquisition of citizenship at birth[2] would be read as May 31, 1961 in relation to the Northern Cameroons. When the Republican Constitution came into force, the Nigeria Constitution First Amendment Act 1961 was repealed[3] and the special provisions relating to the Northern Cameroons were contained in section 10 of the new Constitution. This section also provided for the modification of dates but limited such modification to "the foregoing provision of this Chapter....."[4] which would apply to sections

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1. See Federal Constitution s. 12A (3)
2. ibid ss. 10, 11; Republican Constitution ss. 11, 12.
3. See Constitution (Transitional Provisions) Act 1963.
4. See Republican Constitution s. 10.

7, 8 and 9 but not to the provisions for the acquisition of citizenship at birth now contained in sections 11 and 12 of the new Constitution. The effect of this transposition of the section containing special provisions relating to the Northern Cameroons would be that the provisions for acquisition of citizenship at birth would apply to the Northern Cameroons without modification. Therefore any person born in the Northern Cameroons between October 1, 1960 and May 31, 1961 are citizens at birth.[1] It is submitted that this effect was unintended and the relevant date in relation to the Northern Cameroons is May 31st 1961. A person connected with the Northern Cameroons born on or before that date would acquire citizenship of Nigeria under the provisions of section seven sub-section one or two as the case may be. A way of avoiding this unintended effect is to construe the word "Nigeria" where it first occurs in both sections 11 and 12 as not to include the Northern Cameroons before June 1, 1961 but to include that territory as from that date.[2]

Citizenship at birth comprises citizenship by birth and citizenship by descent. The Constitution does not employ the designations "citizenship by birth" and "citizenship by descent"[3] though it adopts the *jus soli* or *jus sanguinis* as conferring citizenship.[4] The two

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1. By virtue of *ibid.* s.11

2. See Federal Constitution s. 12A (2) inserted by the Nigeria Constitution First Amendment Act 1961 now repealed. See the Constitution (Transitional Provisions) Act 1963.

3. See supra p. 140

4. The *Ad hoc* Committee on Nigerian citizenship had recommended that it was inadvisable to adopt the *jus soli* to the exclusion of the *jus sanguinis*. See Rpt. Pt. IV para 6.

categories embraced by the designation "citizenship at birth" will be discussed separately under (a) Citizenship by birth which relates to persons born in Nigeria and (b) Citizenship by descent for the first foreign-born generation of citizens of Nigeria.

(a) Citizens by birth

Any person, whether legitimate or illegitimate born in Nigeria after September 30, 1960 or in the Northern Cameroons after May 31, 1961, becomes a citizen of Nigeria by birth.[1] This is the rule of the jus soli which formerly governed the acquisition of citizenship of the United Kingdom and Colonies in the former Colony of Nigeria and also the status of a British protected person as regards the former Protectorate of Nigeria and the trust territory of the Northern Cameroons.

ILLUSTRATIONS.

1. A was born in Canada in 1930. His son B was born in Ibadan in 1962. B became a citizen of Nigeria by birth.

2. A, the illegitimate son of a French national was born in Lagos in 1961. A became a citizen of Nigeria by birth.

3. A, the son of nationals of a foreign state, was born in a hospital within the limits of a United Kingdom air base in Lagos in 1961. A became a citizen of Nigeria by birth.

This general rule is qualified by two provisos which exclude from Nigerian citizenship a person at the time of whose birth (i) neither

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1. Federal Constitution ss. 10, 12A; Republican Constitution ss. 10, 11.

of his parents was a citizen of Nigeria and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to the Federation or (ii) his father was an enemy alien and the birth occured in a place then under occupation by the enemy. In the application of these provisos, legitimacy of the child at the date of its birth is material. The expression "father" in these provisos means the father of a legitimate child.[1A] It must be noted, however, that legitimacy in Nigerian law is a wider concept than it is in English law. In Nigeria, legitimacy does not necessarily depend on a marriage. If there is a marriage, it is immaterial whether it is monogamous or polygamous. The marriage must however be recognised by the laws of Nigeria.[1] Where the national status of the father is material, in the case of a posthumous child, it is construed as a reference to the national status of the father at the time of death. Where the death occurred before October 1, 1960[2], the national status that the father would have had if he had been alive on that date is deemed to be his national status at the time of his death.[3]

The citizenship legislation does not contain any provision in respect of foundlings. Presumably, they would be deemed to have been born where

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1A See the similarly worded provision in the Ghana Nationality & Citizenship Act s. 7 where legitimacy is immaterial; see ibid s. 2(1) for the definition of "child".

1. As to legitimacy in Nigerian law, see infra p. 241 et seq.

2. Or June 1, 1961 in relation to the Northern Cameroons; see Republican Constitution s. 10.

3. See ibid s. 17(3)

they were found, in the absence of strong evidence to the contrary.

The first proviso

This is almost identical with that contained in the law of the United Kingdom and Colonies which formerly applied in Nigeria. The difference between this proviso and that of the United Kingdom law results from the rejection in the Nigerian proviso of the rule, adopted in that of the United Kingdom, that citizenship descends solely from the father.[1] Therefore under Nigerian law, unlike the position in the law of the United Kingdom, a person born in Nigeria of a father who is a foreign diplomatic envoy is a citizen of Nigeria if his mother is such a citizen. Legitimacy is of the essence in this proviso as it only operates where the child is legitimate at the date of birth. Therefore the illegitimate child of an envoy accredited to the Federation does not come within the proviso. The subsequent legitimation of the child does not affect its citizenship unless the mode of legitimation related back to the date of birth.

The first proviso is confined to the children of a father who possesses the diplomatic immunity accorded to a foreign envoy accredited to the Federation. A strict interpretation of this proviso would exclude persons who normally enjoy diplomatic immunity within the Federation and would confine it to the Head of a foreign or Commonwealth diplomatic mission. Even a Head of State will not come within it as his

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1. Compare Act of 1948 (U.K.) s. 4, proviso (a) with Republican Constitution s. 11, proviso (a)

immunity has a different legal basis from that accorded to an envoy.[1] This effect, it is submitted, was not intended. Under the Diplomatic Immunities and Privileges Act 1962[2], persons who possess the immunity "accorded to a foreign envoy" are foreign ambassadors, the ambassador of the Republic of Ireland and the chief representatives of Commonwealth countries.[3] Such immunity may also be granted to the representatives of Commonwealth governments attending Conferences in Nigeria[4] and by Order in the Gazette to representatives, members of the committees, senior officers and persons in the missions of any organ of an international organisation or any conference convened by the organisation.[5] Possibly the official and domestic[6] family of a foreign envoy or chief representative of a Commonwealth country or the official staff[7] of the representative of a Commonwealth or foreign government attending a Conference in Nigeria may come within the effect of the proviso.[8] If the strict interpretation of the proviso was unintended, then it may be that those whose names appear on the list submitted by a foreign envoy or chief representative of a commonwealth country to the Ministry of Foreign Affairs[9] come within its operation. However persons possessing

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1. See Parry, op cit. 234; see generally Oppenheim, International Law (ed Lauterpacht) v. 1, 8th ed (1955) 758-763.
2. Act No. 42 of 1962 (Nigeria)
3. See ibid s. 3.
4. See ibid s. 6.
5. See ibid s. 11(2) (b) and Second Schedule
6. See ibid s. 4.
7. See ibid s. 6(1)
8. See generally Oppenheim, op. cit 808-813
9. see ibid 809

the immunities accorded to foreign consular officers are not within the proviso.

It is definite that the proviso applies to the children of envoys accredited to the Federation. It would not seem to apply to the children of envoys accredited to the Regions. Presumably diplomats in the regional capitals would be members of the staff of the envoy accredited to the Federation. It is not clear whether the proviso applies to the children of an envoy accredited to some other country and who is in the Federation. The unintended effect of the proviso might also make it inapplicable to foreign Heads of States who are in the Federation.

ILLUSTRATIONS

1. A is the Ambassador of the Guinea Republic in Nigeria. His son B born in Lagos in 1963 is not a citizen of Nigeria.

2. H was born in the former Colony of Nigeria in 1900. He married W born in the former Colony of the Gold Coast. Their son, B was born in the United Kingdom, H remained a citizen of the United Kingdom and Colonies on September 30, 1960. B[1] becomes the High Commissioner for Ghana in Nigeria. B's son, D, born in Lagos in 1963 is a citizen of Nigeria.

3. A is the Ambassador of the Republic of Dahomey accredited to Nigeria. He married B, a citizen of Nigeria. Their son, C, born in Lagos in 1963 is a citizen of Nigeria.

4. A, the son of U.S. nationals was born in Enugu in 1961. At the time of the birth the mother was Director-General of W.H.O. stationed in Nigeria. A is a citizen of Nigeria by birth.

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1. B became a citizen of Ghana on May 11, 1957. H e was not deprived of his citizenship of the United Kingdom and Colonies. See Ghana Nationality & Citizenship Act 1957 s. 5; British Nationality Act 1958 s. 2 (2) (a). He also is a citizen of Nigeria; Republican Constitution s. 7 (2).

5. A was born in Kano in 1961. His father was a Ghanaian citizen who at the time of the birth was Ghanaian Ambassador to Tunisia passing through Nigeria with his family. Quaere whether A became a citizen of Nigeria.

6. A is the Ambassador of the Republic of Liberia in Nigeria. His illegitimate son, B, born in Lagos is a citizen of Nigeria. If the child is legitimated from the date of the birth, he ceases to be a citizen of Nigeria.

The second proviso

The second proviso to section 11 of the Constitution is identical with that in the law of the United Kingdom.[1] The two requirements contained in the proviso must be satisfied in order to bring a child within it. Therefore a child born of an enemy alien father in a part of the country not in hostile occupation is a citizen of Nigeria. The proviso is also confined to children who are legitimate at the date of birth. An illegitimate child born in a place within Nigeria under hostile occupation and whose natural father was an enemy alien at the date of the birth is a citizen of Nigeria. The subsequent legitimation does not affect this result unless the mode of legitimation relates back to the date of birth.[2]

The term "enemy alien" is not defined in the citizenship legislation. The term may be used in two senses - the national or the territorial sense. The national sense denotes the nationality of the person, and the territorial sense the residence of that

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1. Act of 1948 (U.K.) s. 4 proviso (b)

2. See further infra p. 244

person.[1] The term is used here in the national sense and would be construed to mean the subject or citizen of an enemy State. The term can only properly be employed when the Federation is at war and it follows that the proviso might not apply during a conflict not amounting to war in the technical sense.[2]

ILLUSTRATIONS.

1. A, the son of a prisoner of war of enemy nationality, was born in Lagos in 1961. A is a citizen of Nigeria by birth.

2. A, the son of a neutral national, was born after October 1, 1960 in a part of the Federal Republic under enemy occupation. A acquires citizenship of Nigeria by birth.

3. A, the son of a member of enemy forces was born after October 1, 1960 in a part of the Federal Republic in the occupation of those forces. A is not a citizen of Nigeria.

4. As in Illustration 3 except that A was illegitimate. A is a citizen of Nigeria by birth.

Births in ships and aircrafts.

The territory of the Federal Republic of Nigeria includes her territorial waters.[3] The Constitution provides that a person born in a ship or aircraft registered in Nigeria or belonging to the Government

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1. See infra p.291-2; also Oppenheim, International Law 7th ed. Lauterpacht v. 2 (1952) 309; Parry, op. cit 236.

2. See Oppenheim, op cit. v. 2, 202-203.

3. Interpretation Act, Cap 89 Laws of the Federation and Lagos (1958 ed) s. 3 s.v. "Nigeria."

of the Federation is deemed to be born in Nigeria.[1] This provision is almost similar to the rule adopted in the Act of 1948.[2] All Nigerian ships must be registered or licensed in Nigeria under the provisions of the Merchant Shipping Act 1962.[3] A Nigerian ship not exceeding fifteen tons employed solely on the coasts or inland waters of Nigeria may be exempted from being licensed. Licensed Nigerian ships are not to proceed outside Nigeria.[4] The master of every Commonwealth (including Nigerian) ship has an obligation to record births on the ship and to transmit such returns to a Superintendent of the Mercantile Marine Officer who in turn sends a copy of such returns to the Principal Registrar of Births and Deaths.[5] Aircrafts also carry certificates of registration issued at the place of registration and the owner of an aircraft registered in Nigeria has a duty to furnish returns of births on the aircraft.[6] The case of a birth on a ship or aircraft belonging to the Government of a region is not dealt with.[7] Neither is the case of a birth on an unregistered

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1. Republican Constitution s. 17 (2) see also Nigerian Citizenship Act 1960 s. 1 (2).

2. s. 32 (5)

3. Act No. 30 of 1962 (Nigeria) s.2(1) s.v. "Nigerian ships". As to the registration of ships, see Part IX of the Act; as to the licensing of ships, see Part X.

4. See ibid. s. 380 (3)

5. ibid. s. 137.

6. Civil Aviation (Births, Deaths and Missing Persons) Act, Cap 33 Laws of the Federation and Lagos, 1958 ed, s.3.

7. See the definition of "Nigerian Government ship" in Merchant Shipping Act 1962 s. 2 (1).

ship or aircraft. The position in these cases will depend on where such a ship or aircraft was at the time of the birth. If it was in or over Nigeria or her territorial waters, the birth would be deemed to be a local birth, if not then it will be regarded as a foreign birth. Another situation not provided for is the birth on a Nigerian licensed ship (not belonging to the Government of the Federal Republic) when outside the territorial waters of Nigeria due perhaps to stress of weather or other causes beyond the control of the master or if so authorised in her licence.[1]

ILLUSTRATIONS.

1. A, the son of French nationals, was born at sea on board a merchant ship registered in the Federal Republic. A acquires citizenship of Nigeria by birth.

2. A was born at sea in a ship belonging to the Government of the Federal Republic in 1961. A acquired citizenship of Nigeria by birth.

3. A was born at sea in a ship belonging to the Government of the Eastern Region of Nigeria in 1961. Quaere whether A acquired citizenship of Nigeria by birth.

4. A was born over Dahomey in an aircraft registered in the Federal Republic. A acquires citizenship of Nigeria by birth.

(b) Citizens by descent

A person born outside ~~the~~ Nigeria after September 30, 1960 or outside[2]

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1. see ibid. s. 380(3)

2. As to births on ships and aircrafts, see Republican Constitution s. 17(2)

the Federation (including the Northern Cameroons) after May 31, 1961 becomes a citizen of Nigeria at the time of his birth if his father was such a citizen and acquired his citizenship by birth, by registration, or by naturalisation. Citizenship acquired under and by virtue of section 7 (1) of the transitional provisions of the Constitution is regarded as citizenship by birth. A male citizen of Nigeria who himself acquired his citizenship by transmission from his father - either by virtue of the transitional provision of section 7 (2) or under this rule contained in section 12 - cannot transmit such citizenship to his foreign-born children. The range of the jus sanguinis is therefore limited to the first foreign-born generation.

This provision is similar to the United Kingdom provision relating to citizenship by descent. But whilst in the law of the United Kingdom, a child born abroad of a father who was a citizen of the United Kingdom and Colonies by descent can also become a citizen by descent if he satisfies certain conditions;[1] in Nigerian law such a child of a person who acquired citizenship of Nigeria by descent cannot become a citizen of Nigeria at the time of his birth. This limitation of the transmission of citizenship of Nigeria to the first foreign-born generation only hits particularly hard the children born abroad of fathers who are citizens of Nigeria by descent while on service abroad under the Government of the Federation or a regional government. There are no provisions in the Nigerian legislation

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1. See Act of 1948 s. 5 provisos (a) - (d).

similar to those of the United Kingdom statute exempting children, whose births are registered at a United Kingdom consulate within one year[1] or whose fathers were in Crown service, from the limitation imposed by the rule[2]. This restriction in the Nigerianlegislation may also lead to a conditions of statelessness. For example, a child born of a Nigerian father and mother, the father being a citizen of Nigeria by descent, in a country which does not adopt the simple rule of the jus soli to confer nationality, e.g. Germany, will be stateless.

The hardship caused by such a restriction of the transmission of Nigerian citizenship is however obviated to a certain extent by the existence of a special provision[3] under which children born abroad of fathers who are citizens by descent may be registered as citizens of Nigeria. This is however inadequate relief for a stateless child as he cannot obtain registration as a citizen until he attains the age of 21. In such a case it is probable that the Minister might exercise his discretion to register the child under the provisions of section 4 (1) of the Nigerian Citizenship Act 1960 relating to the registration of minors.

Transmission of citizenship under this provision can only be

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1. ibid s. 5 (1) (b)
2. ibid. s. 5 (1) (c)
3. Nigerian Citizenship Act 1960 s. 3 (2).

effected through males.[1] The legitimacy of the child is also essential.[2] A person deriving citizenship under this provision must be a legitimate child of his father at the date of birth.[3] In the case of a posthumous child, the national status of the father at the time of birth will be construed as his status at the time of his death. Where the death occurred before October 1, 1960 and the birth occurred on or after that date, the national status of the father is deemed to be that which he would have had if he had died on that date.[4]

ILLUSTRATIONS

1. A was born in the former Colony of Nigeria in 1900, his son B was born there in 1940. C, B's son, was born in England in 1961. B became a citizen of Nigeria on October 1, 1960. C acquired citizenship of Nigeria by descent.

2. As in Illustration 1 except that C was born posthumously as B died in 1960. C acquired citizenship by descent.

3. A, a woman, was born in Lagos in 1940 and acquired citizenship of Nigeria on October 1, 1960. She married H, a citizen of Ghana. Their son, B, born in Ghana in 1962 did not acquire citizenship of Nigeria.

4. A was born in Lagos in 1961. His son, B, born in England in 1981 will acquire citizenship of Nigeria by descent. If born illegitimate B does not acquire citizenship of Nigeria.

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1. This is not the case throughout the Commonwealth, see Ghana, Canada, Australia and Ceylon.

2. Compare the position in Ghana Nationality and Citizenship Act 1957, ss 8, 2(1) s.v. 'child'.

3. As to legitimacy in Nigerian Law, see infra p. 241 et seq.

4. Republican Constitution s. 17 (3). In relation to the Northern Cameroons

5. A became a citizen of Nigeria by registration in 1962. His son, B, was born in the United Kingdom in 1961; another son, C, was born there in 1963. B did not acquire citizenship of Nigeria. C became a citizen of Nigeria by descent.

6. A was naturalised in Nigeria as a citizen of Nigeria in 1961. His son, B was born in France in 1960; another son C, born in Dahomey in 1963. B did not acquire citizenship of Nigeria. C is a citizen by descent.

7. A was born in the former Protectorate of Nigeria in 1940 and became a citizen of Nigeria on October 1, 1960. His son, B, was born in Ghana in 1961 and became a citizen of Nigeria at the date of his birth. B's son, C, was born in Sierra Leone in 1980. C will not be a citizen of Nigeria.

3. CITIZENSHIP BY REGISTRATION.

The Ad hoc Committee on Nigerian Citizenship had recommended [1] that certain persons should acquire citizenship by registration. The citizenship legislation follows closely their recommendations. This method of acquisition of citizenship has its parallel in the innovation introduced in the British Nationality Act 1948 [1A] and makes citizenship of Nigeria available to persons who are in some manner connected with the Federal Republic. Some of the provisions for registration are transitional as they apply to persons in being

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the date would be June 1, 1961. See s. 12A of the Federal Constitution, see further s. 10 of the Republican Constitution and supra p. 154-155

1. See Rpt. Pt. VII para. 15 - 18.

1A. Act of 1948 (U.K.) ss. 6 - 9.

prior to October 1, 1960 who did not acquire citizenship by operation of law on that date.

The categories of persons eligible for registration under the Nigerian legislation are more than those in the United Kingdom Act. This results from the structural differences between the two laws. The scheme of the Act of 1948 conferred citizenship of the United Kingdom and Colonies automatically on certain classes of persons who, in similar circumstances in Nigeria, would be required to register as citizens of Nigeria. For example, the transitional provisions of the Act of 1948 automatically conferred citizenship of the United Kingdom and Colonies on a person born within the United Kingdom and her colonies of alien parentage prior to the commencement of the Act.[1] A person of alien parentage born in Nigeria before the commencement of the Nigerian citizenship legislation would require registration to become a citizen of Nigeria.[2] Likewise a person naturalised in the United Kingdom and her colonies before January 1, 1949 became a citizen of the United Kingdom and Colonies on that date,[3] but a person naturalised as a citizen of the United Kingdom and Colonies in Nigeria before October 1, 1960 does not automatically become a citizen of Nigeria on that date.[4] He can acquire such a status by registration.

The Nigerian legislation does not contemplate the entertainment of applications for registration outside Nigeria. Such a provision may

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1. ibid. s. 12 (1) (a)
2. Provided also none of his grandparents was born in Nigeria; Republic Constitution s. 8(1).
3. Act of 1948 (U.K.) ss. 12(1) (b), 32(6)
4. Federal Constitution s. 9, Republican Constitution s. 9

not be necessary for those who ought to satisfy a minimum residential qualification immediately preceding the application.[1] But for those who do not have to satisfy such a requirement, it is submitted that it is not essential for them to submit their applications personally in Nigeria. It may however be impracticable to submit an application outside Nigeria. The declaration in the application form must be signed in the presence of a High Court Judge, a Magistrate or a Commissioner for Oaths.[2] Commissioners for oaths are appointed by the Minister after consultation with the Chief Justice.[3] Unless commissioners for oaths are appointed in Nigerian embassies or High Commissions abroad it will be impracticable for a person who is outside Nigeria to sign the declaration on the prescribed forms and pay the necessary fees.[4] It is believed that regulations might be made to enable applications made outside Nigeria to be signed before an appropriate officer of any Nigerian Consulate or Nigerian Overseas Mission.[5] Applications by persons in Nigeria are to be made

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1. See e.g. those registering under Nigerian Citizenship Act 1960 s.3(1).
2. Nigerian Citizenship Act 1961 s.2(3)
3. Nigerian Citizenship Act, 1960, as amended, s. 14B.
4. Nigerian Citizenship Act, 1961 s. 9.
5. Compare the Nigerian Citizenship (Naturalisation) Regulations, 1961, L.N. 11 of 1961, Reg. 4(2) which allows for an application for a certificate of naturalisation to be signed outside Nigeria by the officer in charge of any Nigerian Consulate or Nigerian Overseas Mission. A fortiori the same should be permissible in respect of an application for registration. The writer understands that arrangements are being made for declarations on applications for registration to be made at a Nigerian Overseas Mission.

made to the Permanent Secretary, the Ministry of Internal Affairs at Lagos. Applications outside Nigeria may be made to him through a Nigerian Consulate or Overseas Mission.

Every application for citizenship of Nigeria by registration must be supported by the certificate of two sponsors who are citizens of Nigeria otherwise than by naturalisation.[1] One of these sponsors should be in the prescribed class.[2] The applicant must be personally known to the sponsors who should be able to vouch for his good character and the correctness to the best of their knowledge and belief of the particulars of the applicant[3] as stated in the application forms. In the case of the registration of Commonwealth citizens, the sponsors must not be the solicitor or agent of the applicant.

Citizenship by registration is made available to certain persons either as of right or at the discretion of the Minister.[4] For discretionary registration, the discretion of the Minister is absolute. He is not to be required to assign any reason for the grant or refusal of any application and his decision is not subject to appeal or review in any court.[5] A residential qualification is required of citizens of

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1. See the application forms; Nigerian Citizenship Act 1960, as amended, Third Schedules, Forms A, B, C and F (added by the Nigerian Citizenship Act 1961, L.Ns. 10 and 171 of 1962).

2. See Nigerian Citizenship Act 1961 s. 2 (2). The prescribed class consists of Senators, members of the House of representatives, members of certain professions and certain civil servants.

3. The applicant is also required to submit proof of certain particulars e.g. date and place of birth, date and place of marriage, present nationality or citizenship. Prima facie evidence can be a birth or marriage certificate and a passport. Sworn declarations as to place and date of birth can be submitted but these are however frowned on owing to the difficulty of testing their genuiness.

4. The Minister is responsible for citizenship matters is the Minister of Internal Affairs.

5. Nigerian Citizenship Act 1960 s.13.

another commonwealth country or of the Republic of Ireland, a British subject without citizenship or a protected person who may seek citizenship of Nigeria by registration.[1] No residential qualification is necessary for the other categories of persons who may register as citizens. Citizenship by registration takes effect as from the date of registration.[2] This is important as children born abroad to a person who is a citizen by registration before the date of registration are not citizens of Nigeria, but children born to him abroad after that date are citizens. With the exception of minors, any person who may be registered as citizens at discretion is required to make a declaration in writing of his willingness to renounce any other nationality he may possess and take the oath of allegiance as prescribed in the First Schedule of the Oaths Act 1963. He is not to be registered unless and until he has complied with these requirements.[3]

Under the Nigerian citizenship legislation, marriage has no effect on citizenship or nationality.[4] As regards non-citizen women who are or have been married to Nigerian citizens, consideration for

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1. ibid ss. 3 (1), 14A (2)

2. ibid s. 5

3. ibid. s. 3(4)

4. As to the effect of marriage of the nationality of women at common law, see Bacon v. Bacon (1641) Cro.Car. 601; Countess of Conway's Case (1834) 2 Knapp. P.C. 364; Count de Wall's Case (1848) 6 Moo.P.C. 216; see also Baty, "The Nationality of a Married Woman at Common Law", (1936) 52 L.Q.R. 247. For statutory provisions, see Aliens Act 1844, Naturalisation Act 1870 s. 10; British Nationality and Status of Aliens Act 1914-33 ss. 10, 11; British Nationality Act 1948 ss. 6(2), 14, 19.

the unity of nationality within the family has led to the provision of an easier mode in which they can acquire local citizenship. Certain categories of them can acquire local citizenship by registration as of right and the others by discretionary registration. No similar concession exists in respect of a non-citizen male married to a female citizen. The provisions of the Nigerian citizenship legislation relating to the nationality of married women are in accord with the Convention on the Nationality of Married Women adopted by the General Assembly on January 29, 1957.

The Constitution provides for the categories of persons who are entitled to be registered as citizens of Nigeria. The Nigerian Citizenship Act 1960[1] has re-enacted these provisions and the manner in which applications for registration should be made. The categories are:-

(i) Persons who having been born in the former Colony or Protectorate of Nigeria or in the Northern Cameroons were on September 30, 1960 (or in case of Northern Cameroons on May 31, 1961) citizens of the United Kingdom and Colonies or British protected persons but neither of whose parents nor any of whose grandparents was born in the former Colony or Protectorate of Nigeria or the Northern Cameroons.[2]

(ii) Three categories of women who are or have been married:

(a) Women being citizens of the United Kingdom and Colonies

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1. As amended by Act No.9 of 1961, L.N. 10 of 1962 and L.N.171 of 1962.

2. Republican Constitution s. 8(1) read in conjunction with ss. 7(1) proviso, 10, see also Nigerian Citizenship Act 1960 as amended s. 3A.

or British protected persons immediately prior to October 1, 1960[1] who are married or have been married to persons who become or but for their prior death would have become citizens of Nigeria on that day.[2]

(b) Women who are or have been married to persons who became citizens of Nigeria by registration and who on the date of such registration were citizens of the United Kingdom and Colonies or British protected persons.[3]

(c) A widow being a citizen of the United Kingdom and Colonies or a British protected person immediately prior to October 1, 1960[1] who has been married to a person who, but for his death prior to that day would have been entitled to be registered as a citizen of Nigeria.[4]

(iii) Persons who immediately prior to October 1, 1960 were citizens of the United Kingdom and Colonies by reason of a naturalisation or registration in the former Colony or Protectorate of Nigeria or in the Northern Cameroons.[5]

The Nigerian Citizenship Act 1960 also provided for discretionary registration of other categories of persons as local citizens. There are four, possibly five such categories:

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1. The dates in relation to the Northern Cameroons is June 1, 1961, see Republican Constitution s. 10.
2. Republican Constitution 8 (2); Nigerian Citizenship Act 1960, s. 3B.
3. Republican Constitution 8 (3); Nigerian Citizenship Act 1960, s. 3C.
4. Republican Constitution 8 (4); Nigerian Citizenship Act 1960, s. 3D,
5. Republican Constitution,9; Nigerian Citizenship Act 1960, s. 3E.

(i) Citizens of other countries of the Commonwealth and of the Republic of Ireland, British subjects without citizenship and a British protected person.[1]

(ii) Persons born outside Nigeria of fathers who were, at the time of the birth, citizens of Nigeria by descent.[2]

(iii) Women who are or have been married to a person who but for his prior death would have become a citizen of Nigeria.[3]

(iv) A minor child of a citizen or any minor child.[4]

(v) Possibly persons who were entitled to register under section 8 (1) of the Constitution but failed to do so before October 1, 1962.[5]

REGISTRATION AS OF RIGHT

(i) Registration of persons born in Nigeria prior to October 1, 1960.

The Constitution[6] makes available citizenship of Nigeria by registration as of right to persons who but for the fact that none of their parents or any of their grandparents was born in the former Colony or Protectorate of Nigeria or in the Northern Cameroons, would have become citizens of Nigeria on October 1, 1960 (or on June 1, 1961 for those connected with the Northern Cameroons under and by virtue of sections 7 (1) and 10 of the Constitution). It will be recalled that under the transitional provisions

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1. Nigerian Citizenship Act 1960, as amended, ss. 3 (1), 14A.
2. ibid s. 3 (2)
3. ibid s. 3 (3)
4. ibid s. 4.
5. ibid s. 3A; see infra pp. 176-9 for the discussion on this point.
6. Republican Constitution s. 8(1)

of sections 7 (1) and 10, a persons became a citizen of Nigeria on October 1, 1960 or on June 1, 1961 if he satisfied all these three requirements: (i)that he was born in the former Colony or Protectorate of Nigeria or in the Northern Cameroons and (ii) that he was either a citizen of the United Kingdom and Colonies or a British protected person immediately before October 1, 1960 or June 1, 1961 for those connected with the Northern Cameroons and (iii) either one of his parents or any of his grandparents was born in the former Colony or Protectorate of Nigeria or in the Northern Cameroons. It is to those persons who satisfy all but the third requirement that this constitutional provision confers the benefit of acquiring citizenship of Nigeria by registration as of right. The provision stipulates that applications for registration should be made before October, 1, 1962 in the manner prescribed by Parliament and that a person who has not attained the age of 21 years (other than a woman who is or has been married) may not make an application but an application may be made on that person's behalf by a parent or guardian.

In prescribing the manner in which application under this constitutional provision should be made, Parliament re-enacted the provision as section 3A of the Nigerian Citizenship Act 1960.[1] But the time-limit in the constitutional provision which required applications to be made before October 1, 1962 was omitted in the reenactment. The question therefore arises whether

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1. The section was introduced into the Act of 1960 by the Nigerian Citizenship Act 1961. For the form of application, see Third Sch. Form A.

a person who comes within this provision can claim to be registered as of right after October 1, 1960. The answer depends on whether the re-enactment has impliedly amended the constitutional provision. Since the citizenship provisions of the Constitution[1] are not among those entrenched, no special procedure is required for their amendment.[2] Even where no limitation exists on the power of constitutional amendment, the question has usually been raised whether such an amendment can be made casually without the use of express words. Judicial opinion on this question varies. The High Court of Australia in a Queensland case expressed the opinion that a formal amendment must be made by express enactment.[3] A South African Court took the opposite view holding that the South African Act may be amended informally merely by the enactment of legislation which is inconsistent with it.[4] The Judicial Committee of the Privy Council thought that something more than mere implication is necessary.[5] The point has not yet come before the courts in Nigeria but the practice adopted by Parliament in amending the Federal Constitution 1960 by a Constitutional Amendment Act[6] suggests that mere implication may not be sufficient.

It is difficult to contend that the re-enactment in section 3A(1)

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1. Republican Constitution, Chap. II ss. 7-17.
2. See ibid. s. 4.
3. Cooper v. Commissioner of Income Tax for Queensland (1907), 4 C.L.R. 1304
4. Krause v. Commissioner of Inland Revenue [1929] A.D. 206
5. McCawley v. The King [1920] A.C. 691
6. See Nigeria Constitution First Amendment Act, No. 24 of 1961; Nigerian Constitution Second Amendment Act No. 21 of 1962.

of the Act has impliedly amended the constitutional provision of section 8 (1) by removing the time-limit of October 1, 1960. Such a contention is contrary to section 18 of the Act which provides that provisions in the Act "shall have effect subject to any provision inconsistent therewith for the time being contained in the Constitution." This negates any intention on the part of Parliament to remove the time-limit and also conforms to the rule that the Constitution prevails over all other laws inconsistent with it.[1] The fact that the Republican Constitution which superseded the Federal Constitution 1960 retained the time limit in the provisions of section 8(1) also argues against such a contention.

A more plausible solution is that Parliament in re-enacting the constitutional provision as section 3A of the Act of 1960 had no intention of enlarging the right given under section 8(1) of the Constitution but intended to make an additional provision for those persons who came within section 8(1) and failed to exercise their right to register before October 1, 1962. This construction can be justified under section 16(a) of the Constitution which gives Parliament legislative power to make provision for the acquisition of citizenship of Nigeria by persons who do not become citizens of Nigeria by virtue of constitutional provisions. It will be noted however that registration under section 8(1) of the Constitution is as of right. The wording of section 3A(1) of the

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1. See Republican Constitution s. 1.

Act does not clearly specify whether this right is preserved to applicants who come within its provision. It seems to stress the discretion on the part of the applicant but it is silent as regards any discretion on the part of the Minister. It is doubtful whether registration in these cases after October 1, 1962 can be as of right. If the section is construed as an additional ground for the acquisition of local citizenship by those who failed to apply for registration before October 1, 1962, most probably registration will be discretionary.

ILLUSTRATIONS.

1. H was born in the former Colony of Sierra Leone and married W who was also born there. Their son, A, was born in Lagos in 1930. A retained his citizenship of the United Kingdom and Colonies on September 30, 1960. A was entitled to be registered as a citizen of Nigeria if he applied before October 1, 1962.

2. As in Illustration 1 except that A was illegitimate. A was entitled to be registered as a citizen if he applied before October 1, 1962.

3. A was born in Ibadan prior to October 1, 1960 of parents and grandparents born in Dahomey. A retained his British protected status on September 30, 1960. A was entitled to be registered as a citizen if he applied before October 1, 1962.

4. As in Illustration 3 but A failed to apply for registration before October 1, 1962 Quaere whether A can be registered under section 3A(1) of the Nigerian Citizenship Act 1960, as amended.

(ii) Registration of women entitled to registration.

There are three categories of women entitled to registration as citizens of Nigeria by virtue of their marriage to citizens of

Nigeria.[1] All three categories must possess either citizenship of the United Kingdom and Colonies or British protected status on a particular date. The categories are:-

Category 1. A woman who is or has been married to a person who became or but for his prior death would have become a citizen of Nigeria on October 1, 1960.[2] To be entitled to registration, she should possess citizenship of the United Kingdom and Colonies or British protected status immediately before that date.

Category 2. A woman who is or has been married to a person who became a citizen by registration.[3] To be entitled to registration she must possess citizenship of the United Kingdom and Colonies or British protected status on the date of that person's registration.[4]

Category 3. A woman who is or has been married to a person who would have been entitled to registration as a citizen of Nigeria[5] but for his death before October 1, 1960.[6] She must possess citizenship of the United Kingdom and Colonies or British protected status immediately before that date. The application for registration must be made before October 1, 1962.

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1. See Republican Constitution s. 8(2), (3), (4).
2. ibid. 8 (2). The date in relation to the Northern Cameroons is June 1, 1961; see ibid s. 10
3. Under ibid. s. 8(1)
4. See ibid s. 8(3)
5. Under ibid s. 8(1)
6. See ibid. s. 8(4). The date in relation to the Northern Cameroons is June 1, 1961; see ibid s. 10.

The date on which a woman should possess the requisite citizenship or status is important in the application of these provisions. The difference in the dates in categories 2 and 3 should be noted. These two categories relate to women who are or have been married to persons who are entitled to, or would, but for their prior death before October 1, 1960, have been entitled to registration. If the person to whom she is or has been married had died before October 1, 1960, she ought to possess the requisite citizenship or status on September 30, 1960 in order to come within category 3. But in the case of a person who lived and acquired citizenship of Nigeria by registration, the woman who is or has been married to him must possess the requisite citizenship or status on the date of that person's registration to come within category 2. If she had been divested of the requisite citizenship or status before the date of registration, she is no longer entitled to registration but may be registered as citizen at discretion.[1] Registration as of right is also not available to the widow of a person entitled to citizenship by registration and who died after September 30, 1960 but before the completion of his registration. In such a case the widow does not come within category 3 but may seek citizenship by discretionary registration.[2]

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1. See Nigerian Citizenship Act 1960 s. 3 (3)

2. idem.

The provisions for the registration of women who are or have been married to citizens under section 8 (2), (3) and (4) of the Constitution have been re-enacted by Parliament mainly for the purpose of prescribing the manner in which application should be made thereunder. The re-enactments are contained in sections 3B, 3C and 3D respectively of the Nigerian Citizenship Act 1960 as amended by the similarly entitled Act of 1961. These re-enactments however do not follow precisely the requirements of their corresponding constitutional provisions. The status which a woman must possess to come within the constitutional provisions is that of a British protected person. But the re-enactments provide that a woman married to a local citizen needs only possess the status of a "protected person", which is a wider status than that of a "British protected person". The wording also of sections 3B and 3C of the Act does not suggest that women who come within their provisions can be registered as of right. It is submitted, that these variations in the re-enactments should be read subject to the constitutional provisions, which, in accordance with section 18 of the Act, are to prevail in cases of inconsistency.[1]

In Nigerian law, marriage does not have an automatic effect upon citizenship, but the wife of a citizen of Nigeria may in every case become a citizen of Nigeria by registration whether or not she is of

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1. See further, supra p. 177

full age and capacity. The provisions relating to the acquisition of citizenship by registration are not confined to wives of citizens of Nigeria but relates to any woman "who is or has been married" to a person who becomes a citizen of Nigeria.[1A] It follows that the termination of the marriage either by the death of the husband or by divorce is immaterial to these provisions and the marriage could have been terminated before the husband became a citizen of Nigeria. It is immaterial also whether the marriage was a monogamous or polygamous union.[1] There must however have been a valid marriage which is recognised by the law of Nigeria. In the cases of the annulment of a monogamous marriage, the distinction between void and voidable marriages must be employed to determine whether there has been a marriage. If a marriage is annulled on the ground that it is bigamous, then it is void and there never was a marriage. If, however, it is annulled on the ground of impotence, then there was a marriage until the date of the annulment.[2]

1A. Cf. the provision of the British Nationality Act 1948 (U.K.) s.6(2) which uses the phrase "has been married to a citizen of the United Kingdom and Colonies."

1. Cf. the Southern Rhodesian Citizenship and British Nationality Act 1949-53 s.25A which confined the provision for registration to wives and children of a monogamous union. See also Citizenship of Rhodesia & Nyasaland and British Nationality Act 1957, as amended, ss.12(2), 14(2), 15(2) which exclude women who are parties to external polygamous unions from the provisions for registration. See Beckett, "The Recognition of Polygamous Marriages under English law" (1932) 48 L.Q.R. 341.

2. De Reneville v. De Reneville [1948] P. 100; Wiggins v. Wiggins and Ingram [1958] 1 W.L.R. 1013.

Many a woman who comes within those categories would have acquired citizenship of Nigeria in her own right under the transitional or definitive provisions of the Constitution. For example, the wife of a citizen of Nigeria who herself being a citizen of the United Kingdom and Colonies on September 30, 1960, was born in Nigeria of parents there born would become a citizen of Nigeria in her own right.[1] The acquisition of Nigerian citizenship by married women by or under the transitional provisions of section 7 of the Constitution is not however prejudiced by their inclusion in the categories of women who may seek citizenship by registration.[2]

Parliament has laid down the manner in which applications for registration should be made.[3] Applications by married women or widows whose husbands became, or would, but for their death have become citizens of Nigeria on October 1, 1960 have no time limit.[4] The application by a woman who is or has been married to a citizen by registration should be made within twelve months or such extended period as the Minister may allow after the date of registration of that citizen.[5] The extension of the period will be necessary in the case of a registered citizen who has not married within twelve months of the date of his registration. The application of the widow of a

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1. See Republican Constitution s. 7(1)
2. ibid s. 8(5)
3. Nigerian Citizenship Act, as amended, Third Schedule Form B as amended by L.N. 10 of 1962.
4. See Nigerian Citizenship Act, as amended, s. 3B.
5. ibid. s. 3C.

person who would, but for his death before October 1, 1960, be entitled to be registered as a citizen should be made before October 1, 1962.[1]

ILLUSTRATIONS.

1. H was born in Lagos in 1920 and became a citizen of Nigeria on October 1, 1960. He married W who was born in the United Kingdom and who retained her citizenship of the United Kingdom and Colonies on September 30, 1960. W is entitled to be registered as a citizen of Nigeria (Category 1).

2. As in Illustration 1 except that W was born in the former Colony of the Gold Coast having parents and grandparent born therein. W having become a citizen of Ghana lost her citizenship of the United Kingdom and Colonies on February 20, 1958.[2] W is not entitled to be registered. She may seek discretionary registration under s. 3(3) of the Act of 1960.

3. As in Illustration 1 except that W was born in Sierra Leone having parents and grandparents born therein. W remained a citizen of United Kingdom and Colonies or British protected person on September 30, 1960 and is entitled to registration as a citizen of Nigeria (Category 1)

4. As in any of Illustration 1, 2, 3, except that H died in 1959 or divorced W in 1959 or 1961. The results would be respectively the same.

5. H was born in Lagos in 1930 having parents and grandparents born in Sierra Leone. H retained his citizenship of the United Kingdom and Colonies on September 30, 1960 and was registered as a citizen of Nigeria in 1960. He married W born in the Colony of Sierra Leone having parents and grandparents born there. W was a citizen of the United Kingdom and Colonies on the date of her husband's registration. W is entitled to registration as a citizen of Nigeria (Category2)

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1. ibid. s. 3D(2)

2. See the British Nationality Act 1958 s.2.

6. As in Illustration 5 except that H became registered as a citizen of Nigeria in 1962. W having lost her citizenship of the United Kingdom and Colonies on April 27, 1961[1] was no longer entitled to registration in Category 2. She may seek discretionary registration under s. 3(3) of the Act of 1960.

7. As in Illustration 5 except that H died in August 1960. W is entitled to registration as a citizen of Nigeria (Category 3)

8. As in Illustration 5 except that H died in December 1960 before completing his registration. W is not entitled to be registered as a citizen of Nigeria. She may seek discretionary registration under s. 3(3) of the Act of 1960.

9. As in Illustration 5 except that W was born in the former Colony of the Gold Coast of parents and grandparents born therein. W became a citizen of Ghana and lost her citizenship of the United Kingdom and Colonies on February 20, 1958.[2] W is not entitled to registration irrespective of the date of her husband's registration. She may seek discretionary registration under s. 3(3) of the Act of 1960.

10. As in Illustration 5 except that W was born in the United Kingdom. W is entitled to registration as a citizen of Nigeria. If the date of registration of her husband is in 1963, she would still be entitled to be registered as a citizen. (Category 2).

(iii) Registration of persons naturalised or registered in the former Colony or Protectorate of Nigeria.

Before October 1, 1960, aliens residing in Nigeria may have become citizens of the United Kingdom and Colonies by naturalisation.

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1. See Sierra Leone Independence Act 1961 s.2.

2. See British Nationality Act 1958 s.2.

This may have been done in two ways. Aliens naturalised in Nigeria before 1949 as British subjects[1] became on January 1, 1949 citizens of the United Kingdom and Colonies.[2] After 1948 aliens are naturalised as citizens of the United Kingdom and Colonies.[3] After 1948, the innovation introduced into the British Nationality Act 1948[4] enabled citizens of Commonwealth countries or their wives and minor children residing in Nigeria to be registered as citizens of the United Kingdom and Colonies. The ad-hoc Committee on Nigerian Citizenship[5] noted that "although these persons had been naturalised or registered on account of their association with Nigeria, one of the conditions they had to fulfill was that they had assimilated the British way of life "and recommended that citizenship of Nigeria should not be imposed on them but that they should be entitled to become local citizens if they wished. As a consequence the Constitution provided that they may acquire citizenship of Nigeria by registration as of right before October 1, 1962.[6] This provision has been re-enacted in the Nigerian Citizenship Act 1960 which also provides a form of application[7]. An applicant must

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1. Act of 1914 (Imperial) s. 8., see also Cap. 146 Laws of Nigeria, 1948 ed.
2. Act of 1948 (Imperial) ss. 12(1)(b), 32(6).
3. ibid s. 10 and Second Schedule.
4. ibid s.s. 6-9
5. See Report by the Ad hoc Committee of the Resumed Nigeria Constitutional Conference, April 1959, para 12.
6. Republican Constitution, s. 9.
7. Nigerian Citizenship Act 1960, as amended, s.3E, Third Schedule, Form C.

be a citizen of the United Kingdom and Colonies on September 30, 1960 and such citizenship must not have been revoked before the submission of his application. He is required to furnish reasons for making the application. The Constitutional provision contains a proviso to the effect that minors (other than a woman who is or has been married) cannot make application directly but may do so through a parent or guardian. This proviso is not however contained in the re-enactment in the Act.

ILLUSTRATIONS.

1. A, an alien, became naturalised as a British subject in the former Colony of Nigeria in 1945. He became a citizen of the United Kingdom and Colonies on January 1, 1949. He retained that citizenship on September 30, 1960. A was entitled to be registered as a citizen of Nigeria if he applied before October 1, 1962.

2. A, an alien, became naturalised in 1950 in the former Colony of Nigeria as a citizen of the United Kingdom and Colonies, which citizenship he retained on September 30, 1960. A was entitled to be registered as a citizen of Nigeria if he applied before October 1, 1962.

3. A, a British protected person born in the former Protectorate of Ghana of parents and grandparents there born, became naturalised in 1950 in the former Colony of Nigeria as a citizen of the United Kingdom and Colonies. A retained that citizenship on September 30, 1960. A was entitled to be registered as a citizen of Nigeria if he applied before October 1, 1962.

4. A, a Canadian citizen, became registered in 1950 as a citizen of the United Kingdom and Colonies in the former Colony of Nigeria. A was entitled to be registered as a citizen of Nigeria if he applied before October 1, 1962.

5. A, an alien became a citizen of the United Kingdom and Colonies by naturalisation in the former Colony of Nigeria in 1959. B, his infant son, then 10, was registered as such a citizen. B retained that citizenship on

September 30, 1960. B was entitled to be registered on an application by A before October 1, 1962.

DISCRETIONARY REGISTRATION.

(i) Registration of citisens of other countries of the Commonwealth and of the Republic of Ireland, British subjects without citizenship and protected person.

Section 3 (1) of the Act of 1960 enables a citizen of another country of the Commonwealth or of the Republic of Ireland, a protected person[1], a British subject without citizenship[2] of full age and capacity[3] to seek citizenship of Nigeria by discretionary registration.[3A] The countries of the Commonwealth whose citizens are eligible to apply under this provision are listed in section 3 (5)(a) of the Act.[4] The President is empowered to amend the list by the addition of any country.[5] The countries which may be added are those which have acceeded to the Commonwealth.

Registration is at the discretion[6] of the Minister who must be satisfied that the applicant:

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1. For definition, see Nigerian Citizenship Act 1960 s. 2(1). In the law of the U.K., citizenship by registration is not extended to the British protected person.

2. See Nigerian Citizenship Act 1960 s.14A.

3. For definition, see ibid s. 2(3), (4).

3A. For the form of Application, see ibid Third Sch. Form F. (inserted by L.N.171 of 1962)

4. For a more recent list of Commonwealth countries, see Republican Constitution s. 14(3).

5. The original list in Federal Constitution s. 13(3) was amended by deleting the Union of South Africa.

6. As to the absolute discretion of the Minister, see Nigerian Citizenship Act 1960 s.13.

(a) is of good character.

(b) has a sufficient knowledge of a language in current use in Nigeria;[1] and

(c) is ordinarily resident[2] in Nigeria and has been so resident throughout the period of five years (or such shorter period as the Minister may[3] in special circumstances accept) immediately preceding his application.

It should be noted that a person seeking local citizenship under this provision is required before his registration to declare his willingness to renounce any other nationality or citizenship he may possess and take the oath of allegiance as prescribed by the Oaths Act 1963.[4] As the legal position of a citizen of another country of the Commonwealth differs in many respects from that of local citizens,[5] a great advantage is gained by registration under this provision. This advantage however has to be weighed against the fact that the applicant is required to make a declaration of his willingness to renounce any other nationality or citizenship he may possess.

ILLUSTRATIONS

1. A, a citizen of Sierra Leone has resided in Nigeria for the past seven years. He may apply to be registered as a citizen of Nigeria. The fact that for a greater part of the period he was not a citizen of Sierra Leone is immaterial.[6]

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1. Cf. Ghana Nationality and Citizenship Act 1957 s.11(1) which requires a language indigenous to and in current use in Ghana.

2. This expression is not defined in the Act. See Gout v. Cimitian [1922] 1A.C.105; Stransky v. Stranskey [1954] 2 All E.R.536; 540 et seq. R. v. Edgehill [1963] 1 All E.R. 181, 184.

3. As to the absolute discretion of the Minister, see Nigerian Citizenship Act 1960 s.13.

4. First Schedule.

5. See infra pp 227-8; 294 et seq

6. He was probably a citizen of the United Kingdom and Colonies or a British

2. A, a citizen of the Republic of Ireland has been resident in Nigeria for six years. He may apply to be registered as a citizen of Nigeria.

3. A, a British protected person born in the Gambian Protectorate, has resided in Nigeria for the past three years. He is not eligible to apply but may do so if the Minister so decides.

(ii) Registration of persons of Nigerian descent born abroad.[1]

As we have seen, a person born outside the Federation (otherwise than on board a ship or aircraft registered in Nigeria or belonging to the Government of the Federation)[2] became a citizen if his father was at the date of the birth such a citizen otherwise than by descent.[3] This limitation of citizenship of Nigeria to the first foreign-born generation denies such a status to the second and subsequent foreign-born generations. A person who belongs to the class of a second foreign-born generation and whose father is a citizen of Nigeria at the date of his birth may, if of full age and capacity,[4] be registered as a citizen of Nigeria[5] on the making of an application in the manner prescribed by Parliament.[6] Legitimacy is essential in this provision. A person who seeks registration under this provision must have been born legitimate of a father who at the date of the birth, was a citizen of Nigeria. A legitimated child does not come within this provision except his legitimation relates back to the

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protected person prior to April 27, 1961. See Sierra Leone Constitution ss. 1, 2, 3.

1. See Supra p.164 et seq.
2. See Republican Constitution s. 17(2), also Nigerian Citizenship Act 1960 s.2(2)
3. Republican Constitution s.12; citizenship by descent is acquired by virtue of ibid ss. 7(2), 12.
4. For definition, see Nigerian Citizenship Act 1960 s.2 (3), (4)
5. ibid s. 3(2)
6. No form of application has yet been prescribed.

the date of birth.[6A]

The existence of this procedure for conferring citizenship by registration on this class of persons tempers to a great extent the hardships that would be caused to such persons. Registration is discretionary[6B] and cannot be obtained unless the applicant is of full age and capacity. A person in this class born in a country which does not recognise the simple rule of the jus soli as conferring nationality may be stateless until he is twenty one.[1] It will be observed that a member of the third foreign-born generation may become a citizen of Nigeria by descent if his father, member of the second foreign-born generation, had acquired such citizenship by registration before the date of the birth. Children born to such a father abroad before the date of his registration[2] are not citizens. They can acquire citizenship under the provision for the registration of minors.[3]

However this provision for registration looks to the future and not to the past. It provides only for a person whose father had citizenship of Nigeria by descent at the date of that person's birth.

6A See infra p. 244-5

6B. The Ad hoc Committee had recommended that persons in this category should be entitled to acquire citizenship by registration, see Rpt. Pt. VII para. 16.

1. See supra p.165-6 ; Such a person may be registered before he attains 21 at the discretion of the Minister under the provision relating to minors; see Nigerian Citizenship Act 1960 s. 4(1)

2. See ibid s.3(2). Citizenship takes effect from the date of registration, ibid. s.5.

3. ibid. s.4.

As that citizenship could not have existed before October 1, 1960,[1] the provision for registration would not include persons of a second foreign-born generation, who were born before October 1, 1960.[2] Such persons of the second generation, though born of fathers who, if alive, would become citizens of Nigeria by descent on October 1, 1960 could only acquire citizenship of Nigeria by naturalisation.[3]

A person seeking registration under this provision is required before he is registered to declare in writing his willingness to renounce any other citizenship or nationality he may possess and take the oath of allegiance.[4]

ILLUSTRATIONS

1. A was born in Lagos in 1900. His son B was born in England in 1935. B became a citizen of Nigeria by descent on October 1, 1960. B's son, C, was born in England in 1961. C may be registered as a citizen under this provision when he attains the age of 21.

2. As in Illustration 1 except that C was born in 1959. Quaere whether C may be registered as a citizen under this provision when he attains majority. C may be registered under s. 4(1) of the Act of 1960 during his minority.

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1. In relation to the Northern Cameroons, the date is June 1, 1961, see Federal Constitution s. 12A; Republican Constitution s. 10.

2. See, however, Parry, op cit, 1264 footnote 53 on the similarly worded provision of the Ghana Nationality Act 1957. He states that though strictly speaking no person born before the commencement of the Act could have been born of a parent who was a citizen of Ghana, yet the intention is clear that a person born before the commencement of the Act of a parent becoming a citizen by descent shall be eligible for citizenship by registration.

3. See Nigerian Citizenship Act s.6. and Second Schedule. If he is a minor, he may be registered under ibid. s.4.

4. See Nigerian Citizenship Act s. 3(4)

(iii) Discretionary registration of women who are or have been married to citizens of Nigeria

Under section 3(3) of the Nigerian Citizenship Act 1960, two categories of women may be registered as citizens of Nigeria upon making application in the prescribed manner,[1] whether or not they are of full age and capacity.[2] Registration is at the discretion of the Minister.[3] The first category consists of women who are or have been married to citizens of Nigeria; the second relates to a woman who has been married to a person who, but for his death, would have become a citizen of Nigeria.

Women who come within the first category are those who are excluded from registration as of right under the provisions of section eight, sub-sections two, three and four of the Constitution. The reason for their exclusion from these constitutional provisions is that they were not citizens of the United Kingdom and Colonies or British protected persons on September 30, 1960[4] or on the date of the husband's registration as a citizen. Thus women in this category are:

(i) those who lost their citizenship of the United Kingdom and Colonies or British protected status before September 30, 1960[4]

(ii) those who lost that citizenship or status before the date of their husband's registration, or

(iii) those who were citizens of another Commonwealth country, or of

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1. See Nigerian Citizenship Act 1960, Third Schedule, Form B (as amended by L.N. 10 of 1962).

2. ibid. s. 3(3). Presumably, the guardian of a woman not of full capacity may apply on her behalf.

3. As to the absolute discretion of the Minister, see ibid s. 13.

4. In relation to the Northern Cameroons, May 31, 1961; see Republican Constitution s. 10.

the Republic of Ireland, protected persons of another Commonwealth country (other than the United Kingdom) or aliens.[1A] It is immaterial whether the marriage was monogamous or polygamous but it must be a valid marriage recognised by the laws of Nigeria. It is also immaterial whether the marriage has been terminated by the death of the husband or by divorce. But in order to be eligible for registration under this provision, women in this category must be or have been married to a person who is or was a citizen of Nigeria. That person's status as a citizen must have vested in him prior to, or during the continuance, of that marriage. For example, a woman who got a divorce before October 1, 1960 from a person who became a citizen on that date does not come within this provision as she was never married to a citizen of Nigeria.[1]

The second category also relates to women who are excluded from the provisions of section 8(2) (b) and (4) of the Constitution. It consists of:

(i) Women not being citizens of the United Kingdom and Colonies or British protected persons who were married to persons who, having died before October 1, 1960, would have become citizens of Nigeria on that date but for their prior death,

(ii) women who were married to persons who died after September 30, 1960 and before being registered as citizens.[2]

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1. Compare the provisions of ibid. s. 8(2), 8(3)

2. Under ibid. s. 8(1)

1A. s.3(3) was amended by the Nigerian Citizenship Act 1961 and made subject to "the provisions of the Act." It seems, however, that it is not subject to s.6 of the Act as alien women who satisfy the condition of the subsection can be registered under it. See Third Sch. Form B. Note 1, as amended.

(iii) women who failed to register as of right before October 1, 1962 under section 8(4) of the Constitution.[1]

An applicant under this provision is required before she is registered to declare in writing her willingness to renounce any other nationality or citizenship which she may possess and to take the oath of allegiance.[2]

ILLUSTRATIONS.

1. H was born in Lagos and became a citizen of Nigeria on October 1, 1960. He married W, a French national in 1959. W may be registered as a citizen of Nigeria.
   If W had divorced H in 1963, she can still apply for registration.
   If H had died in August 1960, W can still apply for registration (in the second category)

2. H, an alien, became a citizen of Nigeria by naturalisation in 1962. He married W, an alien in 1950. W may be registered as such a citizen.
   If W had divorced H in 1961, W cannot obtain registration under this provision.

3. H was born in Lagos and became registered as a citizen of Nigeria in 1962. He married W, a Ghanaian citizen in 1960. W may be registered as a citizen of Nigeria.
   If H had died in 1961, W can still be registered (under the second category)

See also the illustrations on pages 185 & 186, supra

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1. Re-enacted as ss. 3B and 3D of the Nigerian Citizenship Act 1960, as amended.

2. ibid. s.3(4). For the oath of allegiance, see Oaths Act 1963, First Schedule.

(iv) Registration of minors.

The provision of the British Nationality Act 1948 operating in Nigeria before October 1, 1960 for the registration of minors was adopted in the Nigerian Citizenship legislation. Under the Act of 1948 the Governor (or later Governor-General) of Nigeria may in his absolute discretion cause the minor child of a citizen of the United Kingdom and Colonirs or any minor child to be registered as a citizen of the United Kingdom and Colonies.[1] The Ad hoc Committee on Nigerian citizenship had recommended the registration of minors in order to provide for adopted children and the children of persons who acquired citizenship by naturalisation or similar cases.[1A] The Nigerian citizenship legislation similarly provided for the discretionary registration of minors.[2] There are two classes of minors. Firstly the minor child of a citizen of Nigeria may, upon an application by a parent or guardian in the prescribed manner,[3] be registered.[4] Secondly the Minister in such special circumstances as he may think fit cause any minor to be registered as a citizen. Minors in either of these two classes may be aliens.[5] An infant who is adopted[6]

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1. Act of 1948 (Imperial) ss. 7, 8 (1)

1A. Rpt. Pt. VII para. 18.

2. Nigerian Citizenship Act 1960 s.4.

3. No form of application has been prescribed.

4. Minor children of naturalised citizens of Nigeria may be registered in this class; see Nigerian Citizenship (Naturalisation) Regulations 1961, L.N.11 of 1961, Second Schedule Form A para 3.

5. For definition see Nigerian Citizenship Act 1960 s. 2(1)

6. There is no enactment relating to adoption. Adoption orders could however be made at the discretion of the President.

in Nigeria may also be registered under this provision. No residential qualification is required in the case of minors seeking registration. He will however be required when he comes of full age and capacity[1] to renounce any other nationality or citizenship he may possess and take the oath of allegiance.[2]

ILLUSTRATIONS.

1. A, an alien, became a citizen of Nigeria by naturalisation. His minor son B may be registered as such a citizen.

2. As in Illustration 1 except that A dies before completing his naturalisation, B may be registered as a citizen of Nigeria.

3. H, an alien, married W, a citizen of Nigeria. Their son, B, born in France may be registered as a citizen.

4. CITIZENSHIP BY NATURALISATION.

Naturalisation is the process by which a person renounces his former allegiance and becomes a subject of another State. The Ad hoc Committee on Nigerian Citizenship had recommended that naturalisation should be a mode of acquisition of citizenship.[3] Citizenship of Nigeria by naturalisation is available to aliens[3A] of full age and capacity.[3B] This mode of naturalisation is at sharp contrast with citizenship by registration. The latter is generally made available to

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1. For definition, see Nigerian Citizenship Act 1960 s. 2(3), (4)

2. See Republican Constitution s. 13; also Nigerian Citizenship Act 1960, as amended, s. 3F,

3. See Rpt. Pt. VIII para 19.

3A. For definition, see Republican Constitution s. 17(1), Nigerian Citizenship Act 1960 s.2(1)

3B. For definition, see Nigerian Citizenship Act 1960 s.2(3), (4).

citizens of other Commonwealth country (or persons treated as such)[1] or to wives[2] and children[3] of citizens of Nigeria even though aliens may come within the classes of persons who may be registered as citizens.[4] The former is the only mode available to other aliens to become citizens of Nigeria.[4A] Naturalisation is on much more enerous terms than is citizenship by registration. Citizenship by naturalisation could be revoked on much more wider grounds than could citizenship by registration.[5]

Any alien of full age and capacity who possess the qualifications for naturalisation on making application in the prescribed manner[6] may be granted a certificate of naturalisation by the Minister.[7] The grant of such a certificate is at the discretion of the Minister and he may not be required to assign any reason for the grant or refusal of any application and his decision is not subject to appeal or review in any court.[8] Married women are treated for this purpose as single women. Stateless persons are also included in this provision for naturalisation.[9] The oath of allegiance[10] must always be taken and a

1. i.e. citizens of the Republic of Ireland, protected person or British subjects without citizenship, see ibid ss. 3(1), 14A (2)
2. ibid ss. 3(3), 3B, 3C, 3D.
3. ibid ss. 3(2), 4(1)
4. e.g. an alien wife of a citizen of Nigeria, ibid s.3(3); or an alien infant of a citizen of Nigeria, ibid s.4(1)
4A. In the United States, naturalisation makes the alien a citizen of the State in which he is resident, Gassies v. Bullon 6 Pet.671. This is inapplicable to Nigeria where there is no double citizenship.
5. See ibid ss. 9, 10.
6. See Nigerian Citizenship (Naturalisation) Regulations 1961, L.N.11 of 1961, Second Schedule Form A.
7. Nigerian Citizenship Act 1960 s.6.
8. ibid s.13.
9. See Nigerian Citizenship (Naturalisation) Regulations 1961, L.N.11 of 1961, Second Schedule, Form A.
10. As prescribed by the Oaths Act 1963, First Schedule.

declaration must also be made in writing showing willingness to renounce any other nationality or citizenship the applicant may possess and any claim to the protection of any other country; otherwise the certificate of naturalisation is of no effect.

The qualifications for naturalisation are contained in the Second Schedule of the Nigerian Citizenship Act 1960. An applicant for a certificate of naturalisation must show that he

(a) has resided in Nigeria throughout the period of twelve months immediately preceding the date of the application; and

(b) during the seven years immediately preceding the above period of twelve months, has resided in Nigeria for periods amounting in the aggregate to not less than five years and

(c) has an adequate knowledge of a language in current use in Nigeria; and

(d) is of good character; and

(e) intends, if naturalised, to continue to reside permanently in Nigeria.

The periods of residence which would satisfy the residential qualifications are minimum periods and the Minister has no power to waive or reduce them. Unlike the position in the law of the United Kingdom where a period of Crown service is made alternative to residence in the United Kingdom,[1]

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1. See Act of 1948 (U.K.) Second Schedule para 1.

the legislation in Nigeria does not enable an alien in the service of the Federal or a Regional Government abroad to count the period of such service as alternative to a period of residence in Nigeria.

It will be noted that section 6 of the Act only requires a declaration showing willingness to renounce any other nationality or citizenship which the applicant may possess and does not require the actual renunciation to be made before the certificate of naturalisation takes effect. This is contrary to the recommendation of the Ad hoc Committee on Nigerian Citizenship which required the renunciation of the nationality of any other country as one of them conditions for naturalisation.[1]

ILLUSTRATIONS

1. A, a French national has lived continuously for the past seven years in Nigeria. A can apply for naturalisation.

2. A, a Dahomean, has lived in Nigeria for seven years continuously. He attained the age of 21 in 1961. A can apply for naturalisation. The fact that he was a minor during the greater part of his residence is immaterial.

3. A, a Swiss national was in Nigeria from 1945 to 1959. He returned in 1961. A can apply for naturalisation.

4. The Minister grants a certificate of naturalisation to A, a French national. He did not take the oath of allegiance. A is not a citizen of Nigeria until he takes the oath.

5. As in Illustration 4 except that A refused to declare his willingness to renounce his French nationality. A is not a citizen until he does so.

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1. See Rpt. Pt. VIII para. 19.

LOSS OF CITIZENSHIP

The Ad hoc Committee on Nigerian Citizenship recommended that loss of citizenship should be either by renunciation or deprivation.[1] The Committee did not state whether deprivation was to be by an executive, judicial or quasi-judicial act. Neither did it recommend the exclusion of citizens by birth from the provisions for deprivation of citizenship. The Constitution does not contain provisions relating to renunciation or deprivation but empowers[1A] Parliament to make provisions for depriving of his citizenship of Nigeria any person who is such a citizen otherwise than by virtue of subsection (1) of section seven[2] or section eleven[3] of the Constitution and for the renunciation by any person of his citizenship of Nigeria. Parliament has therefore made provisions for renunciation and deprivation of citizenship in the Act of 1960.[4]

(a) Renunciation of citizenship

The provision relating to renunciation is almost identical with that contained in the Act of 1948.[5] Any person of full age and capacity[6] who is a citizen of Nigeria and is also (or when he ceased to be such a

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1. See Rpt. Pt. IX paras. 20-22.

1A. See Republican Constitution s. 16 (b), (c)

2. i.e. a person born within the former Colony, Protectorate or Northern Cameroons who was a citizen of the United Kingdom and Colonies or British protected person on September 30, 1960 (or May 31, 1961 for the Northern Cameroons) of a parent or grandparent there born.

3. i.e. a person acquiring citizenship by being born in the Federation after September 30, 1960.

4. See Part III ss. 7-11, as amended by Nigerian Citizenship Act 1961

5. See Act of 1948 (U.K.) s.19

6. For definition, see Nigerian Citizenship Act 1960 s.2 (3), (4).

citizen) a citizen of another Commonwealth country or the Republic of Ireland or the national of a foreign country[1] may renounce his citizenship of Nigeria by means of a declaration made in the prescribed manner.[2] Such a declaration is of no effect unless and until it is registered. The Minister must register such a declaration and upon registration the declarant ceases to be a citizen of Nigeria.[3] But the Minister has a discretion to withhold registration of a declaration which is made during a war in which Nigeria is engaged by a person who is a national of a foreign country[1] or if in his opinion it is otherwise contrary to public policy.[4] The discretion given to the Minister by the proviso to withhold registration of a declaration "if in his opinion it is otherwise contrary to public policy" applies to all declarations by whomsoever made and destroys the obligation[5] placed on the Minister to register declarations. In Nigerian law marriage has no effect on citizenship or nationality. A married woman therefore is competent to make a declaration of renunciation. For this purpose, a woman who has been married is deemed to be of full age.[6]

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1. For definition see ibid s. 2(1)
2. No form has yet been prescribed.
3. Nigerian Citizenship Act as amended s. 7(1)
4. idem, proviso
5. Introduced by the Act of 1961 by substituting "shall" for the word "may" where it first occurs in s. 7(1) of the Act of 1960; see Nigerian Citizenship Act 1961 s. 6(b)
6. Nigerian Citizenship Act 1960 s. 7 (2)

What effect the courts in Nigeria would give to a declaration made during a war and registered by the Minister remains to be seen. The Courts in England, faced with an almost similar provision,[1] denied the effectiveness of such declarations, despite the plain language of the provisions under which they were made.[2] They did not consider that registration was material to the effectiveness of such declarations.[3] The principle underlining these cases is that it is contrary to public policy for one to escape from his obligations in time of war.[4] Possibly as the Nigerian provision goes further than the English ones[5] to give the Minister the discretion to refuse to register a declaration "if in his opinion it is otherwise contrary to public policy", the courts in Nigeria might hold differently. It can be assumed that once a declaration is registered, it involves nothing contrary to public policy and is therefore effective to divest a person of his citizenship of Nigeria.

The prerequisite to making a declaration of renunciation is the possession by a citizen of Nigeria of the citizenship or nationality of another country. The Nigerian Citizenship legislation does not, however,

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1. See the British Nationality and Status of Aliens Act 1914 s.14.
2. See Ex parte Freyberger [1917] 2 K.B. 129; Gschwind v. Huntingdon [1918] 2 K.B. 420; also Vetcht v. Taylor [1917] 116 L.T. 446; Dawson v. Meuli [1918] L.T. 357.
3. See Gschwind v. Huntingdon [1918] 2 K.B. 420.
4. See Jones, British Nationality Law and Practice (1947) 204.
5. See also British Nationality and Status of Aliens Act 1943 s.7; British Nationality Act 1948 s.19

expressly mention the means of proving such prerequisite citizenship or nationality by a declarant. Since the possession of the nationality or citizenship of another country is a question of law for that country, it might not always be possible to determine conclusively that a declarant possesses such nationality or citizenship without reference to the country concerned and in some cases to a judicial determination of that country.[1]

The renunciation by any person of his citizenship of Nigeria does not affect his liability for any offence committed by him before the date of the registration of his declaration of renunciation.[2]

ILLUSTRATIONS.

1. A was born in Ibadan in 1910. His son, B, was born in New York in 1930. Both became citizens of Nigeria on October 1, 1960. B also possesses citizenship of the United States and is entitled to make a declaration of renunciation of citizenship of Nigeria and register it.
   If the declaration is made during a war in which Nigeria is engaged, the Minister may withold registration as it is made by a national of a foreign country.

2. H was born in Ibadan in 1900. He married W born in the former Colony of the Gold Coast. Their son, B, was born in Lagos in 1930. H and B became citizens of Nigeria on October 1, 1960. B also possesses citizenship of Ghana. B is entitled to make a declaration of renunciation of citizenship and register it.
   If the dedaration is made during a war in which Nigeria is engaged, the Minister may withhold registration if he thinks it is contrary to public policy.

3. A was born in Lagos in 1910. His son, B, was born in Ibadan in 1930. Both became citizens of Nigeria on October 1, 1960. B cannot make a declaration of renunciation of citizenship of Nigeria.

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1. As to the difficulties involved here, see Parry, op cit. 320.
2. Nigerian Citizenship Act 1960 s.11.

4. W was born in Lagos in 1945 and became a citizen of Nigeria on October 1, 1960. She marries H, a citizen of Liberia and acquires Liberian citizenship. W is entitled to make a declaration of renunciation of citizenship of Nigeria and register it.

(b) Deprivation

The Nigerian Citizenship Act 1960, as amended contains several grounds for the deprivation of citizenship applicable to different categories of citizens. Some of these grounds are in accord with the general aim of the citizenship legislation to reduce or minimise the incidence of dual citizenship or nationality. Deprivation of citizenship is at the discretion of the Minister who may by order deprive a person of his citizenship. An omission in these provisions for deprivation is the absence of a quasi-judicial inquiry into cases of intended withdrawal of citizenship.[1] The citizenship of the wife or children of a person against whom an order for deprivation of citizenship has been made remains unaffected. The Minister has no powers to deprive a wife or child of citizenship merely on the ground that the husband or father has been deprived of his citizenship. The deprivation of any person of his citizenship does not affect his liability for any offence committed by him before the order of deprivation is made.[1A]

Two grounds of deprivation are contained in section 8 (1) of the Act of 1960. Deprivation under this provision applies to any citizen

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1. Cf. British Nationality Act 1948 (U.K.) ss. 20(6), (7), 21(2) also the Nigeria Deprivation of Citizenship Rules 1951; see supra p.110

1A. Nigerian Citizenship Act s.11.

"other than a person who is a citizen of Nigeria by virtue of his having been born in Nigeria." This exclusion applies to a citizen by birth.[1] This is in accordance with the legislative power granted to Parliament by the Constitution.[2] The wording of the exclusion also makes it applicable to a person who became a citizen by registration under section 8 (1) of the Constitution or section 3A(1) of the Act of 1960, as amended. Such a person was enabled to become a citizen by virtue of his having been born in Nigeria.[3] It is doubtful whether Parliament intended to exclude such a citizen by registration from these grounds of deprivation. There is no doubt that Parliament has power to make provisions for deprivation applying to such a citizen by registration but on the wording of this exclusion, it is submitted that Parliament has not exercised that power. These grounds of deprivation therefore apply to other citizens by registration, all citizens by descent and all citizens by naturalisation.

The grounds provide for deprivation of citizenship of a person who, while a citizen of Nigeria and being of full age and capacity[4] has

(i) acquired the nationality or citizenship of a foreign country[5] by any voluntary and formal act other than marriage or

(ii) voluntarily claimed and exercised in a foreign country[5]

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1. i.e. persons acquiring citizenship by ss.7(1), 11 of the Republican Constitution.

2. See ibid s. 16(b)

3. See Nigerian Citizenship Act 1960, as amended, s. 3C(1) which refers to such a person as one "who by reason of his birth in Nigeria....becomes a citizen of Nigeria by registration."

4. For definition, see Nigerian Citizenship Act 1960 s.2(3), (4).

5. For definition, see ibid s. 2(1) s.v. "foreign country".

> or in any other country under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens generally, any right available to him under the law of that country, being a right accorded exclusively to its own citizens.

Before the Minister makes an order for deprivation, he must be satisfied that any of these acts has been committed in accordance with the requirements of these provisions and also that it is not conducive to the public good that that person should continue to be a citizen of Nigeria.

The two grounds have certain common requirements. The acts complained of e.g. the acquisition of a foreign nationality must have been done while the person was a citizen of Nigeria. Acts done prior to the date of acquisition[1] of Nigerian citizenship are irrelevant. The person concerned must also have been of full age and capacity at the time he did the acts complained of. Being of full age and capacity is defined not by reference to the law of the foreign or other country but in the Act. Accordingly minors and persons of unsound mind cannot be deprived of citizenship on these grounds. A married woman is regarded as a feme sole for the purposes of these provisions. The acquisition by her of a foreign nationality or citizenship by reason only of her marriage is expressly excluded in the first ground. Both

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1. Citizens by descent acquire citizenship at birth. Those by registration and naturalisation acquire citizenship at the date of registration or naturalisation respectively, see Republic Constitution s.12; Nigerian Citizenship Act ss. 5, 6.

grounds stress the fact that the acts must have been done, claimed or exercised voluntarily. The act must be in the sphere of free choice. The quantum of influence which would remove an act from that sphere varies according to the character of the act. It is not necessary that the person concerned must have appreciated the legal consequences of his act.[1]

As regards the first ground, the nationality or citizenship acquired must be that of a foreign country. A foreign country is defined in the Act as not to include any country of the Commonwealth or the Republic of Ireland.[2] Therefore the acquisition of the citizenship of a Commonwealth country or of the Republic of Ireland does not come within this provision. The usual method of acquiring the nationality or citizenship of a foreign country is by naturalisation[2A] therein. The nationality or citizenship acquired in order to bring a person within this provision must be that of a political unit which is a foreign state and also recognised for international purposes. It will not be sufficient if the nationality or citizenship acquired is that of a political sub-division of a foreign state e.g. the cantonal citizenship in Switzerland.[3] If the naturalisation is invalid under the law of the foreign state,[4] the

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1. See Savorgnan v. U.S. 338 U.S. 491 (1948); also Perkins v. Elg 307 U.S. 325 (1939).

2. See Nigerian Citizenship Act 1960 s.2(1) s.v. "foreign country"

2A. See Oppenheim, op. cit v.1, 654, para. 299 for the different acts of naturalisation.

3. See however In re Trufort (1887) 36 Ch. D.600

4. See U.S. v. Bhagat Singh Thind 261 U.S. 204 (1923)

person concerned does not come within this provision for deprivation. The requirement that the acquisition of the foreign nationality or citizenship must be by a voluntary and formal act excludes from the operation of this provision the acquisition of a foreign nationality or citizenship at birth or a mass or involuntary imposition of nationality upon a Nigerian citizen e.g., the imposition of nationality by the mere purchase of land in a foreign country.[1] Naturalisation in an enemy country, though treasonous,[2] amounts to the acquisition of the nationality of the enemy state.[3]

As regards the second ground of deprivation, it is the practice in some countries to reserve certain rights to their own citizens, e.g. the right to vote at elections and the right to acquire real property. In some cases, the exercise of such rights by a foreigner ipso facto effects his naturalisation. A citizen of Nigeria voluntarily claiming and exercising such rights whether or not it effects his naturalisation may be liable to be deprived of his citizenship. Similarly if a citizen of Nigeria claims and exercise in any Commonwealth country or in the Republic of Ireland rights which are reserved for the citizens of that country and are not made available to Commonwealth citizens generally, such a citizen of Nigeria renders himself liable to be deprived of his Nigerian citizenship. The right

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1. See the provisions of the Mexican Constitution 1857 ascribing Mexican nationality to alien purchasers of land. See further the decisions of the U.S.-Mexican Claims Commission in Anderson and Thompson v. Mexico and Elliott v. Mexico in 3 Moore's International Arbitrations (1898) 2468-83.

2. See R. v. Lynch [1903] 1 K.B. 444

3. See In re Chamberlain's Settlement [1921] 2 Ch. 533

must have been made available to him by the law of that country and it follows that such a citizen of Nigeria must also have been a citizen of that Commonwealth country or of the Republic of Ireland.

There may be cases where a person may be born with a latent right to a foreign nationality which he may claim by a declaration on attaining his majority and which is lost if he fails to do so. Claiming such a nationality by declaration at majority is a voluntary and formal act. It is doubtful, however whether it amounts to an "acquisition" of nationality or whether it is merely the assertion of a right.[1] Whatever view is taken, the person concerned will be caught by one of these two grounds. If it is said to be merely the assertion of a right, he would be liable to be deprived of his citizenship of Nigeria under the second ground. If it amounted to the acquisition of a foreign nationality, the first ground is applicable. If this situation is considered in relation to another country of the Commonwealth or the Republic of Ireland, the acquisition of the citizenship of such a country does not come within the first ground of deprivation but if rights are exercised in that country by virtue of its citizenship, then the person concerned is liable to be deprived of his Nigerian citizenship under the second ground.

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1. See Jones, British Nationality Law and Practice (1947) 196-197 and the provisions of s. 13 of British Nationality and Status of Aliens Act 1914. See further Oppenheim, op cit. v. 1, 656 para. 300 classifying "redintegration" or "resumption" of nationality as a mode of acquiring nationality.

ILLUSTRATIONS.

1. A was born in Lagos in 1930 and became a citizens of Nigeria on October 1, 1960. He sought naturalisation in Liberia in 1962. A is not liable to deprivation of his citizenship of Nigeria.

2. A was born in Lagos in 1930 and was registered as a citizen of Nigeria in 1961. He became naturalised in Liberia in 1963. Quaere whether A is liable to be deprived of his citizenship of Nigeria.

3. A was born in Ibadan in 1900. His son, B, was born in 1930 in the former Colony of the Gold Coast. Both became citizens of Nigeria on October 1, 1960. B acquired Dahomean nationality in 1963. A is liable to be deprived of his citizenship of Nigeria.

4. As in Illustration 3 except that B acquired citizenship of Ghana by registration. B is not liable to be deprived of his citizenship of Nigeria under Section 8 (1) (a) of the Act.

5. A was born in Lagos in 1930 and became a citizen of Nigeria on October 1, 1960. He acquired citizenship of the United Kingdom and Colonies by registration and voted at an election in England. He is not liable to be deprived of his citizenship.

6. As in Illustration 5 except that A acquired citizenship of Ghana by registration and exercised in Ghana certain rights not available to all Commonwealth citizens (e.g. voting at an election). B is liable to be deprived of his citizenship under section 8(1) (b).

7. A was born in Lagos in 1900 and became a citizen of Nigeria on October 1, 1960. His son, B was born in 1941 in Portuguese territory (e.g. Angola). B had at birth Portuguese nationality and became a citizen of Nigeria on October 1, 1960. B's Portuguese nationality was renounced by his father while B was a minor. On attaining majority, B made a declaration reclaiming his Portuguese nationality (Art.18(2) of the Portuguese Civil Code.) Quaere whether this declaration amounts to an acquisition of nationality or the assertion of a right. If the former, B is liable to be deprived of his citizenship of Nigeria under section 8 (1) (a) of the Act. If the latter, deprivation would be made under section 8(1) (b). Probably it will be held to be the latter.

Another ground of deprivation is to be found in section 8 (2) of the Act of 1960. The categories of citizens to which it is applicable are defined by reference to its section 7. It applies to any citizen of Nigeria of full age and capacity who is also (or on ceasing to be a citizen of Nigeria will become) a citizen of any other country of the Commonwealth or of the Republic of Ireland or a national of a foreign country. This ground arises from the power given to the Minister to require any such citizen to renounce the other nationality or citizenship he possesses. If that person fails to do so within the time specified, the Minister may by order deprive him of his citizenship of Nigeria. Upon making the order, that person ceases to be a citizen.

This provision is not primarily for the deprivation of citizenship. Primarily it enables the Minister to reduce the incidence of dual or plural citizenship or nationality, which is in accord with the whole tenor of the citizenship legislation. Section 13 of the Constitution would have accomplished this task but for the fact that its provisions are applicable only to persons who acquired citizenship of Nigeria before attaining the age of twenty-one.[1]

It will be noticed that the categories of citizens to which this provision for deprivation of citizenship applies include a citizen by birth who also (or when he ceased to be a local citizen) possesses the

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1. See infra p. 231 et seq.

citizenship or nationality of another country.[1] The legislative power by virtue of which this provision is enacted expressly excludes citizens by birth[2] from the operation of any provision relating to deprivation. It may be contended that Parliament sought by this provision to amend section 16(b) of the Constitution by increasing its legislative power contained therein and bring citizens by birth within its powers of deprivation of citizenship. It is doubtful whether the courts will accept such contention.[3] especially as it runs counter to the provisions of section 18 of the Act which provides that the provisions of the Act "shall have effect subject to any provision inconsistent therewith for the time being contained in the Constitution.[4A] That Parliament has no intention of increasing its legislative power is shown by the fact that the Republican Constitution which came into force after the enactment of the Act of 1960 provided for the legislative power of deprivation of citizenship in exactly the same way as did the Federal Constitution, 1960.[4] It is submitted that Parliament did not intend to enlarge its legislative powers of deprivation to include citizens by birth and section 8 (2) of the Act is to be read as excluding such citizens.

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1. Federal Constitution s. 15(b); Republican Constitution s. 16(b).

2. i.e. those acquiring citizenship by ibid ss 7(1), 11.

3. See further p. 177 supra.

4A. See also Republican Constitution s. 1.

4. See Federal Constitution s. 15(b); Republican Constitution s. 16(b)

ILLUSTRATIONS

1. A was born in Lagos of a father who was born in the former Colony of the Gold Coast and a mother who was also born in Lagos. A became a citizen of Nigeria on October 1, 1960. He also possesses citizenship of Ghana. The Minister may require him to renounce his citizenship of Ghana. Should he fail to do so, Quaere whether he is liable to be deprived of his citizenship of Nigeria.

2. A was born in Lagos in 1900. His son, B, was born in England in 1930. Both became citizens of Nigeria on October 1, 1960. B also possesses citizenship of the United Kingdom and Colonies. B may be required to renounce the latter citizenship and if he fails to do so, he is liable to be deprived of his citizenship of Nigeria.

Other powers of deprivation.

The Minister has further powers of deprivation in respect of citizens by registration or naturalisation. Such citizen ceases to be a citizen of Nigeria on the making of an order by the Minister depriving him of his citizenship.[1] A citizen by registration may only be deprived of his citizenship on grounds of his misconduct in obtaining the registration. A citizen by naturalisation may be deprived of his citizenship on much wider grounds. The Minister must be satisfied that it is not conducive to the public good that the citizen concerned should continue to be a citizen of Nigeria before making an order of deprivation.[2]

A citizen by registration may be deprived of his citizenship if the Minister is satisfied that the registration was obtained by means of fraud,

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1. Nigerian Citizenship Act 1960 s. 9(1)

2. ibid s. 9(5)

false representation or the concealment of a material fact.[1] A citizen by naturalisation may be deprived of his citizenship not only on these grounds[2] but also if the Minister is satisfied that he

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Nigeria; or

(b) has, during any war in which Nigeria was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(c) has within seven years after becoming naturalised been sentenced in any country to imprisonment for a term of not less than twelve months[3]

(d) has been ordinarily resident[4] in a foreign country[5] or foreign countries[5] for a continuous period of seven years without having registered annually in the prescribed manner[6] at a Nigerian consulate, or given by notice in writing to the Minister his intention to retain his citizenship of Nigeria.[7]

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1. ibid s. 9(2)
2. idem.
3. ibid s. 9(3)
4. This expression is not defined, but see Gout. v. Cimitian [1922] 1 A.C. 105
5. For definition, see Nigerian Citizenship Act 1960 s.2.(1)
6. Not yet prescribed
7. Nigerian Citizenship Act 1960 s. 9(4)

These provisions confine the wider grounds of deprivation to a person who acquired citizenship of Nigeria by naturalisation. This differs from the position in the law of the United Kingdom where these wider grounds are applicable not only to a person who acquired citizenship of the United Kingdom and Colonies by naturalisation but also to a person who was first naturalised in another Commonwealth country and then acquired citizenship of the United Kingdom and Colonies by registration.[1] Therefore a naturalised citizen of Ghana who acquired citizenship of the United Kingdom and Colonies by registration will be subject to the wider grounds of deprivation in the law of the United Kingdom. Such a person who has acquired citizenship of Nigeria by registration is regarded in Nigeria as a citizen by registration and the wider grounds for deprivation are not applicable to him. Neither will these grounds be applicable to a person naturalised in Nigeria before October 1, 1960 and who later acquired citizenship of Nigeria by registration.[2] Another difference between the Nigerian provisions for deprivation and those of the United Kingdom is the absence in the Nigerian provisions of any procedure by which a matter concerning deprivation of citizenship may be referred to a quasi-judicial tribunal.[3]

It requires to be noted that the wife of a citizen of Nigeria by

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1. See the definition of "naturalised person" in Act of 1948 (U.K.) s. 32(1)

2. See Republican Constitution s. 9.

3. See Act of 1948 (U.K.) ss. 20(6), (7), 21(2). Reference to a quasi-judical authority applied in Nigeria prior to October 1, 1960. See the Nigeria Deprivation of Citizenship Rules 1951.

naturalisation may become such a citizen by registration.[1] In such a case, though the husband is liable to be deprived of his citizenship on any of the grounds relating to citizens by naturalisation, the wife may only be deprived of her citizenship on grounds of personal misconduct in obtaining the registration.[2]

There is another provision[3] giving the Minister powers of deprivation of citizenship in respect of a "naturalised person" who is a citizen of Nigeria and also a citizen of another Commonwealth country or of the Republic of Ireland if he has been deprived of the other citizenship on grounds which in the opinion of the Minister are substantially similar to those contained in section 9 of the Nigerian Citizenship Act 1960. The Minister must be satisfied that it is not conducive to the public good that that person should continue to be a citizen of Nigeria before making an order for deprivation. As the expression "naturalised person" is not defined, it is difficult to determine the categories of persons to which the provision is applicable. It is certain that it does not include a person who became a citizen of Nigeria by naturalisation; for such a person before naturalisation would have been an alien and could not have been a citizen of another Commonwealth country or of the Republic of Ireland.[4] It cannot also apply to a person who was naturalised as a British subject or a citizen of the United Kingdom

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1. Nigerian Citizenship Act 1960 s.3(3)
2. ibid s. 9(2)
3. ibid s. 10.
4. Nigerian Citizenship Act 1960 s.6.

and Colonies in the former Colony and Protectorate of Nigeria before October 1, 1960. It must therefore be applicable to certain citizens of another Commonwealth country or of the Republic of Ireland who obtained citizenship of Nigeria by registration. Adopting the definition of the expression "naturalised person" in the Act of 1948[1] the provision would apply to persons who became citizens of another Commonwealth country or of the Republic of Ireland by naturalisation and thereafter acquired citizenship of Nigeria by registration.[2] Such persons, on seeking registration as citizens of Nigeria, are required to declare their willingness to renounce their former citizenship of the other Commonwealth country or of the Republic of Ireland, which they had obtained by naturalisation.[3] If such a person has in fact renounced that former citizenship, it is inconceivable that he would thereafter be deprived of it. The provision therefore would apply to such persons who have declared their willingness to renounce their former citizenship acquired by naturalisation but have not actually renounced it.

ILLUSTRATIONS

1. A, a Canadian citizen, was registered as a citizen of Nigeria fraudulently stating that he had been resident in Nigeria for the prescribed period. A is liable to be deprived of his citizenship of Nigeria.

2. A, an alien, became a citizen of Nigeria by naturalisation. Within seven years of naturalisaion, he was convicted by a Dahomean court and sentenced to eighteen months imprisonment. A is liable to be deprived of his citizenship of Nigeria.

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1. Act of 1948 s.32(1) s.v. "naturalised person"
2. Nigerian Citizenship Act 1960 s.3(1)
3. ibid s.3(4)

3. A, an alien, became a citizen of Nigeria by naturalisation. His wife, W, became such a citizen by registration. A and W show themselves to be disaffected towards the Government of Nigeria. H but not W is liable to be deprived of citizenship of Nigeria.

4. A became a citizen by falsely representing he was a Ghanaian citizen. He then married W who obtained registration as a citizen without notice of A's fraud. A is deprived of his citizenship of Nigeria. Quaere whether W retains that citizenship.

5. A, an alien, became a citizen of the United Kingdom and Colonies by naturalisation. He later became a citizen of Nigeria by registration. A is deprived of his citizenship of the United Kingdom and Colonies as he shows himself to be disaffected towards the Crown. A is liable to be deprived of his citizenship of Nigeria.

It is too soon to know the attitude of the courts to the interreaction of these provisions for deprivation of citizenship with the fundamental rights provisions of the Constitution.[1] The decisions of the United States courts may throw some light on this problem. Those cases however have to be read in the light of the United States Constitution and the structural differences between the United States and Nigerian Constitutions will not make them always applicable.[2] For example, the United States cases in which the powers of Congress to legislate on deprivation of citizenship

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1. For the fundamental rights provisions, see infra p.307 et seq.

2. In Perez v. Brownell 356 U.S. 44 (1958) the majority concluded that citizenship could be divested in the exercise of the foreign affairs power. In Trop v. Dulles 356 U.S. 86 (1958) the "war" power was urged in support of the divestment of citizenship. See Boudin, "Involuntary Loss of American Nationality" 73 Harv. L.R. 1510 (1959-60)

were questioned would not be relevant in the Nigerian context. Unlike the Constitution of the United States, the Constitution of Nigeria expressly gave Parliament the necessary legislative powers for deprivation of citizenship, though with limitations.[2A]

The absence of any recourse to a judicial or administrative hearing in the essentially penal provision for deprivation of citizenship (with the consequent denial of an opportunity for the person affected to be heard) may be held to contravene the rights guaranteed in the Constitution. It is arguable that the provisions for deprivation of citizenship provide punishment without the procedural safeguards entrenched in section 22 of the Constitution and also that the punishment was of such a kind as would be contrary to section 19 of the Constitution. A similar problem came before the United States Supreme Court in the cases of Kennedy, Attorney General v. Mendoza-Martinez and Rusk, Secretary of State v. Cort.[1] Both cases involved the "grave and fundamental problem of the Constitutionality of Acts of Congress which direct an American of his citizenship for "departing from or remaining outside of the jurisdiction of the United States in time of war or..... national emergency for the purpose of evading or avoiding training and service" in the Nation's armed forces." The respondents, Mendoza-Martinez and Cort, urged that the provisions of the Acts of Congress were invalid as

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2A See Republican Constitution s. 16(b)

1. 372 U.S. 144 (1963)

not within any of the powers asserted and as imposing a cruel and unusual punishment. The Court by a vote of 5 to 4 held that the challenged sections of the Act were unconstitutional. Mr. Justice Goldberg, delivering the judgment of the majority said that the issue is whether the provisions, which automatically - without prior court or administrative proceedings - impose forfeiture of citizenship are essentially penal[1] in character and consequently have deprived the respondents of their citizenship without due process of law and without according them the rights guaranteed by the Fifth and Sixth Amendments.[2] He held the provisions invalid because Congress embodied in them the sanction of deprivation of nationality without affording the procedural safeguards guaranteed by the Constitution.

The existence of different grounds for deprivation of citizenship for different categories of citizens might also present certain constitutional problems. Grounds for deprivation of citizenship which apply to citizens by naturalisation are not applicable to citizens by descent or by registration. Such different treatment for the purposes of deprivation might produce such a discrimination

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1. Mr. Justice Stewart in his dissent did not agree with the premise that divestiture of citizenship is punishment in the constitutional sense of that term.

2. Include notice, confrontation, compulsory process for obtaining witnesses, trial by jury and assistance of counsel.

as would be contrary to section 28 of the Constitution.[1] It is necessary to point out that such a challenge is only feasible if it were possible to bring all persons acquiring citizenship by a particular mode within one of the categories in section 28(1) e.g. a particular community, tribe or place of origin.[2]

Finally, there is an apparent inconsistency between the power of deprivation of citizenship and the fundamental rights guaranteed by the Constitution.[3] These fundamental rights are in part based on citizenship. But citizenship which is "a man's basic right...to have rights"[4] is not one of the fundamental rights. Therefore, though Parliament cannot interfere individually with those fundamental rights based on citizenship[5], it can interfere collectively with them by depriving a person of his citizenship. The same situation exists in India and this issue was raised in Izhar Ahmed Khan v. Union of India[6] In rejecting it, the Supreme Court said:

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1. Cf. Schneider v. Rusk 372 U.S. 224 (1963) which raised the constitutionality of the provision that a naturalised American citizen shall lose his nationality by having a continuous residence for three years in a foreign state of which he was formerly a national or in which he was born.

2. See also s. 28(2) (d).

3. See Republican Constitution, ss. 27, 28.

4. Perez v. Brownell, 356 U.S. 44 (1958) at 64 per Chief Justice Warren.

5. For the special procedure of amending the fundamental rights, see Republican Constitution s.4.

6. 1962 A.I.R. 1052, S.C.

> "It may prima facie sound somewhat surprising, but it is nevertheless true, that though the citizens of India are guaranteed the fundamental rights specified in Article 19 of the Constitution, the status of citizenship on which the existence or continuance of the said rights rests is itself not one of the fundamental rights guaranteed to anyone. If a law is properly passed by the Parliament affecting the status of citizenship of any citizens in the country, it can be no challenge to the validity of the said law that it affects the fundamental rights of those whose citizenship is hereby terminated. Article 19 proceeds on the assumption that the person who claims the rights guaranteed by it is a citizen of India. If the basic status of citizenship is validly terminated by Parliamentary statute, the person whose citizenship is terminated has no right to claim the fundamental rights under Art. 19. Therefore....the challenge to s.9(2) on the ground that it enables the rule-making authority to make a rule to deprive the citizenship rights of petitioners cannot be sustained."[1]

Miscellaneous Provisions of the Act.

Part IV of the Nigerian Citizenship Act contains its supplemental provisions.

Section 12 reproduces substantially the provisions of section 17(3) of the Constitution for the determination of the national status of the father of a posthumous child. Section 13 provides for the absolute character of the Minister's discretion in the grant or refusal of any application under the Act. His decision on any such application shall not be subject to appeal or review in any court. It will be noted that

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5. ibid. at 1067 per Gajendragadkar J.

this exemption from review by a court of the Minister's decision is only confined to cases which require the making of an application. Therefore, it does not apply to cases of deprivation of citizenship. In such cases, the decision of the Minister will be subject to review in a court e.g. if it is inconsistent with an overriding constitutional provision.[1]

Section 14A provides for the recognition of the status of British subject without citizenship and assimilates a person having that status to the position of a citizen of another Commonwealth country for the purpose of an application for registration as a citizen of Nigeria. Under section 14B, the Minister after consultation with the Chief Justice may appoint Commissioners for oaths for Lagos and any Region. Such appointments are published in the Gazette and are effective only for the purposes of the Act.

Under section 17 of the Act, the President may make regulations for carrying into effect the purposes of the Act. Any person who fails to comply with any requirements imposed on him by the regulations made under the Act relating to the delivering up of certificates of naturalisation is guilty of an offence.[2] It is also an offence for any[3]

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1. See also Republican Constitution s.32; Doherty and Western Nigeria Development Corporation v. Sir Abubakar Tafawa Balewa & others F.S.C. No. 326/1961

2. See Nigerian Citizenship Act s. 17(e)

3. ibid s.16 (2)

person in order to procure anything to be done or not to be done under the Act or under the provisions of the Constitution to make a statement which he knows to be false in a material particular or recklessly make a statement which is false in a material particular.[1] Section 18 provides for cases of inconsistency between the provisions of the Act and those of the Constitution. The constitutional provisions for the time being are to prevail. All Ordinances relating to British Nationality and subsidiary legislation made thereunder are repealed by section 19.

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1. ibid. s.16(1)

Chapter Six

CITIZENSHIP OF NIGERIA - II - OTHER ASPECTS

CITIZENSHIP OF NIGERIA - II - OTHER ASPECTS

Commonwealth citizenship in Nigeria.

The Ad hoc Committee on Nigerian Citizenship had agreed to recommend that the general scheme of Commonwealth citizenship should be adopted in Nigeria and that citizens of Nigeria should be declared to have the status of Commonwealth citizens in common with the citizens of other independent countries of the Commonwealth. The rights to be conferred on such a status were to be decided by Parliament bearing in mind the principle of reciprocity. They also recommended that citizens of the Republic of Ireland should not be regarded as aliens and in general should have the same rights as are accorded to Commonwealth citizens.[1]

In accordance with these recommendations, the Constitution contains the common status[2] which is a marked feature of most citizenship legislation of the countries of the Commonwealth.[3] The status of a Commonwealth citizen[3A] is conferred on a citizen of Nigeria and a citizen of any country of the Commonwealth. The

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1. Rpt. Pt. VI paras. 13, 14.

2. Federal Constitution s.13; Republican Constitution s.14. See further Act of 1948 (U.K.) s.1(1), (2).

3. The clause is lacking in the Ceylon Citizenship Act 1948, as amended. However no British subject is an alien in Ceylon; see s.26 of the Act. The Pakistan Citizenship Act does not contain the clause but provides in s.15 that every citizen of Pakistan is a Commonwealth citizen.

3A. In Nigeria this expression is not equated with the term "British subject." See Act of 1948 (U.K.) s. 1(2)

countries of the Commonwealth are listed in section 14(3) of the Republican Constitution.[1] Other countries may be added to the list by Parliament. The countries which may be added are those which under the present conventions existing within the Commonwealth, accede to remain within the Commonwealth on becoming independent.[2] The status of a Commonwealth citizen is also conferred on two other classes of persons. These are the British subject without citizenship[3] and any citizen of the Republic of Ireland who continues to be a British subject under the provisions of section 2 of the British Nationality Act 1948. Commonwealth citizenship is thus made derivative from the possession of an actual or potential[4] citizenship of a commonwealth country or from the possession of citizenship of the Republic of Ireland by one who continued to be a British subject.

The privileges of a Commonwealth citizen in a country in which he is not a local citizen are enjoyed by virtue of the local law of that country.[5] The legal status of Commonwealth citizens is not identical with that of local citizens. They are regarded as non-citizens and cannot therefore enjoy those rights and privileges which are specifically reserved for citizens. They are not classed as aliens

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1. The list in the Federal Constitution s.13(3) was supplemented by the Commonwealth Act 1963 which was repealed as being redundant when the Republican Constitution came into force.

2. Kenya and Zanzibar may now be added.

3. See Act of 1948 (U.K.) s.13 and Third Schedule.

4. i.e. the British subject without citizenship.

5. On the introduction in the Parliament of the United Kingdom of the British Nationality Bill which equated the common status of Commonwealth citizenship with that of British subject, the Lord Chancellor said:

and not subjected to those disabilities expressly imposed on aliens. The Nigerian citizenship legislation distinguishes Commonwealth citizens from aliens and accords the former an easier mode of acquiring local citizenship than is made available to the latter. The former can acquire local citizenship by registration on satisfying a residential period of five years or such shorter period as the Minister may in special circumstances allow. The citizen of the Republic of Ireland who is not a Commonwealth citizen and the protected person are placed in the same position as Commonwealth citizens for the purpose of acquiring local citizenship by registration. However, citizens of another Commonwealth country may be placed on the same footing as aliens. For example the immigration policy of the Federal Republic as indicated in the recent Immigration Act 1963 makes no distinction between an alien and a citizen of another Commonwealth country or of the Republic of Ireland.

> "Let it be plainly understood that common nationality does not necessarily confer rights in other member states.... the mere fact that one possesses British nationality does not, and cannot in the nature of things confer any rights in regard to any particular territory.... although there is no special treatment which necessarily follows throughout the Commonwealth....other things being equal, the fact that a man possesses British nationality will stand him in good stead in his application, whatever that application may be." House of Lords Deb. vol. 155 coll.757-58, May 11, 1948.

See further Thornton v. The Police [1962] A.C.339

The Constitution draws a distinction between local citizens and citizens of another country of the Commonwealth or of the Republic of Ireland as regards criminal liability for extra-territorial conduct. It provides[1] that a Commonwealth citizen or a citizen of the Republic of Ireland who is not a citizen of Nigeria shall not be guilty of an offence against any law in Nigeria in respect of conduct in any part of the Commonwealth other than Nigeria or in the Republic of Ireland or in any foreign country[2] unless such conduct was an offence if it had been committed by an alien[2A] in a foreign country. The criminal jurisdiction of the Nigerian courts is therefore limited to a certain degree in respect of the extraterritorial conduct of such a person.[3] Even as regards local citizens, the extraterritorial criminal jurisdiction of the Nigerian Courts is very limited. They exercise such jurisdiction over crimes as treason[4], treachery[5], treasonable felonies,[6]

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1. Republican Constitution s.15(1)

2. "Foreign country" defined in ibid. s.15 (2)

2A. For definition, see ibid s.17 (1) s.v. "alien".

3. As to the criminal jurisdiction of the Nigerian Courts, see Criminal Code Cap 42, Sch.(1958 ed) s.12. Cf. Archbold, Criminal Pleadings, Evidence and Practice, 35th ed; (1962) para 67; R. v. Lewis, Dears & B. 182.

4. Criminal Code, Cap. 42, Sch, Laws of Federation & Lagos (1958 ed) ss. 37, 38.

5. ibid. ss.49A, 49B, 49C.

6. ibid. s.41.

murder,[1] manslaughter,[2] bigamy,[3] perjury,[4] receiving,[5] incitement[6] offences connected with unlawful oaths[7] and the Official Secrets Act 1962[8] and offences against the Geneva Conventions.[9] The limitation in respect of citizens of other Commonwealth countries or of the Republic of Ireland only excludes, from the jurisdiction of the Nigerian courts, such conduct which would not amount to any of these crimes if it had been committed by an alien in a foreign country. The rule as to the criminal liability of aliens for their extraterritorial conduct in the laws of Nigeria is similar to that in England. Archbold states that "a foreigner is not liable under English law for an offence committed on land abroad except in the case of treason, where the foreigner has previously resided within the dominions of the Crown and at the time of the treasonable act still owes allegiance to the Crown e.g. by being in possession of a British passport. Joyce v. D.P.P. [1946] A.C. 347"[10]

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1. ibid. s.316
2. ibid. s.317
3. ibid. s.310
4. ibid. s.117
5. ibid. s.427
6. ibid. s.44.
7. ibid. ss.53-57.
8. Act No. 29 of 1962
9. See the Geneva Conventions Act, No. 54 of 1960 ss. 3,4.
10. Archbold, op. cit, para 67.

Thus, on account of this exemption, the criminal liabilities of citizens of another Commonwealth Countries or of the Republic of Ireland (who are not local citizens) are to a certain degree less than those of local citizens.

The exemption contained in section 15 of the Constitution is almost similar to that contained in section 3(1) of the British Nationality Act 1948. The only difference is that the latter provision excepts from its applic ation the contravention of the Merchant Shipping Acts 1894 to 1948. It should be noted that the Nigerian courts are given jurisdiction over offences committed abroad or on the high seas by foreigners who are, or within three months previously have been, members of a Nigerian ship.[1]

Dual Citizenship or Nationality

The citizenship legislation of Nigeria is expressed to be against the incidence of dual nationality, i.e. the coincidence of local citizenship with nationality of a foreign state and dual citizenship which is the coincidence of local citizenship with citizenship of another Commonwealth country or of the Republic of Ireland. The Constitution[2] expressly provides for the loss of citizenship of Nigeria by a person who is such a citizen and also possesses the nationality or citizenship of another country. Such a citizen is required to renounce that other nationality or citizenship upon the attainment of the age of twenty-one years

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1. See Merchant Shipping Act, No. 30 of 1962, s.399 Cf. Merchant Shipping Acts 1894-1948 (U.K.) s.687.

2. Federal Constitution s.12, Republican Constitution s.13.

and if he fails to do so before he is twenty-two, he ceases to be a citizen of Nigeria on his twenty second birthday. He is also required to take the oath of allegiance and if he has acquired citizenship by virtue of section 7 (2) of the Constitution to make a declaration of his intentions concerning residence or employment in a manner to be prescribed by Parliament. Parliament has enacted[1] that a person who is entitled to citizenship of Nigeria and to citizenship or nationality of some other country, if by any enactment or rule of law he is required to elect whether to retain his Nigerian citizenship or the citizenship or nationality of that other country, shall cease to be a citizen of Nigeria, unless within one year of attaining the age of twenty-one and of sound mind, he renounces his citizenship or nationality of that other country, takes the prescribed oath of allegiance[2] and in the case of a citizen of Nigeria by virtue of section 7 (2) of the Constitution, declares his intention concerning residence or employment on Form E of the Third Schedule[3]. Where renunciation of that other citizenship or nationality is not possible under the law of that other country, he is to make a declaration of renunciation of that citizenship as

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1. See Nigerian Citizenship Act 1960, as amended s. 3F.

2. For the oath, see Oaths Act 1963, First Schedule.

3. Added by the Nigerian Citizenship Act 1961. Form E however relates only to citizens by registration and does not apply to citizens by descent under section 7 (2) of the Constitution.

specified in Form D. of the Third Schedule.[1] If the Minister is satisfied that a person is of unsound mind, that person will be deemed for the purposes of this provision to be under the age of twenty-one years.[2] When he is of sufficient mental capacity to understand the nature and quality of his acts, he shall cease to be a citizen of Nigeria at the expiration of such time as the Minister may prescribe unless within that time he takes the oath of allegiance and does all such other acts as the case may require and as are prescribed for a person of sound mind.

A strict interpretation of section 13 of the Republican Constitution would confine its operation to persons who acquired citizenship of Nigeria before they attained the age of twenty-one. It does not apply to persons who were over that age on October 1, 1960 (or June 1, 1961 in relation to the Northern Cameroons). However, the citizenship legislation provides for the reduction of the incidence of dual nationality or citizenship as regards those who do not fall within section 13. The Minister has powers of deprivation of citizenship of Nigeria in respect of citizens who voluntarily acquire a foreign nationality[3] or who possess another citizenship or nationality which they fail to renounce within a specified time.[4] These provisions for deprivation do not produce an automatic loss of citizenship as deprivation is always at the discretion of the Minister. There are also the provisions that

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1. Added by the Nigerian Citizenship Act 1961. Form D applies to persons who were citizens by birth or registration and does not seem to provide for citizens by descent.
2. See Nigerian Citizenship Act 1960, as amended, s. 3F (b), (c),
3. ibid, s. 8(1)(a) This provision excludes citizens "by virtue of having been born in Nigeria." see supra p.107 et seq.
4. ibid s. 8(2)

persons seeking discretionary registration or naturalisation are required before they are registered[1] or naturalised[2] to make a declaration in writing of their willingness to renounce any other citizenship or nationality they may possess and take the oath of allegiance.

Statelessness.

It was not until 1921 that an English Court had to decide whether English law recognised the condition of statelessness. International writers had however recognised such a condition at an earlier date.[3] In Stoeck v. Public Trustee[4], Russell J. after alluding to a contrary statement by Phillimore L.J. in Ex parte Weber[5] decided in favour of the recognition of such a condition by English law. But the English courts will not recognise an enemy decree made during war purporting to make its subjects stateless persons.[6]

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1. ibid. s.3 (4). For the categories of persons, see ibid s.3 (1), (2),(3)

2. ibid. s.6.

3. Hall, International Law, 7th ed. para 74; Oppenheim, International Law 1st ed. (1905) 365-367.

4. [1921] 2 Ch. 67.

5. [1916] 1 K.B. 280, 283.

6. The King v. The Home Secretary ex parte L. and another [1945] 1 K.B.7 See however U.S.A. ex rel. Schwarzkopf v. Uhl. (1943) 137 Fed. 2d 898 where the U.S. Circuit Court of Appeal Second Circuit said "There is no public policy of this country to preclude an American court from recognising the power of Germany to disclaim Schwarzkopf as a German citizen." It must be remembered that the German decree of Nov.1941 was enacted before the U.S. entered the war with Germany. Whether the views of the N.Y. Court would have been the same had the decree been enacted after the U.S. entered the war is an open question.

It is not necessary for municipal legislation to distinguish aliens into their several national categories. This is a consequence of the rule that international law leaves it to each state to determine who are its nationals.[1] The view taken by Russell J. in Stoeck v. Public Trustee was that such a distinction cannot be made as "there is not and cannot be such an individual as a German national according to English law" though the learned judge admitted that English law "might determine that for the purposes of English municipal law a person shall be deemed to be a national of Germany, or shall be treated as if he were a national of Germany."[2]

The Nigerian citizenship legislation however contemplates the condition of statelessness and assimilates the stateless person to aliens. The form of application for a certificate of naturalisation prescribed by the Nigerian Citizenship (Naturalisation) Regulations, 1961[3] is applicable to stateless persons and they may acquire citizenship of Nigeria by naturalisation.[4]

There are no provisions in the Nigerian citizenship legislation specifically dealing with the reduction or elimination of statelessness. It will be recalled however that the provision for the renunciation of Nigerian citizenship[5] takes account of the possibility of statelessness

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1. Convention on certain questions relating to the Conflict of Nationality laws of April 12, 1930. Arts 1, 2. (Cmd 4347); Lauterpacht, The Function of Laws in the International Community (1933), 300
2. [1921] 2 Ch. 67, 82; see also In re Chamberlains Settlement [1921] 2 Ch. 533, 545.
3. L.N. 11 of 1961, Second Schedule Form A.
4. Nigerian Citizenship Act 1960 s.6.
5. ibid. s.7 as amended; see supra p.106

and therefore gives the right of renunciation only to a citizen of Nigeria who is also, (or when he ceased to be such a citizen will become) a citizen of another Commonwealth country or of the Republic of Ireland or the national of a foreign country.

Evidence - Proof of Nigerian Citizenship

Proof of Nigerian citizenship is essential for a claim to any of the rights of such citizenship e.g. in the issuance of a Nigerian passport or a claim to the diplomatic protection of the Nigerian Government . The principal methods of proving Nigerian citizenship are by evidence of birth within the Federal Republic after September 30, 1960, of birth abroad of a citizen father after that date or by registration or naturalisation in the country. A person claiming Nigerian citizenship by operation of law has to prove the possession of citizenship of the United Kingdom and Colonies or British protected status immediately before the commencement of the citizenship law, his birth within the present limits of the Federal Republic and also the birth of one of his parents or any of his grandparents therein; or if born outside the Federal Republic, show proof of the birth of his father therein and the prerequisite status prior to the commencement of the citizenship law. The documentary means of proving Nigerian citizenship are the birth certificates[1] of the persons concerned, and/or the certificates of registration and of naturalisation. The possession of a Nigerian passport is also evidence of citizenship. It is a document which gives a person certain facilities to travel in foreign

1. Unfortunately there were no birth registries in certain places in the former Colony and Protectorate of Nigeria. A sworn declaration of the birth may be accepted in lieu of a birth certificate.

countries.[1] Nigerian passports are issued by the Ministry of Foreign Affairs in Nigeria or by diplomatic officers abroad to citizens of Nigeria. Proof of citizenship is always required for the issue of a passport, as it certifies that the holder is a citizen of Nigeria. The passport is also a request to all Nigerian diplomatic and consular representatives abroad to give the holder all the assistance and protection of which he is in need. A passport is however, prima facie evidence of citizenship and is not conclusive on this point.[2] It may be attacked on the ground that it was obtained by fraud or granted under a mistake.

The Nigerian Citizenship Act 1960 provides for the registration and naturalisation of persons as citizens and issuing them with the necessary certificates. As regards evidence, the Act provides[3] that every document which purports to be a notice, certificate, order or declaration, or an entry in a register, or a subscription of an oath of allegiance, given granted or made under the Act or under the Constitution, shall be received in evidence, and shall,

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1. See the definition of 'passport' by Lord Alverstone C.J. in R. v. Brailsford [1905] 2 K.B. 730, 745. The definition was adopted by the House of Lords in Joyce v. D.P.P. [1946] A.C. 347, 369, 375; see also Urtetiqui v. D'arcy & D'arbel, 9 L.Ed. 276, 279 (1835)

2. See R. v. Ketter [1939] 1 All E.R. 729, 160 L.T. 306; see also Ex parte Banta Singh [1938] 1 D.L.R. 789; Urtetiqui v. D'arcy & D'Arbel 9 L.Ed. 276, 279 (1835) and Saad v. Taket [1929-30] Ann. Dig. 233. see also Weis, op.cit. 226; Diplock, "Passports and Protection in International Law" (1947) 32 T.G.S., 42, 58; But see Izar Ahmed Khan v. Union of India A.I.R. (1962) S.C. 1052.

3. Nigerian Citizenship Act s.15

unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given,, granted or made. Prima facie evidence of such documents may be given by the production of a certified true copy thereof and any entry in any register is to be received as evidence of the matters stated in the entry.

Certificate of citizenship in cases of doubt.

The Minister may in such cases as he thinks fit on the application of any person with respect to whose citizenship of Nigeria a doubt exists, certify that/that person is a citizen of Nigeria. Such a certificate in the absence of fraud, false representation or the concealment of a material fact is prima facie evidence that he is such a citizen on the date thereof but it is not prejudicial to any evidence that he was such a citizen at an earlier date. The doubt may be on a question of law or of fact.[1] The Minister has an absolute discretion whether to grant or refuse the grant of such a certificate and his decision need not be accompanied by reasons and is not subject to appeal or review in any court.[2] The certificate can only be issued on the application of the person concerned; this provision can therefore not be used to establish the citizenship of a deceased person. The provision applies to aliens and non-aliens alike; as a person in respect of whose right to

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1. Nigerian Citizenship Act 1960 s.14

2. ibid. s.13.

citizenship of Nigeria a doubt exists may be an alien, a British protected person or a citizen of another Commonwealth country or of the Republic of Ireland. The provision is relevant in respect of persons who claim Nigerian citizenship but cannot wholly substantiate their claims because of doubts either of fact or law. For example a person born in the former Colony or Protectorate of Nigeria of Ghanaian parents may believe that one of his grandparents was born in the former Protectorate of Nigeria but cannot prove this fact as at the time there were no birth registries in that part of the country.[1] Similarly a person may believe that he was born in Nigeria after September 30, 1960 but cannot prove it. A doubt as to law is one relating to the laws of Nigeria whether regional or federal. However a doubt as to native law and custom is to be treated as a question of fact.[2] A doubt as to any other law is also to be treated as a question of fact[3] by the Minister.

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1. Such a person could claim, in the absence of proof of the birth of a grandparent in the former Colony or Protectorate of Nigeria, citizenship of Nigeria by registration; see Republican Constitution s. 8(1), also Nigerian Citizenship Act 1960, as amended, s.3A.

2. See Evidence Act, Cap. 62 Laws of the Federation & Lagos, 1958 ed, ss.56, 58; see also Adedibu v. Adewoyin 13 W.A.C.A. 191; Angu v. Attah (1916) Gold Coast P.C. 1874-28, 43. George v. Adm.-Gen.(1955) 21 N.L.R. 85; Kwaku v. Addo (1957) 2 W.A.L.R. 306; See generally Allott, Essays in African Law (1960) 74 et seq.

3. See Evidence Act, Cap. 62 Laws of the Federation & Lagos, 1958 ed., s.57; see generally Nokes, An Introduction to Evidence, 3rd ed. (1962), 40.

Marriage and Legitimacy

The concepts of marriage and legitimacy are of importance in construing the effects of certain provisions of the Nigerian citizenship legislation. It is necessary to determine whether a woman is or has been married to a citizen or a person who becomes a citizen in order that she may claim citizenship of Nigeria by registration.[1] Legitimacy is essential in the application of certain provisions, as only legitimate children can claim citizenship through a father and it may therefore be necessary to ascertain whether a child is legitimate or been legitimated at a material date.[2]

The law of Nigeria recognises both monogamous and polygamous unions.[3] The former are contracted under the provisions of the Marriage Act[4] and accord with the domestic English law conception of marriage.[5] Customary law, marriages are polygamous in nature and are contracted according to the customary laws applicable to the parties.

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1. See Nigerian Citizenship Act 1960 ss. 3(3), 3B, 3C, 3D.

2. See ibid s.3(2); also Republican Constitution ss.7, 11 provisos (a), (b), 12, 17(3).

3. See Elias, Groundwork of Nigerian Law (1953) 279-294; Anderson, Islamic Law in Africa (1954) 204-214; also generally Survey of African Marriage and Family Life (ed. Phillips) (1953) Pt. II, 173 et seq, Coker, Family Property among the Yorubas (1958) 227 et seq.

4. Cap. 115, Laws of the Federation & Lagos, 1958 ed.

5. See definition of Christian marriage in Hyde v. Hyde (1866) L.R. 1 P & D 130, 133.

Legitimacy is a matter of status to be determined by the law of a persons origin.[1] Nigerian law has adopted the English rules of legitimacy as regards monogamous marriages. Firstly birth in lawful wedlock makes a child legitimate at the date of his birth. Secondly, a child born illegitimate may be legitimated per subsequens matrimonium[2]. This form of legitimation takes effect from the date of the Act or from the date of the marriage whichever is later.[3] Under these English rules, legitimacy is necessarily connected with the marriage.[4] In addition to English law, customary laws operate in Nigeria and the courts are enjoined to "observe or enforce the observance ....of any existing native law and custom, such law or custom not being repugnant to natural justice, equity and good conscience."[5] Some of the rules of native law and custom on legitimacy differ widely from those of English law. The difference has recently been stated by the Federal Supreme Court thus:

> "Unlike in England, legitimate children in Nigeria are not confined to children born in wedlock or children legitimated by subsequent marriage of the parents. In Nigeria, a child is legitimate if born in wedlock according to the Marriage Ordinance. There are also legitimate children born in marriage under Native Law and Custom.

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1. In re Goodman's Trust (1881) 17 Ch.D.206; Alake v. Pratt 15 W.A.C.A. 20
2. See Legitimacy Act, Cap. 103 Laws of the Federation and Lagos, 1958 ed.
3. ibid s. 3 (1)
4. But see Re Bischoffscheim [1948] Ch. 79
5. Supreme Court Ord, Cap 211 Laws of Nigeria, 1948 ed, s.17 now reproduced in the laws setting up the Regional High Courts, the High Court of Lagos and Magistrate Courts.

> Children not born in wedlock (Marriage Ordinance) or who are not the issues of a marriage under Native Law and Custom, but are issues born without marriage can also be regarded as legitimate children for certain purposes if paternity has been acknowledged by the putative father - see Baingbose v. Daniel 14 W.A.C.A.111 at page 115 and Alake v. Pratt 15 W.A.C.A. 20. On the face of this, it is clear that legitimacy in England is a different concept to legitimacy in Nigeria."[1]

Thus under customary laws, legitimacy may be a wider concept than it is in England for "it is a possible jural conception that a child may be legitimate, though its parents were not and could not be legitimately married."[2] The rules vary in the different customary laws operating in Nigeria and each particular rule has to be proved to gain recognition in a court[3]. There are however certain features which are common to most if not all the different customary laws. For example birth in lawful wedlock (i.e. in the nature of a polygamous union validly contracted) makes a child legitimate at the date of his birth. The legal father is the man who paid the bride-price and therefore the legal husband. In some societies this has been extended to cover the cases of children born of a married woman as a result of an adulterous association.

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1. Lawal v. Younan & Sons (1961) 1 All. N.L.R. 245, 250 per Ademola F.C.J.
2. Leong v. Kwee [1926] A.C. 529 P.C., 543.
3. See Evidence Act Cap. 62 Laws of the Federation & Lagos 1958 ed. ss.56,58.

These children are regarded as the legitimate children of the legal husband. A modern writer on Ibo customary law has said that a child born to a lawful wife of anyone, or a widow whose marriage consideration has not been refunded is regarded as the legitimate child of her husband whether living or dead. It is only in the case of a child born to a feme sole that the status of illegitimacy can arise.[1] In the muslim societies a child born of legal concubinage is regarded as legitimate.[2] A child could also be made legitimate by the subsequent marriage of his parents. Legitimacy in such cases may relate back to the date of birth.

Legitimacy may also arise, under certain customary laws, in cases where the parents of the child were not and could not be validly married. The status of legitimacy in these cases is not related to a marriage. In a matter involving a polygamous union, Innes C.J. sitting in the Appellate Division of the Supreme Court of South Africa stated the position as follows:

> "With regard to the wife, the issue is the validity of the marriage to which she was a party; with regard to the children, the issue is their right to the status of legitimacy. The wife's position cannot be considered apart from the marriage, but the position of the children may be."[3]

The position is the same with some of the customary laws in Nigeria. In a

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1. See, Obi The Ibo Law of Property (1963), 190; see also Amachree v. Taria (Goodhead) (1923) 4 N.L.R. 101, where the natural father made no claims; Edet v. Essien (1932) 11 N.L.R. 47

2. See Anderson, op cit, 215

3. Seedat's Executor v. The Master [1917] A.D. 302, 312

case involving Yoruba native law and custom, a Nigerian court pronounced against the validity of the marriage but held that the issue of that marriage was legitimate.[1] Children born of irregular unions may be made legitimate if paternity is acknowledged. This method of conferring legitimate status on a child under Yoruba native law and custom has been recognised by the Nigerian courts[2] but it is difficult to determine from the decided cases whether "acknowledgement"[3] is a form of legitimation and if so whether it related back to the date of birth or took effect from the first acts of acknowledgment. There is however a passage in the judgment of the West African Court of Appeal in C.A.A. Young v. B.A. Young and others[4] which leans strongly in favour of the conclusion that acknowledgment does not relate back to the date of birth.

The question whether a mode of legitimation relates back to the date of the child's birth may be important to determine whether a child may claim citizenship of Nigeria. The citizenship legislation does not provide for the assimilation of legitimated children to the condition of legitimate children.[5] Where a claim to Nigerian

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1. Savage v. Macfoy (1909) Ren. 504

2. Savage v. Macfoy (1909) Ren. 504; Re Adel Sapara, ibid 605; Phillip v. Phillip (1946) 18 N.L.R. 102, Alake v. Pratt 15 W.A.C.A. 20

3. Compare with legitimation by recognition in Californian law, see Re Luck's Wills Trust [1940] 1 Ch. 323

4. Civil Appeal W.A.C.A. No. 3631 of May 4, 1953 in Selected Judgments (Lagos) Feb, April-May, 1953.

5. Cf. s.23 of the British Nationality Act 1948 (U.K.)

citizenship depends on a child being born legitimate,[1] a legitimated child cannot acquire that citizenship if the mode of legitimation does not relate back to the date of his birth. Thus a legitimated child can claim citizenship of Nigeria, in such cases, only when the mode of legitimation assimilates a legitimated child to the condition of a legitimate one.

Relationship of Citizenship of Nigeria to Citizenship of the United Kingdom and Colonies and to British protected status.

The transitional provisions of the Nigerian citizenship legislation made the possession of citizenship of the United Kingdom and Colonies immediately before the their commencement, one of the essential qualifications for the acquisition of citizenship of Nigeria.[2] Similarly possession of citizenship of the United Kingdom and Colonies immediately before the commencement of these provisions is a prerequisite for those who are entitled to be registered as citizens of Nigeria.[3] By virtue of the Nigeria Independence Act 1960, certain persons who became citizens of Nigeria on October 1, 1960 ceased to be citizens of the United Kingdom and Colonies.[4] Some citizens of Nigeria on account of their connection with the United

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1. See e.g. Republican Constitution ss. 11, 12; see also ibid s.17 (3); Nigerian Citizenship Act 1960 s.3 (2)

2. Republican Constitution s. 7.

3. ibid ss. 8, 9.

4. Nigeria Independence Act 1960 s.2(2)

Kingdom or a colony did not lose their citizenship of the United Kingdom and Colonies.[1]

Citizenship of the United Kingdom and Colonies can be acquired by birth, by descent, by registration, by naturalisation, by incorporation of territory and by adoption. Citizenship of Nigeria can be acquired by the first four methods. The Nigerian citizenship legislation makes no specific reference to the acquisition of citizenship by the incorporation of territory but the procedure adopted in relation to the Northern Cameroons[2] shows that the matter is one for regulation by Parliament as and when it arises. Neither is there any provision made for the acquisition of citizenship by adoption.[2A] In both the laws of Nigeria and of the United Kingdom and Colonies, the principle of the jus soli is adopted to almost the same extent.[3] The slight difference between the two laws is that in Nigeria, unlike the position in the law of the United Kingdom and Colonies, a child born of a foreign diplomatic envoy is a citizen of Nigeria if his mother is such a citizen. The jus sanguinis operates to confer citizenship of the country on the first foreign-born generation under both laws. The second foreign-born generation may

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1. ibid. s. 2(3)

2. The Nigeria Constitution First Amendment Act 1961 made the citizenship provisions of the Federal Constitution applicable to the Northern Cameroons; see Federal Constitution s. 12A; Republican Constitution s.10.

2A. An adopted child may be registered under s.4 Nigerian Citizenship Act 196

3. Compare provisions of Republican Constitution s.11 and Act of 1948 (U.K.) s.4.

acquire citizenship of the United Kingdom and Colonies on fulfilling certain conditions,[1] and citizenship of Nigeria by discretionary registration.[2] Both laws recognise each other's citizens as Commonwealth citizens[3] and the citizens of one can acquire the citizenship of the other by registration with similar residential qualifications. But citizens of Nigeria of full age and capacity are entitled to be registered as citizens of the United Kingdom and Colonies; citizens of the United Kingdom and Colonies may only acquire citizenship of Nigeria by registration at discretion.[4] A female citizen of Nigeria who is married to a citizen of the United Kingdom and Colonies may acquire the latter status by registration as of right, and so also is a female citizen of the United Kingdom and Colonies who is married to a citizen of Nigeria entitled to citizenship of Nigeria by registration.[5] An infant citizen of either country may become a citizen of the other by discretionary registration.[6]

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1. See Act of 1948 (U.K.) s. 5.

2. Nigerian Citizenship Act 1960 s. 3(2)

3. The law of the U.K., unlike that of Nigeria, equate Commonwealth citizenship with the status of British subject.

4. See Act of 1948 (U.K.) s.6 (1) as amended by Commonwealth Immigrants Act 1962 s.12 (2); Nigerian Citizenship Act 1960 s.3 (1)

5. Act of 1948 (U.K.) s. 6(2); Republican Constitution s. 8(2), (3), (4); Note however the time limit in ibid s. 8(3), (4). See further Nigerian Citizenship Act 1960, as amended, ss.3B, 3C, 3D. However a female citizen of the United Kingdom and Colonies married to a citizen of Nigeria by naturalisation may become a local citizen by discretionary registration.

6. Act of 1948 (U.K.) s.7; Nigerian Citizenship Act 1960 s.4.

The law of Nigeria, unlike that of the United Kingdom and Colonies, leans not only against plural nationality but also against plural citizenship within the Commonwealth-Republic of Ireland system. Citizenship of Nigeria cannot in principle be retained after the age of twenty-two by anyone who possesses any other citizenship or nationality.[1] A citizen of the United Kingdom who seeks citizenship of Nigeria by registration is required to make a declaration in writing of his willingness to renounce his former citizenship.[2] No such declaration is required of citizens of Nigeria who may register as citizens of the United Kingdom and Colonies. A citizen of Nigeria who is also, or on ceasing to be a citizen of Nigeria will become, a citizen of another Commonwealth country or of the Republic of Ireland or a national of a foreign State may be required to renounce the other citizenship or nationality within a specified period and if he fails to do so, he may be deprived of his citizenship of Nigeria.[3] A citizen of Nigeria may also be deprived of his citizenship if he voluntarily acquires the nationality of a foreign country by a formal act other than marriage.[3A]. The law of the United Kingdom and Colonies

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1. Republican Constitution s. 13; Nigerian Citizenship Act 1960, as amended, s. 3F.

2. Nigerian Citizenship Act, 1960 s. 3(4).

3. ibid s. 8(2)

3A. ibid. s. 8(1) (a)

has no provisions for deprivation of citizenship in order to limit the incidence of plural citizenship or nationality.

The transitional provisions of the Nigerian citizenship legislation also regards British protected status as one of the essentials for acquisition of citizenship of Nigeria.[1] British protected status is also an essential prerequisite for those entitled to registration.[2] Persons having British protected status by virtue of their connections with the Nigeria Protectorate lost that status when they became citizens of Nigeria. The Nigerian scheme of citizenship is slightly more favourable to the British protected person. Such a person can acquire the citizenship of Nigeria by discretionary registration,[3] but can acquire citizenship of the United Kingdom and Colonies by the slightly more onerous process of naturalisation.[4]

The Nigerian Independence Act 1960 and Citizenship of Nigeria.

As was the case with cession of territory to the Crown,[5] the common law rules relating to a change of sovereignty caused by a cession of territory by the Crown or by the creation of an independent country

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1. Republican Constitution s.7.
2. ibid s.8.
3. Nigerian Citizenship Act 1960 s.3 (1)
4. Act of 1948 (U.K.) s.10 (1) and second schedule, as amended by Commonwealth Immigrants Act 1962 (U.K.) s.12 (2)
5. See supra p. 51 et seq.

out of the dominions of the Crown were unclear[1] as to the classes of persons whose nationality was affected thereby. Does the change only affect the nationality of those resident and domiciled therein at the time ? Can individuals elect to retain their former nationality?[2] In modern times the position has been regulated by statute.[3] When the former Colony and Protectorate of Nigeria became an independent state on October 1, 1960 the classes of persons whose nationality was affected by the change of sovereignty were regulated by the Nigerian Independence Act 1960.[4] The Act made the British Nationality Act 1948 and 1958 inapplicable to the Federation of Nigeria with effect from October 1, 1960. The Protectofate of

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1. The problem arose in England on the recognition of the independence of the U.S.A. by the Treaty of Paris 1783. See Doe d. Thomas v. Acklam (1824) 2 B. & C. 779; Doe d. Auchmuty v. Mulcaster (1826) 5 B. & C. 771. The problem was recently considered by a Divisional Court of the King's Bench Division in Murray v. Parkes [1942] 1 All. E.R. 558

2. See Jephson v. Riera (1835) 3 Knapp. 130; Isaacson v. Durant (1886) 17 Q.B.D. 54, 60 per Lord Coleridge; Murray v. Parkes [1942] All E.R.558, 564, per Singleton J.

3. See e.g. Art XII (2) of the Agreement annexed to the Anglo-German Agreement Act 1890 in respect of Heligoland; also the Burma Independence Act 1947 s.2 and First Schedule.

4. The Ghana Independence Act 1957 contained no such provisions. They were enacted in the British Nationality Act 1958 s. 2. For the U.K. provisions for other Commonwealth countries see Cyprus Independence Act 1960 s.2; Sierra Leone Independence Act 1961 s.2; Tanganyika Independence Act 1961 s.2; Jamaica Independence Act 1962 s.2; Trinidad and Tobago Independence Act 1962 s.2.

Nigeria was also removed from the operation of the First Schedule of the British Protectorates, Protected States and Protected Persons Orders 1949-60.[1] Thus persons born within Nigeria[1A] or on or after October 1, 1960[2] will not acquire citizenship of the United Kingdom and Colonies or British protected status.

The Nigerian Independence Act provided for the class of persons who ceased to be citizens of the United Kingdom and Colonies.[3] The rule is that a person shall cease to be a citizen of the United Kingdom and Colonies on October 1, 1960 if on that date he becomes a citizen of Nigeria and he, his father[4] or his paternal grandfather was born in any of the territories comprised in Nigeria. This rule has to be read in conjunction with the transitional provisions of the citizenship provisions of the Constitution.[5] The rule only affects those persons who acquired citizenship of Nigeria on October 1, 1960 by virtue of the transitional provisions of the Constitution. Under these provisions, a person acquired citizenship of Nigeria if he was born in Nigeria of a parent or grandparent there born.[6]

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1. Nigeria Independence Act 1960 s.2 (1) (a), (b)

1A. Not including the Northern Cameroons.

~~2. June 1, 1961 in relation to the Northern Cameroons.~~

3. ibid 2(2)

4. i.e. father of a legitimate or legitimated child; see ibid s.2 (10) incorporating s.23 of the Act of 1948.

5. i.e. Republican Constitution s.7.

6. ibid. s.7(1)

If he was born outside Nigeria, he acquired citizenship of Nigeria if his father was born in Nigeria.[1] Any person who acquired citizenship of Nigeria by virtue of these provisions would satisfy the rule for the deprivation of citizenship of the United Kingdom and Colonies laid down by the Act of 1960.

The rule is however subject to certain exceptions.[2] Not all persons who acquired citizenship of Nigeria on October 1, 1960 by virtue of the transitional provisions would lose their former citizenship of the United Kingdom and Colonies. A person who became a citizen of Nigeria on October 1, 1960 did not lose his citizenship of the United Kingdom and Colonies if he, his father or paternal grandfather acquired, or had he survived would have acquired, citizenship of the United Kingdom and Colonies by any means other than descent,[3] within the present area of the United Kingdom and Colonies (i.e. excluding the Colony of Nigeria).[4] Therefore a person who became a citizen of Nigeria did not lose his citizenship of the United Kingdom and Colonies if he, his father or paternal grandfather:

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1. ibid. s. 7(2)
2. Nigeria Independence Act 1960 s. 2 (3) - (10)
3. i.e. by birth, registration, naturalisation, incorporation of territory
4. Nigerian Independence Act 1960 s.2 (3) read in conjunction with s.2(8). Colony refers to a territory having that status on October 1, 1960. It would not include e.g. the Colonies of Gold Coast, Ashanti and of Nigeria.

(a) was born in the United Kingdom or in a colony (excluding the Colony of Nigeria)

(b) is or was a person naturalised in the United Kingdom and Colonies which includes a person locally naturalised in a colony, or protectorate other than the former colony or protectorate of Nigeria.[1]

(c) was registered as a citizen of the United Kingdom and Colonies.[2] or

(d) became a British subject by reason of the annexation of any territory included in a colony.[3]

Thus a person acquiring citizenship of Nigeria by virtue of section 7 (1) whose father or paternal grandfather was born in the United Kingdom or in a colony (other than the colony of Nigeria)[4] and a person born in any of those territories and, who acquires citizenship of Nigeria by virtue of section 7 (2) of the Constitution, retain their citizenship of the United Kingdom and Colonies. Likewise a person does not cease to be a citizen of the United Kingdom and Colonies[5] if he, his father or paternal grandfather

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1. ibid s. 2(3) (b) read with s.2(8); see further Bulmer v. Att.-Gen. [1955] 2 All. E.R. 718

2. Nigerian Independence Act 1960 ss.2 (3) (c), 2(8)

3. ibid s.2 (3) (d); see Act of 1948 (Imperial) s.12 (1) (c).

4. Nigeria Independence Act s.2 (8)

5. Ibid. s. 2(4)

was born in a protectorate (other than the former protectorate of Nigeria, and Northern Rhodesia and Nyasaland)[1] protected state[2] or United Kingdom Trust territory and his father or paternal grandfather is or at any time was a British subject.[3]

The rule with its exceptions applies to a married woman as if she were feme sole but the wife of a citizen of the United Kingdom and Colonies is not deprived of her citizenship of the United Kingdom and Colonies unless her husband has been so deprived.[4] A woman who has been married to a citizen of the United Kingdom and Colonies has the right to acquire such citizenship herself by registration.[5] It is provided however that a woman who has been married to a person who has lost his citizenship of the United Kingdom and Colonies as a result of the Nigerian Independence Act 1960 or who would have ceased to be such a citizen but for his prior death shall lose her right to be registered as a citizen of the United Kingdom and Colonies.[6] The supplemental provisions of Part III of the British Nationality Act 1948 are to be employed in the determination of the citizenship of the United Kingdom and Colonies of persons affected by the rule and its exceptions.[6A]

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1. see ibid s. 2 (9)
2. This excludes any territory which had ceased to be a protected state on October, 1, 1960 e.g. Malay States.
3. After 1948, this is synonymous with Commonwealth citizen.
4. Nigerian Independence Act 1960 s.2 (5)
5. Act of 1948 (U.K.) s. 6 (2)
6. Nigeria Independence Act 1960 s.2 (6).
6A. see ibid s.2 (10); Cf the British Nationality Act 1958 s.2 which provided

These provisions leave unaffected the citizenship of the United Kingdom and Colonies possessed by persons who acquire citizenship of Nigeria after October 1, 1960. Thus persons who are entitled to registration as citizens of Nigeria under the provisions of the Constitution[1] are not affected by the rule in the Act. Persons naturalised[2] or registered as citizens of the United Kingdom and Colonies in the former Colony or Protectorate of Nigeria are not within the rule if they did not acquire citizenship of Nigeria on October 1, 1960.[3]

The exclusion of the Nigerian Protectorate from the list of scheduled protectorates in the British Protectorates, Protected States and Protected Persons Orders 1949-60 also had the effect of depriving persons who had British protected status by virtue of their connection with the Nigerian Protectorate of that status. But such persons were to lose that status only when they acquired citizenship of Nigeria under the local enactments.[4] Persons who had British protected status by virtue of their connection with the former

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for the deprivation of certain citizens of Ghana of their citizenship of the United Kingdom and Colonies but did not incorporate the supplemental provisions of the Act of 1948.

1. Republican Constitution ss. 8, 9.

2. Nigeria Independence Act 1960 s. 2(7), (8)

3. Citizenship by registration takes effect from the date of registration; see Nigeria Citizenship Act 1960, as amended, s.5.

4. Nigeria Independence Act 1960 s.2 (1) (b) proviso.

Protectorate of Nigeria and who became citizens of Nigeria on October 1, 1960 ceased to be British protected persons on that date. Those who did not become citizens on that date would lose their British protected status if and when they became citizens.

On June 1, 1961 the Northern Cameroons became part of the Federation but was not removed from the operation of the British Protectorates, Protected States and Protected Persons Orders 1949-60. This meant that persons who had British protected status by virtue of their connection with the former trust territory of the Cameroons under United Kingdom trusteeship,[1] and who became citizens of Nigeria on June 1, 1961 or thereafter retained that status. They have now been deprived of that status in a curious way. The Tanganyika Independence Act 1961[2] deleted every reference to a trust territory in the Orders-in- Council and also the Third Schedule.[2A] This had the effect of depriving persons having British protected status by virtue of their connection with the Northern Cameroons of that status as from December 9, 1961.[3] But the proviso contained in the Tanganyika Act which preserved the status to persons who had it by virtue of their connection with Tanganyika and who did not become citizens of that country, did not

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1. Of which the Northern Cameroons was a part.

2. 10 Eliz 2 Ch.1.

2A. See ibid s. 2(1) (b)

3. The appointed day under the Act; see ibid s. 1(1)

apply to persons connected with the Northern Cameroons.[1] It follows that any person having British protected status by virtue of his connection with the Northern Cameroons ceased to have that status on December 9, 1961 whether or not he had acquired citizenship of Nigeria. This differs from the position of one who had such status by virtue of his connection with the former Protectorate of Nigeria. He retained his British protected status until he acquired citizenship of Nigeria.[2]

ILLUSTRATIONS.

1. A was born in the Former Colony of Nigeria in 1930. His son, B, was born there in 1955 and remained a citizen of the United Kingdom and Colonies immediately before October 1, 1960. B became a citizen of Nigeria and also ceased to be a citizen of the United Kingdom and Colonies on that date.

2. A was born in the United Kingdom in 1900. His son, B, was born in Ibadan in 1930. B's son, C, was born in Lagos in 1955. C became a citizen of Nigeria on October 1, 1960. C has not ceased to be a citizen of the United Kingdom and Colonies by reason only of his citizenship of Nigeria.

3. As in Illustration 2 except that B was illegitimate. C ceased to be a citizen of the United Kingdom and Colonies.[3]

4. A was born in Lagos in 1900, His son, B, was born in the former Colony of Sierra Leone in 1930. B's son, C, was born in Lagos in 1955, C became a citizen of Nigeria on October 1, 1960. C did not cease to be a citizen of the United Kingdom and Colonies by reason only of his citizenship

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1. See ibid. s. 2(1) (b) proviso.
2. See Nigeria Independence Act 1960 s.2 (1) (b) proviso.
3. C is not within s.2 (3) (a) of the Act of 1960, as in law A is not his paternal grandfather.

of Nigeria.[1A]

5. A was born in Australia in 1900. His son, B, was born in Lagos in 1930. B's son, C was born in Germany in 1955. B and C remained citizens of the United Kingdom and Colonies immediately before October 1, 1960. C became a citizen of Nigeria and also ceased to be a citizen of the United Kingdom and Colonies on that date.

6. A was born in Dahomey in 1910. His son, B, was born in Lagos in 1940. B became a citizen of Nigeria by registration in 1962 under section 8 (1) of the Constitution. B has not ceased to be a citizen of the United Kingdom and Colonies by reason only of his citizenship of Nigeria.

7. A was born in Lagos in 1900. His son, B, was born in the United Kingdom in 1930. B's son, C, was born out of wedlock in Ibadan in 1955. C was later legitimated on the marriage of B in 1959 to C's mother W, who was also born in Lagos. C became a citizen of Nigeria on October 1, 1960 and has not ceased to be a citizen of Nigeria.[1]

8. A was born in Ibadan in 1930. His son B, was born there in 1955. B became a citizen of Nigeria on October 1, 1960 and ceased to be a British protected person on that date.

9. A was born in Dahomey in 1930. His son, B, was born in Ibadan in 1955. B became a citizen of Nigeria by registration in 1962 under section 8(1) of the Constitution. B ceased to be a British protected person on the date of his registration.[2]

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1. C became a citizen of the United Kingdom and Colonies as from 1959; see s. 2(10) of the Act of 1960.

2. See s. 2(b) proviso of the Act of 1960.

1A. C comes within s. 2(3) (a) of the Act of 1960, as his father was born in a territory which was a colony on October 1, 1960.

10. A was born in the Northern Cameroons in 1930. His son, B, was born there in 1955. B became a citizen of Nigeria on June 1, 1961. B did not cease to be a British protected person on that date by reason only of his citizenship of Nigeria. B ceased to be a British protected person on December 9, 1961.[1]

11. A was born in Ibadan in 1900. His son, B, was born there in 1930. B became naturalised as a citizen of the United Kingdom and Colonies in England in 1955. B became a citizen of Nigeria on October 1, 1960. B has not ceased to be a citizen of the United Kingdom and Colonies by reason only of his citizenship of Nigeria.

12. A was born in Ibadan in 1900. His son B, was born in Northern Rhodesia in 1940. B's son, C, was born in Lagos in 1959. C became a citizen of Nigeria on October 1, 1960. C ceased to be a citizen of the United Kingdom and Colonies on that date.[2]

Nigerian Nationality

Under customary international law, an individual is in regard to a particular state either a national or an alien. Into this simple characterization, the Commonwealth-Republic of Ireland scheme introduced the status of Commonwealth citizenship. Since under this scheme, the law of the United Kingdom recognises Nigerian citizens as British subjects, many questions would arise as to how this common status of British subject functions in international law and whether third States have to recognise it for any purpose. Would the United Kingdom be able to extend its diplomatic protection to a Nigerian citizen on the ground that he is a

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1. See Tanganyika Independence Act, 1961 s.2 (1) (b)

2. See Nigeria Independence Act 1960 s.2 (4), (a)

British subject and bring an international claim against a third State on his behalf. Furthermore would Nigeria be barred (inter-Commonwealth conventions apart) from presenting a claim against the United Kingdom on behalf of a Nigerian citizen on the ground that the individual is also a British subject.[1] This common status of British subject is derived from the Commonwealth citizenship of the individual and is not relevant for international purposes.[2] Commonwealth citizenship is not itself a nationality. Commonwealth countries are independent countries having international personality[3] and each having its own citizenship laws. Foreign States are not bound to recognise the common status of Commonwealth citizenship and they would regard an individual as being a national of the Commonwealth country of which he is a citizen. As the position now stands, the United Kingdom can exercise diplomatic protection on behalf of a citizen of Nigeria. But normally she will not do so unless requested by the Government of the Federal Republic. This does not, however prevent the Government of the Federal Republic from presenting their own claims without seeking the assistance of the United Kingdom.

From the international aspect, all persons who possess citizenship of Nigeria will be regarded as Nigerian nationals.[4] There is only one

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1. See Parry "Plural Nationality and Citizenship," (1953) 30 B.Y.I.L. 244, 279-281; Jennings, "The Commonwealth and International Law," ibid 320, 342-349.

2. Oppenheim, International law, 8th ed. Lauterpacht v. 1, 645, 653.

3. For a discussion onthis subject, see Fawcett, The British Commonwealth in International Law (1963) 92 et seq.

4. Cf. s.3(1) of the Ghana Nationality and Citizenship Act 1957, where this is expressly stated as regards Ghanaian citizens.

category of human beings who are nationals of Nigeria and that is the citizen of Nigeria. This is not necessarily so in certain countries, which have dependent territories, in which case, a national might not be a citizen. The citizenship laws of Nigeria make no provision for legal entities or inanimate objects to which the concept of nationality is usually attributed. These are the corporations, ships and aircraft.

Nationality of Corporations, Ships and Aircraft.

At common law only human beings were legal persons. A group of persons was not therefore personified. A corporation is a creation of statute and has a legal personality or persona distinct from the individuals conprising it. The corporation exists as a fiction of law and possesses only such attributes as are conferred on it by law. As it is assimilated to a natural person, a corporation has many but not necessarily all of the capacities of a natural person. Its existence and succession are perpetual. It is capable of enjoying certain rights and liable to certain obligations. Local corporations may stand in the same position as a citizen for most purposes e.g. as regards rights of ownership of property and the right of protection and assistance by the law. But while it stands for most purposes in the position of a citizen, it cannot be correctly described as a citizen. "A citizen" as Lord Wrenbury (then Buckley L.J.) said in his dissenting judgment in the Court of Appeal in the Daimler case[1] "must, I conceive, be

1. [1915] 1 K.B. 893, 916.

one who can serve the King physically, for instance, if he be a male, by wearing weapons and serving in the wars, who has a mind and can either be loyal or disloyal to the King. None of these can be predicated of the abstract legal entity. It has no existence at all except in contemplation of the law."

Under the distribution of powers between the various legislatures in the Federal Republic, Parliament has exclusive legislative competence in respect of incorporation, regulation and winding-up of bodies corporate. From this general power are excepted "co-operative societies, native authorities, local government authorities and bodies corporate established directly by any law enacted by the legislature of a Region."[1] Parliament is therefore competent to authorise incorporation under a general law such as the Companies Act[2] or to create any corporate body directly by a particular statute. Examples of the latter are the Central Bank of Nigeria Act[3], the Colonial Church Council (Incorporation) Act[4], the Lagos Diocesan Synod Act[5] and the Ministry of Finance Incorporation Act,[6] General incorporation of corporate bodies is outside the competence of Regional legislatures but they are competent to create Corporations for governmental purposes established directly by their own law such as local-government councils established by the Local Government Law[7] and corporations

1. See the Exclusive Legislative List, item 19.
2. Laws of the Federation of Nigeria & Lagos 1958 ed., Cap. 37.
3. ibid Cap. 30.
4. ibid. Cap. 35
5. ibid. Cap. 92
6. ibid. Cap. 123
7. See Laws of W.R. Nigeria, 1959 ed, Cap. 68 s.4.

as the Western Region Finance Corporation.[1]

Strictly speaking, the concept of nationality is not ordinarily applicable to corporate bodies. But for certain purposes, it is necessary to attribute nationality to corporations, in particular for the purposes of diplomatic protection and the interpretation of treaties under which certain benefits are secured to corporations of the contracting states. The nationality of corporations is a subject completely free from statutory influences. The Nigerian citizenship legislation makes no reference to corporations and its provisions do not apply to them. The Companies Act[2] which is the general law of incorporation in the Federation does not refer to nationality. It does not distinguish companies on the basis of nationality. It makes a distinction between Companies incorporated under its provisions and companies established outside Nigeria.[3] Therefore, the nationality of corporations must be determined by reference to the common law and the decisions of the Courts, primarily English, as they touch basic and fundamental questions of the common law and commercial law.

Treating corporations as being analogous to individuals, the place of incorporation of a corporation is its place of birth. It is the place of birth that attributes nationality to individuals at common law. On this analogy, the place of incorporation gives a corporation its nationality.

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1. See Finance Corporation and Local Loans Board Law, ibid Cap. 37
2. Laws of the Federation of Nigeria & Lagos 1958 ed. Cap. 37.
3. ibid. ss. 239, 240.

Changes of and loss of nationality had always depended upon statute which are inapplicable to corporations. It follows therefore that a corporation must always retain its original nationality attributed to it by the place of its incorporation.

The principle that a corporation takes its national character from the country of incorporation is supported by many judicial statements in England. A dictum by Collins L.J. in Attorney-General v. Jewish Colonization Association[1] referred to a company incorporated in England as being "deliberately given an English nationality."[2] In Jason v. Driefontein Consolidated Mines Ltd.[3] many of the Law Lords expressed the opinion that a corporation incorporated abroad was a subject of the country of incorporation and if a state of war existed between the Crown and that country, the corporation became an alien enemy. Lord Lindley considered that if it became material to attribute nationality to a company incorporated and registered in the Traansvaal, he was of the opinion that it was a "Traansvaal company and a subject of the Traansvaal Government, although although almost all its shareholders were foreigners resident elsewhere and subjects of other countries."[4] In Bradbury v. English Sewing Cotton

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1. [1901] 1 Q.B. 123.
2. ibid at 135.
3. [1902] A.C. 484.
4. ibid at 505. For statements to the same effect by Lords Macnaghten, Davey and Brampton, see ibid pp. 497, 498 501 respectively.

Co. Ltd.[1] Lord Wrenbury said that the place of registration of a company is "in many respects comparable with the nationality of a natural person."[2]

The place of incorporation as a determinant of the nationality of a corporation has also been adopted in a local legislation in Nigeria. The Trading with the enemy Ordinance of 1939 applied the place of incorporation to determine whether a corporation was an enemy subject. An individual who possessed the nationality of a State at war with the Crown was an enemy subject just as a body of persons constituted or incorporated under the laws of such a State.[3] Therefore a corporation incorporated under any law in the Federation is a Nigerian Corporation having Nigerian nationality irrespective of the nationality of its members.

The nationality of a corporation is of very little importance for the purposes of our conflict of laws[4] but assumes an important role in the field of public international law.[5] As the nationality of the respective members forming a corporation is irrelevant, the place of incorporation alone determines whether a corporation is a national or alien as regards restrictions imposed on aliens.[6] Thus in order to determine the liability

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1. [1923] A.C. 744.
2. ibid. 765
3. See Ord. No. 23 of 1939 s.2(1)
4. See Graveson, The Conflict of Laws, 4th ed. (1960) 110; Farnsworth, The Residence and Domicil of Corporations (1939) 72, 226
5. But see Oppenheim, op cit. v. 1,642n
6. See R. v. Arnaud (1846) 9 Q.B. 806

to seizure of the property of a corporation as enemy property, the national character of the individual shareholders is irrelevant and the separate legal personality of the corporation is the decisive factor.[1] But whether a corporation has enemy character in time of war depends on the character of its controlling officers,[2] and not on the place of its incorporation.

The Nigerian citizenship legislation is also silent on the nationality of ships and aircraft. The Merchant Shipping Act differentiates between a foreign ship, Commonwealth ship and Nigerian ship.[3] The Nigerian ship is either licensed or registered in Nigeria. The Act contains detail provisions relating to registration and licensing. The test of nationality as regards a ship depends on the place of its registration. Thus ships which are registered or licensed in Nigeria will be deemed to possess Nigerian nationality and be eligible to fly the Nigerian flag.[4] In addition to such ships, there are Nigerian Government ships[5] and ships forming part of the Nigerian Navy or the Nigerian Naval Reserve, which are also deemed to possess Nigerian nationality.

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1. Bank voor Handel v. Slatford [1953] 1 Q.B. 248.
2. Daimler Tyre Co. v. Continental Tyre Co. [1916] 2 A.C. 307.
3. Merchant Shipping Act, No. 30 of 1962, s.2(1)
4. Cf. the Geneva Convention on the High Seas; also Empresa Hondurena de Vapores, S.A. v. McLeod; 300 F.2d. 222 (1962); 57 A.J.I.L. 134 (1960)
5. Merchant Shipping Act, No. 30 of 1962, s.2(1) s.v. "Nigerian Government Ship"

The test of registration also applies to determine the nationality of aircraft. It will be recalled that this is the test adopted by the Chicago Convention of 1944.[1] The Colonial Air Navigation Orders 1955-1958[2] which applied to Nigeria defined "British aircraft" as "aircraft registered in any part of Her Majesty's dominions"[3] and contained detailed provisions for the registration of aircraft in the former Colony of Nigeria.[4] These Orders will now be modified to give effect to the new status of Nigeria. Aircraft registered within the Federal Republic will be deemed to possess Nigerian nationality.

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1. See Convention, Art. 17.

2. S.I. 1955 No. 711, as amended; see Laws of the Federation & Lagos, 1958 ed., Vol. XI p. 413 et. seq.

3. ibid, Art 77(1) s.v. "British aircraft"

4. ibid. Arts. 3 - 10.

CHAPTER SEVEN

NATIONALITY IN CUSTOMARY LAW

Nationality as an ethnic concept

Nationality is generally employed in a politico-legal sense to denote membership of a state, a political union. Its politico-legal sense in Nigeria prior to independence was the Imperial British nationality and thereafter citizenship of Nigeria. In addition to this usage of the concept of nationality, there is another sense in which it is employed in the laws of Nigeria. This is in the historico-biological[1] or ethnic sense. Nationality in this sense has been described as "the subjective corporate sentiment of unity of members of a specific group forming a "race" or "nation"."[2] It determines the membership of a particular clan, tribe, race or nation. A member of an ethnic group is bound in allegiance to his local chief to fight his wars and obey the dictates of the community as promulgated by the chief. Such a member of an ethnic community is a national or citizen of that community.

These two notions of the concept of nationality need not coincide. The word "nationality" is mostly employed in its politico-legal sense as denoting membership of a state, and as regards Nigeria it refers to citizenship of Nigeria. It is rarely used in its ethnic sense to denote membership of the various ethnic communities that make up the Federation. Membership of such ethnic community is not normally referred to as Ibo,

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1. See Vichniac, "Le Statut International des Apatrides", 43 Recueil des Cours, (1933) (i) 115, 135 where he refers to "le sens double du terme "nationalite"...le fait historico-biologigue de la communaute et le lien politico-juridique entre l'individu et l'etat." The historico-biological sense may go to determine the politico-legal nationality in cases of dual or plural nationality. See the Nottebahm Case I.C.J. Rep. 1955 p.4.
2. Weis, Nationality and Statelessness in International Law, 1956 p.3.

Hausa or Yoruba "nationality." There is evidence however that formerly the word "nationality" was employed in relation to ethnic communities in Nigeria. In the agreement made between the British Government and the Alake and the Egba Authorities on January 13, 1904, Egbaland was considered a nation and the natives of Egbaland were said to be of Egba nationality. As late as 1910 Osborne C.J. in a judgment involving the application of this agreement, spoke of a person who was a British subject and also a native of Egbaland as possessing "dual nationalities".[1] In a later judgment by the Full Court in the same case, the learned Chief Justice suggested that as no satisfactory definition of the term 'Native of Egbaland' has been propounded, each case where the question of nationality arises must be decided on its merits.[2]

Nationality in its ethnic sense is the core of the application of customary law. In order to give effect to the principle of respecting customary laws, the British administrators developed a policy of indirect rule and governed the native population through local rulers, chiefs or representatives by their customary laws. There was introduced into the local legislation the concept of "native of Nigeria" or "native of a particular area." The "native" was contrasted with the "native foreigner" and the "non-native". This tripartite classification cuts across the British nationality of the pre-independence era and also across citizenship of Nigeria. The Courts were also enjoined to observe and enforce native law and custom. The first Supreme Court Ordinance of 1876 and the later ones superseding it contained provisions to this effect. The courts were

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1, Allen v Peliku (1910-11) 1 N.L.R. 116, 117.
2. ibid at 121.

to apply native law and custom between natives or between a native and a non-native where it would be inequitable not to apply them.[1] It has been held that native law and custom would still be applied even if it might deprive a litigant of a legal right which he had under the common law of England.[2]

Membership of an ethnic community.

The persons who constitute the members of an ethnic community and the the size of it may vary according to the different customs of the various ethnic communities. Most communities are made up of natural and assimilated lineages. According to sociologists, the lineage is an association of people of both sexes comprising all the recognised descendants by an accepted genealogy of a single named ancestor and the growing point of the lineage is the family. In most ethnic communities in Nigeria, kinship is traced through males. There are however a few ethnic groupings in the Federation where descent is traced through females and the kinship group would be composed of matrilineal descendants of a common ancestor.[3] Membership of an ethnic community is normally determined by birth into a kinship group. Where the communities are matrilineal, the children of a woman belong to her clan; where they are patrilineal the children belong to their father's clan. In certain communities, the clan of a child may depend

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1. Laws of Nigeria, 1948 ed Cap 211 s.17; Laws of the Federation & Lagos, 1958 ed, Cap 80 s.27(i); Laws of N.R. of Nigeria, Cap 44 s.12; E.R.No. 27 of 1955 s.22; N.R. No.8 of 1955 s.34.
2. Rufai v. Igbirra Native Authority [1957] N.R.N.L.R. 178.
3. For example, the Verre and the Longuda of Sarduana Province of the Northern Region. See Meek, Tribal Studies in Northern Nigeria Vol. I,415-416, II, 346-7 and the Ekoi in the Eastern Region. There are also a few double-descent groups in the Afikpo and Ohafia. Division in the Eastern Region.

on the source of the marriage payment for the mother. The place of the child's birth is immaterial in determining whether he is a member of an ethnic community. In dealing with a foreign place of birth, Osborne C.J. in In re Sapara [1] said "But one's place of birth may be a mere accident and the fact that his father was an Ijesha forcibly removed from his domicile of origin is in my judgment sufficient to stamp Dr. Sapara with the nationality of an Ijesha and I hold that he is a native."

In some communities, a child, one of whose parents is a member of an ethnic community and the other a stranger, is regarded as a member of that community. Osborne, C.J., in the case mentioned above had further held that "the daughter of an Egba father and a West Indian mother is also a native."[2] In the earlier case of Savage v. Macfoy,[3] the same judge had attached great weight to the evidence of a chief who said that the children of a Lagos woman by a foreigner, such as a Sierra Leonean, are regarded by native law as Lagos children for the purposes of succession.[4]

In patrilineal communities, only a man's legitimate children are considered to be members of his clan. As has been seen, the concept of legitimacy in customary law is different from that in English law. It is immaterial whether the marriage was a customary or an Ordinance marriage.[5] It may be possible under the laws of a particular community

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1. (1911) Ren. 605, at 606
2. ibid. at 606
3. (1909) Ren. 504
4. ibid. at 506
5. Coleman v. Shang [1961] 2 W.L.R. 562, P.C. (Ghana) See however Cole & Anor v. Akinyele & Ors. (1960) 5 F.S.C. 84

for a man to legitimate his illegitimate children by acknowledgement and thereby make them members of his clan. Such a doctrine of acknowledgement has been judically recognised among the Yorubas where "there is no difference between children born in native wedlock and the offspring of fortuitous connection provided that paternity has been acknowledged."[1] It is uncertain whether this doctrine is recognised by the Ibos[2]. Among the Ibos, however, illegitimacy only arises in the case of a child by an unmarried female. Illegitimate children who have not been acknowledged would, in a patrilineal community, belong to their mother's clan.

The case of Allen v. Peliku[3] contains illuminating evidence on how membership of an ethnic group, in this case the Egbas of Yorubaland, can be acquired. The court accepted the evidence of Egba native law that a person, wherever born, whose parents were both Egbas, or one of whose parents was an Egba was himself an Egba. In this case the person concerned was born in Sierra Leone of a father who was a "son of the soil of Egbaland forcibly removed from his fatherland" and a mother who was the daughter of an Egba woman similarly removed. The Court held that that person was a native of Egbaland and further suggested that the animus revertendi shown by his parents by their return to Egbaland within three years evidenced

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1. (1909) Ren. 504, 508, See also Cole & Anor. v. Akinyele & Ors (1960) 5 F.S.C. 84.
2. See Onwundinjoh v. Onwundinjoh (1957) 2 E.R.L.R.L. where it was held that there was no evidence before the Court that illegitimate children "for long recognised as members of the family" were entitled to share in their natural father's intestate estate.
3. (1910-11) 1 N.L.R. 116

that they had no intention of removing their rights and obligations as Egbas.[1] The court was not prepared to accept the evidence that whoever had one Egba ancestor however remote is a native of Egbaland.[2] Folarin[3] has given several examples of how a person could become a member of Egbaland. His illustrations show that the jus sanguinis is the most relevant factor. In the case of the offspring of a union which is not in accordance with native law and custom, the offspring follows the nationality of the mother. A person born of parents both of whom are slaves or one of whom is a slave follows the nationality of the master of the slave.

In customary law, there is the concept of the "stranger" and rules for the admission of strangers into an ethnic community. The lineages in certain communities would include some assimilated lineages, i.e. lineages which do not naturally descend from a common ancestor but have been recognised as being merged or absorbed into the lineage group. These assimilated lineages have always sprung from strangers, refugees or freed slaves, who have been assimilated into the lineages by a fiction. Thus birth into a lineage group is not the only criterion for membership of an ethnic community. It is customary in most ethnic communities for masters to adopt ex-slaves into their kin, or for benefactors to adopt strangers and refugees. Strangers who were permanently settled in the area of a community may be adopted as members of that community and be subjected to its

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1. ibid at 121
2. ibid
3. Laws and Customs of Egbaland, (1939) Chap. III

laws and customs.[1] This custom exists among the Yorubas[2] and strangers were assimilated as members of the communities[3] - a process similar to the modern ideas of naturalisation. It also exists in other parts of the Federation. Among the Ibos, Mbanefo J (as he then was) had observed that:

> "In Abriba strangers and even slaves who lived for a long time with a family are regarded as members of the family and have equal rights with the direct descendants of the original founder of the family to the use and occupation of family lands." [4]

The definitions and use of the term "Native" in local legislation.

These general principles of the modes of becoming a member of an ethnic community have been applied in the various definitions of the term "native" of Nigeria or of a particular community in the local legislation. The term "native of Nigeria" has relevance not only as regards the jurisdiction of customary courts, but also in a wide variety of legislation ranging from the field of immigration to the acquisition of native lands. The Interpretation Act[5] differentiates between "native of Nigeria", "native foreigner" and "non-native". It contains general definitions which apply to every

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1. The Ghanaian courts have held that succession to an emancipated female slave accepted into the ex-masters family is governed by the customs of the ex-master's family; Yeboah v. Bonko (1956) 2 W.A.L.R. 107, 111.
2. See P.C. Lloyd, "The Yoruba Lineage" (1955) 25 Africa, 235, 240 et seq; also P.C. Lloyd, Yoruba Land Law (1962) 64, 86 et seq.
3. See Folarin, op. cit 55, 104, Ajisafe, The Laws and Customs of the Yoruba people (1924) 21.
4. Onwuka & Anor. v. Abriba Clan Council & Ors. (1956) I.E.N.L.R. 17,19.
5. Ord. 27 of 1939 now Cap. 89, Laws of Federation & Lagos, 1958 ed.

enactment unless such enactment has its own special definition. Recently, certain statutes have adopted the term "Nigerian", but defined it in the same way as "Native of Nigeria"[1]. Firstly, the Interpretation Act defines the term "native" as including a native of Nigeria and a native foreigner. A native of Nigeria is defined as "any person whose parents were members of any tribe or tribes indigenous to Nigeria and the descendants of such persons; and includes any person one of whose parents was a member of such a tribe." A native foreigner is any person whose parents were members of any tribe or tribes indigenous to some parts of Africa other than Nigeria and the descendants of such persons and [redacted] includes any person one of whose parents was a member of such tribe. Lastly, a non-native is one who is neither a native of Nigeria or a native foreigner. The Western Regional Interpretation Law[2] adopts the same definition of these terms as the Federal Interpretation Act.

The definition of "native of Nigeria" embodies some of the general principles of customary laws for the determination of membership of an ethnic community. It adopts a general test of race or descent[3]. It is the jus sanguinis that makes one a native of a particular community and not the accidental incident of birth. The definition traces descent through either parent. It provides only for natural lineages and makes no reference to assimilated

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1. E.g. Customary Courts Law, Laws of W.R. of Nigeria 1959 ed, Cap. 31.
2. Laws of W.R. of Nigeria, 1959 ed, Cap. 51.
3. For other tests used in African legislation, see Allott, Essays in African Law (1960) 168 et seq.

lineages. The operation of the jus sanguinis in this definition is almost similar to its operation in the citizenship laws of Nigeria. In the transitional provision of section 7 (1) of the Constitution, citizenship can descend from either parent. But in sections 7 (2) and 12 of the Constitution the jus sanguinis is limited to the male line. The jus sanguinis in the citizenship legislation is also limited to natural lineages.

A difficulty in the practical application of this definition is the determination of the tribes which are indigenous. This difficulty applies equally to the definition of a "native foreigner". What factors would attribute indigenous characteristics to a tribe? Would "domicil" or "long habitation" make a tribe indigenous and after how many generations would settlers be regarded as indigenous? It is suggested that indigenous might mean permanently settled.[1]

There are other definitions in the Acts and Regional Laws of the term "native" in relation to a particular area of the country. Some of these definitions are not as precise in their practical applications as that contained in the Interpretation Act. The Western Region Local Government Law defines a "native" in relation to an area of a Council as "a person who was born in, or whose father was born in that area."[2] The Eastern Region Local Government Law adopts the same wording not as a definition for the term "native"

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1. See the position in Sierra Leone, the laws of which define a "native" as comprising any person who is a member of a race, tribe or community settled in Sierra Leone but excludes persons of European or Asiatic origin or persons settled in the colony.
2. Laws of W.R. of Nigeria, 1959 ed Cap 68 s.18(2) s.v. "native"

but as a qualification for those to be elected councillors[1]. Its practical application is the same as that of the Western Region. Here the jus soli or place of birth is made one of the criteria for the determination of a native of an area. There is not also the requirement that he has to belong to an ethnic community indigenous to the area. The only advantage of this definition is the simplicity of its application. It would however include persons who are not subject to the native laws and customs of the area, and who would not be natives of Nigeria under the general definition of the Interpretation Law of the Region.[2]

The definition of the term "native" may also determine the jurisdiction of customary courts. Prima facie all natives are subject to the jurisdiction of the customary courts of their area. The jurisdictions of these courts vary in the different regions. Jurisdiction may be extended over persons who would not normally be included in the term "native". This is effected by defining the term "native" by reference to other tests (e.g. the mode of life test). In the Western Region, the customary court has jurisdiction over "all Nigerians"[3] Nigerians are defined in the Law in a way which limits the persons over whom the courts have

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1. E.R. No. 17 of 1960 s.19 (6) (i)
2. See Laws of W.R. of Nigeria, 1959 ed, Cap 68s. 18(2) s.v. 'native'
3. Customary Courts Law Cap. 31 Laws of W.R.N. s.17.

jurisdiction to natives of Nigeria[1]. No provision is made for native foreigners.[2] A non-Nigerian will therefore be unable to sue or be sued in the customary courts. In the Eastern Region persons who are subject to the jurisdiction of the customary courts are as follows:-

(a) Persons of African descent, provided that the mode of life of such persons is that of the general community.

(b) Persons whether of African or non-African descent whom the Governor-in-Council may direct to be subject to the jurisdiction of the customary courts.

(c) Persons who have at any time instituted proceedings in any customary court.[3]

In the Northern Region, the following classes of persons are subject to the jurisdiction of the native courts:-

(a) All persons who (i) permanently reside on the land within the area of jurisdiction of a native authority and (ii) "whose general mode of life is that of the general native community."

(b) All persons who are temporarily resident within the area of jurisdiction of a native authority and whose mode of life is similar to that of the general community.

(c) Persons whether of African or non-African descent who have at any time instituted proceedings in any native court.

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1. See ibid. S.2 s.v. "Nigerian". Cf. the definition of "native of Nigeria" in the Interpretation Law, Cap 51 Laws of W.R.N. 1959 ed, S.3.
2. Dr. Allott thinks the provision inadequate in its brevity, see Essays in African Law (1960) 167.
3. Customary Courts (Amendment) Law, E.R. No. 12 of 1957 S.3.

(d) All natives of Nigeria and all native foreigners in cases in which they consent to the exercise of the jurisdiction of the native court.[1]

There are also definitions of the term "native" in the field of land law which are not very helpful. The legislation in this field usually imposes certain restrictions on the alienation of land by a native of the area in which the land is situate to a non-native or between two non-natives without the prior consent of the local authorities. These laws adopt their own definitions of the term "native". Under the Eastern Regional Local Government Law, 1960,[2] local authorities have passed bye-laws which restrict the alienation of land from a native of the area to a non-native without the consent of the local authorities. A native of the area is defined by these bye-laws as "any person who is eligible by local customary law to inherit land or the use of land within the area."[3] Such a definition is also contained in the subsidiary legislation of the Northern Region. Under the Native Authority Law of the Region[4], a bye-law defined "stranger" as "any native of Nigeria or native foreigner who is not eligible by native law and custom to inherit land or the use of land within the area of jurisdiction" of the local authority[5]. By deduction therefore the native of that area would be

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1. Native Courts Law, N.R. No. 6 of 1956 S.15 (1)
2. E.R. No. 17 of 1960 ss. 85, 221
3. See Western Ahoada Rural District Council (Alienation of Land) Bye-Law 1957, E.R.L.N. No. 272 of 1958 S.2 (1); Izi D.C. (Alienation of Land) Bye-Law, 1959, E.R.L.N. No. 370 of 1959, Uzo-Uwani D.C. (Alienation of Land) Bye-Law, 1959, E.R.L.N. No. 37 of 1960 S.2.
4. N.R. No. 4 of 1954 S.37 (22).
5. See the Wase Native Authority (Control of Cultivation of Land) Rules 1958, N.A.L.N. 146 of 1958 s.2

someone who is, in accordance with native law and custom, eligible to inherit land or the use of land within his area. Such definitions are inadequate and indeed will not be helpful to determine whether a particular individual is a native of the area or not. In order to apply such a definition one has to fall back on the general principles of customary law which determine membership of a lineage or kinship group. It is a cardinal principle of customary law that only members of an ethnic community are entitled to the use of land belonging to that community.[1]

The conception of a "native of Nigeria" could be stretched by any statute for certain purposes to include persons who under the general principles of customary law would not be regarded as members of an ethnic community in Nigeria. In this connection, an example can be taken from the old Immigration Act[2] which was law in the Federation up to the end of June 1963. That Act exempted "natives of Nigeria" from its provisions.[3] The Act did not contain a definition for the term and therefore the general definition in Interpretation Act applied to it. Prior to November 15, 1956, the Immigration Act also exempted from its provisions a person who was "deemed to be a native of Nigeria". A person was deemed to be a native of Nigeria if "he is a British subject or a British protected person and (a) was born in Nigeria of parents who at the time of his birth were ordinarily resident in Nigeria; or (b) obtained the status of a British subject by

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1. See Cole, Report or Land Tenure Niger Province para 132; Agbloe & ors. v. Sappor & anor. (1947) 12 W.A.C.A. 187, Lopez v. Lopez (1924) 5 N.L.R.47
2. Laws of the Federation and Lagos, 1958 ed, Cap. 84.
3. ibid. s.4(1) (d).

reason of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 or under the Naturalisation of Aliens Ordinance."[1] This subsection was repealed by Ordinance No. 18 of 1956 with effect from November 15, 1956, which provided that from its commencement the principal Ordinance shall apply to the immigration of any person heretofore deemed to be a native of Nigeria[2] The Federal Supreme Court has held that the retrospective effect of this amendment on the vested right, to enter and remain in Nigeria unconditionally, of a person who was previously deemed a native of Nigeria would disentitle him from being deemed as such only if he were to put himself in the position of entering Nigeria as if he were a newcomer[3].

The native of Nigeria and citizenship of Nigeria.

The framers of the Nigerian citizenship laws did not have any recourse to the ethnic aspect but based the new legislation on the politico-legal aspect of British nationality which was then the law applicable in the Federation. Noneof the definitions of the term "native", not even the general one of a "native of Nigeria" contained in the Interpretation Act was employed as a basis for citizenship of Nigeria. Admittedly the transitional provisions of the citizenship legislation would embrace most people who are natives of Nigeria and such natives who do not come within its ambit were enabled to become citizens by certain of the

1. Laws of Nigeria. 1948 ed. Cap 89 s.2 (2)
2. Laws of the Federation and Lagos, 1958 ed, Cap 84. s.31.
3. Habib v. Principal Immigration Officer (1958) 3 F.S.C. 75, 79

permanent provisions.

The concepts of the "native" and "native foreigner" blurred the distinction between a citizen of the United Kingdom and Colonies or a British protected person and an alien in the pre-Independence era. Under the Imperial legislation then in operation in Nigeria, a native of Nigeria may be an alien[1] and a native foreigner a citizen of the United Kingdom and Colonies.[2] With the heavy reliance of the transitional provisions of Nigerian citizenship on citizenship of the United Kingdom and Colonies or the status of British protected person, a native of Nigeria who is an alien can only acquire citizenship of Nigeria through the process of naturalisation[3] and a native foreigner who is a citizen of the United Kingdom and Colonies or a British protected person may acquire citizenship by the easier process of registration.[4] A person who became a citizen of Nigeria by operation of law on October 1, 1960, may or may not have been a native of Nigeria. A second generation of locally-born foreigners would qualify for citizenship on October 1, 1960[5] but such a person is not a native of Nigeria within the definition contained in the Interpretation Act. The son, wherever born, of a foreigner who was born in Nigeria is in a similar position if he satisfies the other conditions of the citizenship law.[6] Instances of natives of Nigeria who do not acquire citizenship by operation of law can arise in places where the boundary of Nigeria cut arbitrarily across

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1. E.g. A child born in Dahomey of a Yoruba mother and a Dahomean father.
2. E.g. A child born of Ghanaian parents in Lagos.
3. Nigerian Citizenship Act 1960 s.6.
4. Ibid. s.3 (1); Republican Constitution s.8 (1)
5. See ibid s.7 (1)
6. If born within Nigeria, ibid 7 (1) would apply; if born outside Nigeria, ibid s. 7(2) applies.

ethnic communities which are indigenous to Nigeria. Even where this does not occur, the possibility still exists. A son born in Dahomey to a Yoruba mother and a Dahomean father is a native of Nigeria but does not qualify for citizenship of Nigeria under section 7 (2) of the constitution.

Single Citizenship

Prior to independence, there were two broad categories of the native population of the Federation - the citizen of the United Kingdom and Colonies and the British protected person. The most important aspect of the constitutional provisions relating to citizenship is the establishment of a uniform or single system of citizenship law for the whole country.[1] A citizen of Nigeria is regarded as a citizen in every part of the territories that make up the Federal Republic with almost all the rights and privileges that go with such a status. This is in contrast to the system of double citizenship that prevails in some federal states.[2]

The retention of the term "native" of a particular area as the basis of certain rights in some legislation[3] detracts from this ideal of single citizenship but in no way goes to create any form of regional citizenship. With the retention of that term, there are differences in the rights of different classes of citizens under customary law. For example the acquisition of lands in the Northern Region is only open

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1. See also the Constitution of India s.s. 5-11 and the Constituion of Burma s.10.
2. In the U.S. a citizen of the U.S. is also a citizen of one of the States and state citizenship is the qualifying factor for rights and duties under state law.
3. The word "citizen" has been substituted for "native" in part XLV of the Criminal Procedure Act, Cap 43. See the Immigration Act, 1962 s.52 (3)

to natives of that Region.[1] This denies the right to acquire such lands to a citizen who is a member of ethnic communities in the Western or Eastern Region or in the Federal territory but extends such a right to a non-citizen who is a native of the Northern Region. These differences[2] in the rights of citizens under customary law do not create a sort of regional citizenship.[3] Citizenship of Nigeria is not the basis of the conferment of rights under customary laws. Even among citizens who are natives of the Northern Region there are differences in their rights to acquire land. A native of that Region can only acquire land within his own ethnic territorial limits or emirate and nowhere else in the Region.

Citizenship of Nigeria is an exclusive matter for the Federal Parliament. The regional Constitutions do not contain provisions regarding citizenship but the rights which flow from citizenship may be subject to Regional legislative competence. The fundamental rights provisions of the Constitution contain a provision prohibiting discrimination against a citizen on the ground that he is a person of a particular community, tribe, place of origin, religion or political opinion.[4] This provision is subject to several exceptions including one relating to restrictions with respect to the acquisition of land or use by any person of land or other property.[5] It is on this exception that legislation such as the Land Tenure Law of the Northern Region is based.

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1. See the Land Tenure Law, 1962 (Northern Region)
2. For other differences among citizens; see the provision for deprivation in Nigeria Citizenship Act 1960 ss.8,9,10; also Naturalised citizens cannot act as sponsors, see Nigerian Citizenship Act, 1961 s.2(2)
3. Cf. with State citizenship in the United States. The Federal Supreme Court and the High Courts of the Regions and Federal territory do not have any jurisdiction based on diversity of citizenship, as do the Federal Courts of the United States.
4. Republican Constitution s.28(1)
5. Ibid. s.28 (2) (c).

Chapter Eight

CITIZENSHIP AND NON-CITIZENSHIP.

Powers relating to citizenship and aliens.

The scheme of the Constitution envisages a division of legislative matters between Parliament and the Regional legislatures. The division leaves the residual powers to the Regions. There are two legislative lists, the Exclusive and the Concurrent.[1] The legislative powers of Parliament are contained in sections 69 to 83 of the Constitution. Section 69 empowers Parliament to make laws for the peace, order and good government of Nigeria (other than the Federal territory) with respect to matters included in both legislative lists. With respect to the Federal territory, Parliament can make laws in relation to any matter whether or not it is in the legislative lists. Section 70 provides for the legislative powers of Parliament during a period of emergency in relation to matters not included in the legislative lists. The Regional legislatures are competent to legislate in relation to matters in the concurrent list and those not included in any of the legislative lists.[2] However, if a regional law is inconsistent with any law validly made by Parliament, the latter prevails and the former is void to the extent of its inconsistency.[3]

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1. See Republican Constitution, Schd. for the two Legislative Lists.
2. ibid. s. 69(5)
3. ibid. s. 69 (4)

Provisions relating to citizenship of Nigeria are found in the Republican Constitution[1] and the legislative powers given to Parliament by sections 8, 9, 13 and 16 of that Constitution are included in the Exclusive Legislative List.[2] Matters relating to citizenship therefore fall within the exclusive legislative competence of Parliament.[3] There is no specific power relating to aliens or non-citizens in either of the legislative list. This means that the "aliens" power is residuary and comes within the legislative competence of a regional legislature. The "aliens" power deals with persons of a particular kind. The legislature having that power can regulate the activities of aliens, exclude them from, or require a licence as a condition of, carrying on business or prescribe other rules of conduct while they are within its jurisdiction. There are, however, certain aspects of the "aliens" power which are reserved exclusively to Parliament such as immigration,[4] deportation[5] and the naturalisation of aliens.

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1. See its Chap. II. No such provisions are contained in the Regional Constitution.

2. See item 44 of the List.

3. The provisions of Chap. II of the Constitution make it unnecessary to provide an item relating to citizenship of Nigeria in the Exclusive Legislative List. Cf the Nigerian Constitution of 1954, First Sch. Pt. I. item 25A.

4. See the Exclusive Legislative List, item 18.

5. ibid, item 12.

The power of the Federal Parliament to legislate exclusively on the naturalisation of aliens is limited to defining the persons who, the conditions under which and the procedure whereby a person may become naturalised. Such a power "does not purport to deal with the consequences of.....naturalisation."[1] The consequences of naturalisation may come within the legislative competence of the Federal Parliament or a regional legislature depending on whether the subject matter of legislation is in the Exclusive or Concurrent Legislative List. If the consequences of naturalisation pertain to a subject matter within the concurrent list, the law of a regional legislature which is inconsistent, with that of the Federal legislature covering the same field, is void to the extent of the inconsistency.[2]

Who is an alien?

Prior to October 1, 1960 there was the tripartite classification of persons into citizens of the United Kingdom and Colonies, British protected person and the alien. The status of an alien in Nigeria was determined by the Imperial law of British nationality, though his rights and duties were determinable by Nigerian law.[3] An alien may be defined as one who owes allegiance to a foreign state. At common law the general rule was that anyone born outside Her Majesty's

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1. See Cunningham v. Tomey Homma [1903] A.C.151, 156. P.C. as regards the power of the Dominion of Canada relating to "Naturalisation and aliens". But see Union Colliery Co. v. Bryden [1899] A.C.580

2. Republican Constitution s.69 (4).

3. Re Adams (1837), Moo.P.C.460.

dominions was an alien subject to certain exceptions.[1] The definition of alien in the British Imperial law later became statutory. At first it was simply defined as one who is not a British subject.[2] Under the British Nationality Act of 1948 the term was defined as "a person who is not a British subject a British protected person or a citizen of [the Republic of Ireland] ".[3] The term "British subject" in this definition has the same meaning as the term "Commonwealth citizen."[4] Alienage in the Nigerian Ordinances was similarly defined. In the Ordinances relating to the deportation and restriction of aliens, the definition of alien excluded the British protected person and a native of the Cameroons under United Kingdom Trusteeship.[5] This was necessary as the majority of the local population were British protected persons.

After September 30, 1960, the status of Nigerian Citizenship was created and the Nigerian citizenship legislation defined an alien as "a person who is not a citizen of Nigeria, a Commonwealth citizen

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1. E.g. the children of the Sovereign born abroad; see De Geer v. Stone (1882) 22 Ch.D.243.

2. See Act of 1914 (Imperial) s.27(1) s.v. "alien."

3. Act of 1948 (Imperial) s.32 (1) s.v. "alien"

4. See ibid. s.1(2)

5. See Aliens (Deportation) Act, Cap.9., Laws of Federation of Nigeria and Lagos 1958 ed. s.2; Aliens (Restriction) Act ibid. Cap. 10, s.2.

other than a citizen of Nigeria, a British protected person or a citizen of the Republic of Ireland."[1] The creation of a citizenship scheme in Nigeria did not materially affect the status of aliens. Under the new citizenship scheme in Nigeria, anyone who was not an "alien" in Nigeria prior to October 1, 1960 did not become such merely by the introduction of the new legislation on that date. It will be noted that the definition of an "alien" excludes the citizen of another Commonwealth country or the Republic of Ireland. This is due to the adoption in Nigeria of the Commonwealth-Republic of Ireland scheme of citizenship. The definition also excludes British protected persons. A "protected person"[2] who is not a British protected person[3] is therefore an alien in Nigeria. For example a New Zealand protected person[4] is an alien. For the purpose of acquiring local citizenship, all protected persons are placed in the same position as Commonwealth citizens.

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1. Republican Constitution s.17 (1) s.v. "alien"; see also Nigerian Citizenship Act 1960 s.2(1) s.v. "alien".

2. For definition, see ibid. s.2(1) s.v. "protected person".

3. For definition, see Republican Constitution s.17(1).

4. See British Nationality & New Zealand Citizenship Act, 1948 (N.Z.No. 15 of 1948) s.2(1) s.v. "New Zealand protected person"; also The Western Samoa New Zealand Protected Persons Order 1950. Western Samoa became independent on January 1, 1962 and the term "New Zealand protected person" has now been abolished; see Western Samoa Act 1961 (N.Z. No. 68 of 1961).

An alien if of full age and capacity may become a citizen of Nigeria by naturalisation.[1] An alien minor may be registered as a citizen.[2] There are certain rights and privileges which are denied the citizen by naturalisation. He cannot be a sponsor to a person who seeks citizenship of Nigeria by registration of naturalisation.[3] He is liable to be deprived of his citizenship on grounds which are not applicable to other citizens of Nigeria.[4] He may also not be entitled to certain rights and privileges which are accorded to persons not by virtue of their citizenship but in virtue of the fact that they are natives of Nigeria or of a particular area of Nigeria. Apart from these, a person who obtains citizenship by naturalisation has the same status as any other citizen.

Aliens residing in the Federal Republic may be grouped into two broad categories i.e. alien friends and alien enemies. The former category comprises all aliens as long as the Federal Republic is not at war. Although an alien has no right to enter the country[5], when once he is admitted, he enjoys protection for his person, his family and his effects. He can sue and be sued in the courts in the same

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1. See Nigerian Citizenship Act 1960, s.6 and Second Schedule.
2. ibid s.4 (2)
3. Nigerian Citizenship Act 1961 s.2 (2)
4. Nigerian Citizenship Act 1960 s.9 (3)
5. Cf. Musgrove v. Chin Teeong Toy [1891] A.C. 272; see also Thornton v. The Police [1962] A.C. 339

manner as a citizen. He is in almost exactly the same position as a citizen and has rights and obligations. There are certain rights which he cannot exercise and certain obligations to which he is not normally subject. He is amenable to all municipal laws and liable for criminal offences committed in the country or within its territorial waters or on ships registered in the Federal Republic. An alien is triable in the same manner as if he were a citizen. He has no right of action against a citizen acting in obedience to commands of his government in the performance of an act of state.[1] The Federal Govefnment has power to exclude and expel any alien.

The category of alien enemies only arises when the Federal Republic is at war. A state of war may not affect alien friends whether neutral or allies, except in so far as it affects local citizens. Special statutes may however give the executive wide powers to deal with and regulate any category of aliens.[2] There are two main tests to define an enemy alien, the national and the territorial. On the national test the term denotes any person (other than a citizen of Nigeria) having enemy nationality, i.e. being the subject of a state at war with the Federal Republic or a

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1. Buron v. Denman (1848) 2 Ex. 167

2. The attitude of the common law as regards enemy alien is illustrated by Sylvester's case 7 Mod. 152 an enemy alien might be imprisoned and was without the protection of the law unless under a special or general protection of the Crown.

corporate body constituted under the laws of such a state.[1] This test of nationality is employed to ascertain a man's personal rights and liabilities e.g. whether he should be interned or subject to certain emergency restrictions. The territorial test is employed to ascertain a man's position as a contractor or litigant. On this test an enemy alien means any person (including a citizen of Nigeria) who voluntarily resides or carries on business in enemy[2] or enemy-occupied[3] territory. One of the immediate consequences of a declaration of war is the interdiction of all commercial intercourse between the subjects of the states without license from their respective Governments.[4] Thus a citizen of Nigeria or a neutral national voluntarily resident in enemy territory is an enemy alien by the territorial test. An enemy alien in the territorial sense has no right of access to the courts[5] but he may be sued. Conversely an enemy national who is permitted to remain in the country under licence is not an enemy alien by this test and can therefore maintain civil proceedings.[6]

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1. See The Trading with the Enemy Ordinance, No. 23 of 1939 s.2 (1) which defines enemy subjects as"(a) an individual who not being either a British subject or a British protected person possesses the nationality of a state at war with His Majesty or (b) a body of persons constituted or incorporated in or under the laws of, any such state."

2. Porter v. Freudenberg [1915] 1 K.B. 857 867-9 Vandyke v. Adams (1942) Ch. 155, In re Hatch [1948] 2 All.E.R. 288

3. Sovracht v. Van Udens [1943] A.C.203; In re Anglo-International Bank Ltd. [1943] Ch. 233.

4. See Lord Stowell in The Hoop (1799) 1.C. Rob. 196

5. Porter v. Freudenberg [1915] 1.K.B. 857

6. Schaffenius v. Goldberg [1916] 1.K.B. 184

All aliens residing in the country owe a local and temporary allegiance to the Federal Republic as long as the residence continues. Certain aliens e.g. foreign sovereigns, ambassadors are exempt from the duty of local alligiance. A resident alien still owes allegiance when the Federal Republic is at war even with his own country.[1] An alien enemy may therefore be covicted of treason by assisting his own country when resident in the Federal Republic[2] Nationals of neutral countries may also be guilty of treason.[3] The decisions of the House of Lords in Joyce v. Director of Public Prosecutions[4] and of the South African Court in R. v. Neuman[5] have shown that an alien may be guilty of treason in respect of acts done while he is outside the country of residence if he keeps alive his allegiance to that country during the commission of those acts.[6]

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1. De Jager v. Att. General [1907] A.C. 326
2. Morosini v. Belgium State [1946] Ann:Dig: 138
3. In re Ernst [1949] Ann.Dig. 238
4. [1946] 1 All.E.R. 186.
5. [1949] 3 S.A.L.R. 1238; [1949] Ann. Dig. 239;
6. See further Sarkar, "The Proper Law of Crime in International Law", (1962) 11 I.C.L.Q. 446, 451 et seq. As to liability for treason in the laws of Nigeria, see Criminal Code, s.37 (1), Cap. 42, Sch, Laws of the Federation of Nigeria & Lagos, 1958 ed; Brett & McLean, Criminal Law and Procedure etc. (1963) paras. 1412, 1419-22.

THE CITIZEN AND NON-CITIZEN[1]

Citizenship confers rights and imposes obligations on individuals. The rights enjoyed by citizens and also non-citizens can be abrogated or diminished by the legislature. In countries with a constitution restricting the powers of the legislature, citizens and non-citizens may be granted certain rights which are removed from the sphere of legislative interference. The concept of Nigeria citizenship has been employed in various fields to determine rights and liabilities. Certain rights are also guaranteed to the citizen and non-citizen in the fundamental rights provisions of the Constitution. The difference in the status of citizens and non-citizens can be appreciated by a consideration of some of these fields.

As regards contractual, testamentary and procedural capacity, any person resident in Nigeria, whether a citizen or not, has full contractual, testamentary and procedural capacity. He may sue and be sued in the local courts.[2] There is, however, the usual exception of persons having immunity from suit or legal process and who cannot be sued as long as that immunity continues.[3] No distinction is made between aliens and citizens of another Commonwealth country or of the Republic of Ireland as regards parliamentary or municipal franchise, which is denied to them. Only citizens of Nigeria who have attained

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1. The term "non-citizen" includes an alien, a citizen of another Commonwealth country and the British protected person.
2. See supra p.277 et seq. for the jurisdiction of customary courts.
3. Diplomatic Immunities and Privileges Act 1962 s.1 (2)

the age of twenty-one can vote or be voted for at elections for Parliament[1] and the Houses of Assembly.[2] The franchise is limited to males in the Northern Region.[3]

Certain public offices are reserved to citizens. The Federal Constitution did not reserve the office of Governor-General of the Federation to citizens of Nigeria,[4] nor are the offices of the Governors of the Regions so reserved.[5] However, a person who was appointed Governor-General was required to take the oath of allegiance and such oath for the due execution of his office.[6] Similar conditions apply to a person who is appointed Governor of a Region.[7] Under the Republican Constitution, the office of President of the Republic was substituted for that of Governor-General[8] and only citizens of Nigeria were eligible for that office.[9]

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1. Electoral Act 1962 s.1(1); Republican Constitution s.44.

2. Constitution of N. Nigeria s.8; Constitution of W.Nigeria s.7; Constitution of E. Nigeria s.7.

3. Electoral Act 1962 s.1 (3) (d); Republican Constitution s.44 (b), Constitution of N. Nigeria s.8.

4. Federal Constitution s.33 (1)

5. Constitution N. Nigeria s.1(1); Constitution W. Nigeria s.1(1); Constitution E. Nigeria s.1(1).

6. Federal Constitution s.34.

7. Constitution N. Nigeria s.2; Constitution W. Nigeria s.2; Constitution E. Nigeria s.2.

8. Republican Constitution s.34.

9. ibid. s.35(1) (a). See further ibid s.157 (1). Cf with the position in the U.S. where citizens by naturalisation cannot be citizens; see U.S. Constitution, Art II, s.1.

Senators and members of the House of Representatives must be citizens of Nigeria.[1] The offices of Prime Minister, President of the Senate, Speaker of the House of Representatives, Premiers and Speakers of Regional Houses of Assembly can only be held by citizens.[2] The President and Members of the Regional Houses of Chiefs are also citizens of Nigeria.

In respect of participation in ordinary trade and occupation or in the admissions to the learned professions, no distinction is made between citizens and non-citizens. The conditions of the Immigration Act which controls the entry of non-citizens must, however, be observed by a non-citizen. A person who is a national of another country desirous of taking employment (not being employment with the Federal or a Regional Government) or engaging in a business or profession requires the consent of the Chief Federal Immigration Officer or the Minister as the case may be. The employer of a non-citizen may be required to comply with certain conditions for the repatriation of the employee.[3] But recently the Legal Practioners Act 1962 confines

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1. Republican Constitution s.44. Under the Federal constitution, Senators selected by the Governor-General and the President of the Senate need not be citizens, see Federal Constitution ss.39 (b), 41(2), 50 (1), (2).

2. See Republican Constitution s.44, 46, 47, Constitution N. Nigeria ss 8, 9(1) (a), 11(1), (2), 13(1)(c), See however proviso to s.8 for special members of the Northern House of Assembly; Constitution W. Nigeria ss. 7, 8 (1)(a), 10(1)(2), 12(1)(c); Constitution E. Nigeria ss, 7, 8(1)(a), 10(1)(2); 11(1)(c).

3. Immigration Act 1962 ss.8, 33.

the practice of the legal profession to citizens. Non-citizens who were already in practice and resident in Nigeria on July 1, 1963 were allowed to continue in practice. Non-citizen lawyers who would otherwise be qualified to practice in Nigeria may be permitted by the Federal Chief Justice to appear in certain proceedings.

With regards to taxation, income, or estate taxes, no distinction is made between citizens and non-citizens. The basis of taxation is residence or the possession of property within the jurisdiction. The status of resident non-citizens for income tax purposes, is the same as that of any citizen. Tax is payable upon income accruing in, derived from, brought into or received in Nigeria in respect of gains or profits from any trade, business, profession or vocation or any salary wages, fees allowances or other gains or profits from an employment which are paid or payable in money by the employer with certain exceptions.[1]

The concept of citizenship is not employed to limit the rights of resident non-citizens in the fields of religion, education and jury service. Resident non-citizens are free to practice their religious beliefs and educate their children to the same extent as citizens. The freedom to practise and propagate their religion either individually or in community with others is guaranteed as a fundamental right by the

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1. See Income Tax Act, Cap 85, Laws of Federation & Lagos, 1958 ed; also Income Tax Management Act, No. 27 of 1961 and the relevant regional legislation.

Federal Constitution.[1] Jury service in the Federation is based on residence and not on citizenship. A male person resident in the region or in the Federal Capital is liable for jury service unless he falls within the exempted categories.[2]

In the acquisition of property other than land, non-citizens have full proprietary capacity. But for the acquisition and holding of lands, the position is more complicated and their treatment not quite so liberal. The enactment of laws for the acquisition of lands is within the legislative competence of the regional Legislatives. The Parliament is only competent to legislate with respect to the Federal territory of Lagos in this matter. Under the Native Lands Acquisition Law[3] of the Western Region, no alien can acquire any interest or right in or over any land from a native unless the transaction under which it is acquired has been approved by the Governor.[4] Any agreement or instrument by which an alien purports to acquire any interest or right in or over any land is void and of no effect.[5] An alien is defined by that law as a person

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1. Federal Constitution s. 23; Republican Constitution s. 24.
2. See Jury Act, Cap. 90 Laws of the Federation & Lagos, 1958 ed. s. 4. For the categories of exempted persons, see ibid. s. 6.
3. Cap. 80, Laws of Western Region, 1959 ed.
4. ibid s. 3(1)
5. ibid. s. 3(3)

other than a native of Nigeria.[1] This definition therefore extends the prohibition not only to aliens but also to citizens of other Commonwealth countries or the Republic of Ireland and even to local citizens who are not natives. The Governor-in-Council can exempt any company or association or body of persons corporate or unincorporate not already exempted from the provisions of the Law subject to such conditions as the Governor-in-Council may deem fit to impose.[2] Where an alien has acquired any interest or right in or over land, he cannot transfer, alienate, demise, sell or otherwise dispose of that right to any other alien without the approval of the Governor of the transaction or sale.[3] The interest or right that will be approved under any transaction should not exceed, including any option to renew, a term of ninety-nine years commencing not more than twelve months after the application for approval of the transaction. The instrument of lease should not provide for payment in advance of the rent for an aggregate period of more than twenty years and should contain a condition that the rent reserved will be subject to revision on the exercise of any option of renewal contained in the lease or every twenty years of the term created.[4]

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1. ibid. s.2, s.v. 'alien' (a)
2. ibid. s.7(2)
3. Cap 80, Laws of Western Region, 1959 ed., s.3 (2)
4. Native Lands Acquisition (Approval of Transactions) Reg. 1958.

The Acquisition of Land by Aliens Law of the Eastern Region contains a similar prohibition against the acquisition of lands by aliens and requires that both the alien and the instrument under which he acquires any interest in or over land must be approved by the Minister.[1] An alien is defined as an individual other than a Nigerian.[2] The definition of a "Nigerian" is identical with that of a "native of Nigeria"[3]. In effect the law of the Eastern Region applies to the same class of persons as does that of the Western Region. It is an offence under these regional laws for an alien to be unlawfully in occupation of land belonging to a native or a Nigerian and the Attorney General of the Region is empowered to bring ejectment proceedings in cases of unlawful occupation.[4]

The prohibition in the Northern Region is much wider. The Land Tenure Law of the Northern Region prohibits the alienation of land by any native to a non-native by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise without first obtaining the consent of the Minister.[5] A native in this connection is confined to a native of the Northern Region.[6]

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1. E.R. No. 11 of 1958 ss 4, 5. See also Nahman v. Odutola (1953) 14 W.A.C.A 318; See however Ankrah & Ors. v. Dabra & Olaga (1956) 1 W.A.L.R.89 (Ghan

2. ibid. s.2. s.v. "alien" (a)

3. ibid. s.2. s.v. "Nigerian" Cf. Interpretation Act s.3. s.v. "Native of Nigeria".

4. E.R.No. 11 of 1958 ss, 6, 7; Cap. 80, Laws of W.R., 1959 ed., ss.4(2),5.

5. s.27.

6. ibid. s. 2 s.v. "native".

Therefore a non-native includes anyone whether an alien or a citizen of another Commonwealth country or the Republic of Ireland or even a citizen of Nigeria who is not a native of the Northern Region. Any transaction or instrument which purports to confer on or vest in a non-native any interest or right in or over any lands otherwise than in accordance with the provisions of the Law is null and void.[1] The Regional Attorney-General or a native authority is empowered to bring proceedings for recovery of possession of any native lands in unlawful occupation.[2]

Immigration and Deportation.

The powers of the Federal Government relating to Immigration and Deportation are invariably confined to non-citizens. Lord Atkinson said in a Canadian appeal that "one of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what condition it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order and good government, or to its social or material interests."[3] An alien lawfully within a country does not

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1. ibid. s.32.
2. ibid. s.39
3. Att-Gen. for Canada v. Cain [1906] A.C.542, 546

normally enjoy any security as to the duration of his stay.[1]

The old legislation dealing with these matters were contained in several Acts. The Immigration Act[2] dealt with all immigrants and the Aliens (Restriction) Act[3] applied to non-Commonwealth citizens only and was applied through regulations enforced by the Nigeria Police. The Aliens (Deportation) Act[4] authorised the deportation of undesirable aliens, the Deserter from Ships Act[5] dealt with the illegal entry into Nigeria of seamen and part XLV, sections 402-412 of the Criminal Procedure Act[6] covered the deportation of all non-Nigerians who were convicted of offences punishable by imprisonment without the option of a fine. As all offences under the Immigration Act were punishable by imprisonment or the option of a fine, these provisions did not apply to immigration offences. Under the Immigration Act, the distinction was not between a citizen and an alien but rather between a native and a non-native. There was also the interjection of the status of a native foreigner.[7] The Act did not apply to any person

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1. The U.S. Supreme Court has held that even aliens admitted for permanent residence acquire no vested right to remain in the country. See Harisades v. Shaughnessy 342 U.S. 580 (1951)
2. Laws of the Federation of Nigeria & Lagos, 1958 ed, Cap. 84
3. ibid. Cap. 10.
4. ibid. Cap. 9.
5. ibid. Cap. 49.
6. ibid Cap. 43.
7. For definition, see ibid, Cap. 84 s.2.

who could prove that he was a native of Nigeria.[1] It provided for several classes of prohibited immigrants[2] and prohibited their entry into the Federation. A native foreigner who was not a prohibited immigrant was exempted from the provisions of the requirement of passports and visas provided he satisfied the authorities as to his identity. It was found in practice that the definition of a "native foreigner" did not provide a reciprocal system. Under the provisions of the Act, a Sudanese national might enter Nigeria without a passport or a visa whilst Nigerian citizens needed both a passport and a visa to enter the Sudan. These Acts survived the independence of Nigeria but were totally inadequate to reflect the new independent status of the Federation. The division adopted in the Immigration Act between nativ es and non-natives became obsolete in view of the adoption of a citizenship scheme for the Fe eration. All these Acts, with the exception of the Criminal Procedure Act, which was amended, and the Desertion from Ships Act, were repealed and replaced by a single comprehensive Act, the Immigration Act 1962 which came into force on July 1, 1963.

The purpose of the new Act is to provide an up-to-date and comprehensive enactment to replace the existing ones and to protect

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1. ibid. s. 4(1) (d)
2. ibid. s.s. 12, 13.

the national economy and security in so far as these ends can be achieved by immigration control. It provides the machinery for the control of immigration of crews, stowaways and non-citizens and for the deportation of non-citizens. It is made applicable to persons entering or leaving Nigeria and to persons who are at anytime therein after its commencement.[1] The Act does not distinguish between aliens and citizens of another Commonwealth country or the Republic of Ireland as regards immigration into deportation from and employment in the Federal Republic. It does not prohibit the entry into Nigeria of any citizen of Nigeria nor the deportation of such a citizen from Nigeria. This is in accordance with the recommendation of the Adhoc Committee on Nigerian Citizenship that a provision that no Nigerian citizen should be liable to deportation or exclusion from Nigeria[2] should be written in the Constitution. This recommendation was embodied in the Constitution as one of the provisions on fundamental rights.[3] The burden of proving that he is a citizen is placed on the citizen[4]. The individual should not be placed in a position which makes the discharge of this burden unreasonable. A citizen who is to be deported in the belief that he is a non-citizen may question the

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1. Immigration Act 1962 s.1(1)
2. See Rpt. para 23.
3. Federal Constitution s.26; Republican Constitution s.27.
4. Cf. Lardan v. Att.Gen. & ors. (No. 1) (1957) 3 W.A.L.R. 55 (Ghana)

deportation order by proceedings in habeas corpus.[1] The Act also exempts from its provisions diplomats and persons in the service of the Federal or a Regional Government, holding a valid travel document.[2]

Non-Citizens have no right to enter the Federation[3]. This is illustrated in relation to a citizen of another Commonwealth country by the decision of the Judicial Committee of the Privy Council in Thornton v. The Police[4] which laid down that the common status of Commonwealth citizenship (or British subject) does not entitle a citizen of one part of the Commonwealth to enter another part of the Commonwealth. In this case a citizen of the United Kingdom and Colonies from the United Kingdom contended that the local Immigration Ordinance of the Colony of Fiji was inconsistent with the British Nationality Act 1948 and therefore void by virtue of the Colonial Laws Validity Act 1865. The Board rejected this contention. The advice of the Board in this case would a fortiori apply to an independent member of the Commonwealth.

Under the Act, non-citizens may be admitted for the purpose of residence. A citizen of another Commonwealth country or of the Republic of Ireland may enter the Federal Republic for the purpose of residence (if not employed by the Federal or a Regional Government) on the production of a residence permit issued by the Chief Federal

1. See e.g. Habeas Corpus Law, Cap 42, Laws of W.R.Nigeria, 1959 ed; also Administration of Justice (Habeas Corpus) Act, No.49 of 1961; see Eshugbayi Eleko v. Govt of Nigeria (D.A.) [1931] A.C.662, 670; R. v. Governor of Brixton Prisons exparte Sarno [1916] 2 K.B. 742, 749 752; U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)
2. Immigration Act 1962 s.1 (2) (b) (d)
3. Cf. Musgrove v. Chin Teeong Toy [1891] A.C. 272
4. [1962] A.C. 339

Immigration Officer with his other travel documents.[1] An alien desirous of entering the country for the purpose of residence is required to give security in such an amount as the Minister may prescribe in addition to producing a visa valid for entry into Nigeria and a residence permit.[2] With regard to entry into the Federal Republic for business purposes, no person other than a citizen of Nigeria shall accept employment (not being employment with the Federal or a Regional Government) without the consent in writing of the Chief Federal Immigration Officer or on his own account or with any other person practice a profession, establish or take over any trade or business, register or take over any company, without the consent in writing of the Minister.[3] Any such consent has to be produced to an immigration officer by the non-citizen on entering the Federal Republic. Failure to do so is an offence and renders him liable to deportation as a prohibited immigrant.[4]

For the purposes of deportation, the Act provides several classes of prohibited immigrants who are to be refused admission into Nigeria or to be deported.[5] The provisions relating to deportation do not

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1. Immigration Act 1962 ss. 9(1), 17(4) (a)
2. ibid. ss. 9(2), 17(4) (6)
3. ibid. s.8 (1)
4. ibid. s.8 (2)
5. For the different classes, see ibid. s.17

apply to citizens of Nigeria.[1] They are only applicable to non-citizens, i.e. aliens and citizens of another Commonwealth country or the Republic of Ireland. The Act thus brings the law of Nigeria into line with the Commonwealth Immigrants Act 1962 of the United Kingdom which controls the entry of Commonwealth citizens into the United Kingdom for the purposes of employment and residence and for deportation of certain classes of them. The Minister may in his absolute discretion make a deportation order on his own authority[2] or upon the recommendation of a court made on conviction.[3]

Fundamental Rights.

The Constitution of Nigeria guarantees certain rights to citizens and non-citizens. These are contained in Chapter III of the Constitution and are termed fundamental rights. These provisions safeguard not the rights of minorities but of individuals generally. They closely followed the European Convention of Human Rights and fundamental Freedoms 1950[4] which was based on the Universal Declaration of Human rights adopted by the General Assembly of the United Nations in 1948. The only right in the Nigerian provisions that has no

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1. See ibid s. 1 (2) (e)
2. See ibid ss. 18 (2), (3), (4), 21, 24.
3. ibid. ss. 18 (1), 19, 20, 22
4. Cmd. 8969 (1953)

counterpart in the European Convention is freedom of movement.[1] The Nigerian Constitution, unlike those of certain continental and Latin American States, make no reference to the duties of the individuals.

The Republican Constitution distinguishes between rights available to all persons and those exclusive to citizens. The rights which are available to citizens only are:-

Freedom of Movement (s.27)

Freedom from Discrimination (s.28)

Those available to all persons, citizens and non-citizens alike are:-

Right to Life (s.18)

Inhuman Treatment (s.19)

Slavery and Forced Labour (s.20)

Right to Personal Liberty (s.21)

The right to a fair and speedy determination of rights and obligations (s.22)

Private and family life (s.23)

Freedom of Conscience (s.24)

Freedom of Expression (s.25)

Peaceful Assembly and Association (s.26)

Freedom from compulsory Acquisition of Property (s.31)

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1. For a useful comparison of the provisions of the European Convention with those of the Federal Constitution, see de Smith, "Fundamental Rights in the New Commonwealth," (1961) 10 I.C.L.Q. 215

The Constitution[1] specifically provides that an Act of Parliament may derogate from the right to life, the right to personal liberty, the right to a fair and speedy determination of rights and obligations and freedom from discrimination in a period of emergency to the extent reasonably justifiable for dealing with the situation. Many of the rights can be restricted to the extent that is "reasonably justifiable in a democratic society" in the interests of defence, public safety, public order, public morality, public health or the economic well-being of the community.[2]

On strict legal principles, "persons" include both natural and juristic persons. Most of the fundamental human rights available to persons are not applicable to corporations e.g. deprivation of life, inhuman treatment etc. The provisions of section 31 relating to the compulsory acquisition of property applies to corporations.[3] The fundamental rights provisions of the Indian Constitution available to persons are made applicable to "any company or association or body of individuals, whether incorporated or not" if the context permits.[4] It has been held, however, that a corporation cannot be a citizen.[5]

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1. Federal Constitution s. 28; Republican Constitution s.29.
2. See ss.23 (2), 24(4), 25(2), 26(2), 27(2); See also D.P.P. v. Chike Obi (1961) 1 All N.R. 186.
3. See s.31 (3), (d), (j) which relates to corporations.
4. By the operation of Art. 367 and s.3 (39) of the General Clauses Act.
5. Jupiter General Insurance Co. v. Rajag-opalan A.I.R. [1952] Punj.9.

The fundamental rights impose limitation on the state or organs of the state and individuals. The provisions may be pleaded not only against a Statute[1] but also against executive orders.[2] They can also be pleaded against the acts of individuals[3] whether government officials or private. The provision may form part of a cause of action or a defence to a criminal charge and may be the basis of an application for a constitutional writ or order[4] for its enforcement under the provisions of section 32. A fundamental right cannot be invoked to prevent the passing of a Bill.[5]

The Constitution is the supreme law of the land and any existing or future law which are inconsistent with it are void to the extent of the inconsistency.[6] Existing laws are saved only if they are in conformity with the Constitution.[7] Existing Laws are defined as Ordinances, Laws, Rules, Regulations, Orders and other instrument having the effect of Law[8]. This definition does not take account

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1. See Olawoyin v. Att-Gen. N.R. (1961) 1 All.N.R. 269, also D.P.P. v. Obi, ibid. at 186
2. Ojiegbe & Esiaba v. Ubani and Electoral Commission. (1961) 1 All N.R.277
3. Williams v. Majekodunmi F.S.C. 166/1962
4. Aoko v. Fagbemi and D.P.P. (1961) 1 All N.R. 403 (High Court W.R.)
5. See Cf. Chotey Lal v. U.P., A.I.R. [1951] All. 228
6. Federal Constitution s.1; Republican Constitution s.1.
7. See Nig (Const.) O-in-C. 1960 s.3; Olawoyin v. Comm. of Police (1961) 1 All N.L.R. 203, Republican Constitution s.156
8. See Nig (Const.) O.in C. 1960 s.3 (7); see also Republican Constitution s. 33 s.v. "law"

of unwritten laws. The exclusion of unwritten laws would not derogate much from the effectiveness of the fundamental rights as the area in which unwritten laws would affect the individual most is in the field of criminal law and this has been regulated by the provision of section 21(10) of the Constitution. The fundamental rights have no retrospective effect. Anything duly done and suffered before the commencement of the provisions, under a law then in force, though repugnant to the Fundamental Rights is valid.[1] But if that law or a decree made under such a law has a continuing effect it becomes void on the commencement of the Constitutional provisions.[2]

The fundamental rights provisions are justiciable by the courts. By section 32 of the Republican Constitution any person who alleges that a right has been contravened in any territory in relation to him may apply to the High Court of that territory for redress. The High Courts are given original jurisdiction in such cases and provisions for practice and procedure of the High Court are to be made by Parliament. Section 115 authorises the references of a question on the interpretation of a constitutional provision from an inferior tribunal to a higher one. The jurisdiction of the Courts cannot be ousted by legislation without an amendment of the

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1. See Motilal v. Uttar Pradesh A.I.R [1951] All. 257
2. Santisarup v. Union of India A.I.R. 1955 S.C. 624

Constitution. The Supreme Court recently took this view in Doherty and Western Nigeria Development Corporation v. Sir Abubakar Tafawa Balewa and others[1] as it is contrary to these provisions of the Constitution to do so. Unlike the Constitution of India,[2] the Nigeria Constitution did not provide for any of the usual constitutional remedies to seek redress for the breach of a fundamental right. Parliament has power in providing for the practice and procedure by which redress may be sought from the courts.[3] No procedure has yet been laid down. In Aoko v. Adeyeyi Fagbemi and Director of Public Prosecutions[4] an application was made to the High Court of the Western Region to quash a conviction which violated section 21 (10) of the Federal (now section 22 (10) of the Republican) Constitution. In his judgment, Patayi-Williams J. dealt with the procedure adopted thus:

> "Since no law with respect to practice and procedure has yet been passed by Parliament, I am of the opinion that the procedure adopted in the present application is in order. To my mind, the whole purpose of a special procedure for the enforcement of fundamental human rights, the essence of which is to provide for easy and speedy access to the courts, will be defeated if the slow and sometimes cumbersome procedure which an application for an order of certiorari will involve, is adopted." [5]

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1. F.S.C. No. 326/1961

2. See Indian Constitution Arts. 32; See further Basu, Commentary on the Constitution of India, 4th ed. (1961) Vol. 1. 145.

3. Federal Constitution s.31(2); Republican Constitution s.32(2)

4. (1961) 1 All. N.L.R. 400. The application before the Court was by motion.

5. ibid at 403.

In an earlier case[1] where the application was made by motion to the Kano High Court seeking a declaration that sections 33, 34 and 35 of the Children and Young Persons Law 1958 of the Northern Region were void as being contrary to the fundamental rights provisions, Bates J. accepted the procedure adopted but thought that "it would be more strictly in conformity with the Supreme Court (Civil Procedure) Rules if the proceedings were commenced by writ of summons."[2]

Although the Constitution explicitly states that any law which is inconsistent with its provisions is void to the extent of the inconsistency, the words "in relation to him" in section 32 implies that a person who challenges the constitutionality of a statute must show "not only that the statute is invalid, but that he has sustained, or is immediately in danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."[3] This principle has also been adopted in India.[4] It was raised in the recent case of Olawoyin v. Attorney-General for Northern Region[5]. Here the plaintiff sought a declaration that his children were entitled to engage in political activities and challenged the constitutionality of

1. Dahiru Cheranci v. Alkali Cheranci [1960] N.R.N.L.R. 24
2. ibid. 26.
3. Massachussets v. Mellon 262 U.S. 447 (1923) at 488 per Justice Sutherland.
4. See Chiranji and Lal v. Union of India [1950] S.C.R. 869; Dwarkadas v. Sholapur Mining Co. [1945] S.C.R. 674
5. [1960] N.R.N.L.R. 53.

sections 33-35 of the Children and Young Persons Law 1958, which prohibited juveniles participating in politics, as being repugnant to provisions of the 1954 Constitution[1] which correspond to sections 24, 25 and 26 of the present Constitution. The High Court of the Northern Region held that no proceedings could be brought in vacuo under the Constitutional provisions and that the plaintiff had not suffered any actual infringement of his fundamental rights. On appeal[2] the Federal Supreme Court held that a High Court has jurisdiction to make a declaratory judgment in favour of an interested party; the person asking for the declaration must first show that he had an interest in the subject matter.[3] On the evidence before the Court, Unsworth F.J. concluded thus "In my view the appellant failed to show that he had a sufficient interest to sustain a claim. It seems to me that to hold that there was an interest here would amount to saying that a private individual obtains an interest by the mere enactment of a law with which he may in future come in conflict, and I would not support such a proposition."[4] This shows a tendency in the court towards the adoption of the Indian practice of requiring "standing" and a test of injury to the particular individual before he avails himself of the provision of Section 32.

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1. The 1954 Constitution did not contain a provision as does the 1960 Constitution that all laws inconsistent to the provisions of the Constitution are void to the extent of the inconsistency.
2. Olawoyin v. Att-Gen. N.R. [1961] 1 All. N.L.R. 269.
3. See Guaranty Trust Co. of New York v. Hannay [1915] 2 K.B. 536
4. [1961] 1 All. N.R. 269, 274

PART 4

D O M I C I L

Chapter Nine

DOMICIL

Domicil and Nationality Contrasted

Domicil and nationality are two distinct concepts but they have often been confused one with the other. Domicil is essentially a civil status and nationality is an attribute of a political character.[1] The two concepts are not identical. An individual may have one nationality and a different domicil or he may have a domicil but no nationality. Every individual must have only one operative domicil attributed to him at a given time but this is not so with nationality. A man may be stateless or may be a dual or even a plural national. Membership of the political society determines his political status or nationality on which depends his permanent allegiance. Membership of the civil society of a particular locality determines his civil status, that is, his domicil. Domicil implies a connection with a territory; nationality implies membership of a community.

The unfortunate assertion of Lord Cranworth in Moorhouse v. Lord[2] that "in order to acquire a new domicil .... a man must intend quatenus in illo exuere patriam"[3] blurred the distinction between the

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1. See dictum of Lord Westbury in Udny v. Udny (1869) L.R. 1 Sc. & Div. 441, 457.

2. (1863) 10 H.L.C. 272.

3. ibid. at 283.

two conceptions. Lord Kingsdown in the same case had followed a similar trend when he adverted to a remark by Dr. Lushington in Hodgson v. De Beauchesne[1] in support of the proposition that in order to change a domicil "a man must intend to become a Frenchman instead of an Englishman".[2] However later judgments of the English courts had an improved view of the difference between the two concepts. In referring to these judicial pronouncements, Lord Hatherley and Lord Westbury were at pains to lay down anew the English doctrine of domicil on a stronger and clearer basis in the famous case of Udny v. Udny[3] Lord Hatherley L.C. observed that "some of the expressions used in former cases as to the intent 'exuere patriam', or to become 'a Frenchman instead of an Englishman', go beyond the question of domicile. The question of naturalization and of allegiance is distinct from that of domicile. A man may continue to be an Englishman, and yet his contracts and the succession to his estate may have to be determined by the law of the country in which he had chosen to settle himself."[4] Lord Westbury distinguished between the political status, "by virtue of which [an individual] becomes the subject of some particular country, binding him by the tie of natural allegiance" and

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1. "A settled domicile in a country, imports an allegiance to the country, very different from a mere obedience to its laws during a temporary residence" 12 Moo. P.C.C.285.

2. (1863) 10 H.L.C. 272 at 292.

3. (1869) L.R. 1 HL.(Sc.) 441.

4. ibid. at 452.

the civil status "by virtue of which he ..... is possessed of certain municipal rights and subject to certain obligations". He maintained that Lord Kingsdown's assertion in Moorhouse v. Lord were likely "to confound the political and civil states of an individual, and to destroy the difference between patria and domicilium".[1] The principles[2] laid down by Lord Westbury were approved by Sir William James V.C. in Haldane v. Eckford[3] and Jessell M.R. in King v. Foxwell.[4] More recently Lord Atkin had observed that "a change of domicil is not a condition of naturalization and naturalization does not necessarily involve a change of domicil".[5]

Nationality may however be dependent on domicil but this dependence is not mutual. In accordance with the generally accepted rule that it is for each state to determine the criteria for the acquisition of its nationality or citizenship, states may adopt the concept of domicil as one of the requirements for citizenship.[6]

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1. ibid. at 460.

2. The American courts have also distinguished the two concepts. See In re Mesa's Est. (1914) 149 N.Y. Supp.536, 543 where it was said "The naturalization of decedent is not conclusive. Citizenship or nationality and domicile involve different principles. A citizen of any country may retain his citizenship in that country and yet have his last domicile out of that country."

3. (1869) L.R.8 Eq.631.

4. (1876) 3 Ch.D.518.

5. Wahl v. Att.-Gen. (1932) 147 L.T.382, 385.

6. Some states adopt domicil as a criterion for citizenship but with a special meaning which bears no relation to the common law conception of domicil, e.g. Belgian law of Nationality of June 8, 1909 Art.7; see also the Canadian example in the text.

The law of the United Kingdom has never adopted domicil as a criterion for the acquisition or loss of British nationality. The Royal Commissioners inquiring into the Laws of Naturalization and Allegiance expressed the view that mere domicil in a foreign country should not affect national character.[1] There is an exception to this general rule. An old Act - the Liberated Africans (Sierra Leone) Act 1853[2] - adopted the criterion of domicil or residence to confer British nationality. Section 1 of the Act reads:-

> "All liberated Africans domiciled or resident, or who hereafter may be domiciled or resident, in the Colony of Sierra Leone or its Dependencies, shall be deemed to be and to have been for all purposes as from the date of their being brought into or of their arrival in the said Colony natural-born subjects of Her Majesty."

As most of the liberated Africans never had any connexion by birth with a British dominion, domicil or residence alone in the Colony made them natural-born subjects of Her Majesty. The Constitution of India made domicil in the territory of India an essential element for the acquisition of citizenship of India at the commencement of the Constitution. The Canadian Citizenship Act 1946 employs the words "Canadian domicil" as one of the requirements for the acquisition of Canadian citizenship. But 'domicil' is here used in a specially defined sense for the purposes of the Act. It has been held that this usage of 'domicil' refers to residence and not to the common law

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1. Report, Parliament Papers vol.XXV (1868-9) p.607, 612.

2. 16 & 17 Vict. C.86.

conception of domicil.[1] The Nigerian Citizenship Act does not adopt domicil as a criterion for the acquisition of citizenship.

Domicil, unlike nationality, is not generally recognised as conferring the right of diplomatic protection. According to British state practice domicil might be considered a factor determining only the extent of the protection which should be afforded but does not of itself divest the subject of his right to diplomatic protection, which depends entirely on his nationality. Naturalization as a national of the foreign state destroys the very right of protection.[2]

Nationality and domicil as connecting factors

Nationality and domicil are concepts which figure prominently in that branch of the law known as conflicts of laws. Certain countries of Continental Europe such as France, Belgium and Italy have adopted the concept of nationality as the criterion for the determination of personal status. For such countries, in the field of nationality law itself there is a special branch which may be described as 'the law of conflicts in nationality matters'.[3] Nationality is thus employed by the conflict of law rules to determine the civil status of an individual

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1. Re Leong Ba Chai [1952] 4 D.L.R.715 affd. [1953] 2 D.L.R. 766 per Robertson J.A. at 773.

2. See further Sinclair, "Nationality of Claims: British Practice" (1950) 27 B.Y.I.L. 124, 131-138.

3. Silving, "Nationality in Comparative Law"; (1956) 5 Am.Jour. of Comp. Law, 410, 416.

but at the same time it may itself be determined by civil status e.g. legitimacy and marriage.

In other countries especially in the Anglo-American common law jurisdictions, domicil is the concept employed to determine the law to apply to personal status and relationships. In these countries, the concept of nationality will rarely be encountered in the field of Conflict of Laws.

Merits and Demerits of Nationality and Domicil

Each of these two conceptions has its merits and demerits as a determinant of the law governing personal relationships. Nationality enjoys the advantage of being easily ascertainable though it might be difficult at times to ascertain the political facts on which nationality depends. The test of nationality however may lead to the application of the laws of a country with which the propositus has not the least connection. In determining foreign nationality in the field of conflict of laws, the oft-recited rule that nationality must be determined by the law of the country whose nationality is alleged, is recognised.[1] However, the concept of a foreign nationality may not always be unitary. Different municipal courts may ascribe different national statuses to an individual. A conflict may even arise as regards the recognition of another state's determination of its own nationality laws. Generally a court will not look behind a foreign country's declaration that a particular individual is or is not its

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1. Hague Convention on Conflicts of Nationality Laws 1930 Art.2; see also Stoeck v. Public Trustee [1921] 2 Ch.67.

national. But such a declaration can be regarded as not binding if it is contrary to the public policy of the forum. The Swiss Federal Tribunal refused to recognise a Nationalist Socialist law expatriating German Jews even though they were not considered German nationals under German law.[1] The courts of the United Kingdom refused recognition to the same foreign legislation as it effected a loss of enemy nationality in wartime.[2] Similarly the courts of the United States are inclined not to recognise a nationality brought about by territorial changes not recognised by the United States.[3]

The concept of nationality works well in countries all of whose nationals live under one system of law. It will be unworkable when several legal units form the components of a single political unit as in the case of the United States or the United Kingdom and Colonies. The preference by English law of the concept of domicil over that of nationality is a consequence of the inevitable character of British nationality as the bond common to all citizens of the many countries constituting the British Commonwealth of Nations. In a country which is a Federation or an aggregate of political entities providing for a state or similarly limited citizenship, the law of that country must be examined in order to designate if necessary the additional citizenship.

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1. Levita-Mühlstein v. Département Fédéral de Justice et Police [1946] Ann.Dig.133.

2. Lowenthal and ors v. Att.-Gen. [1946] 1 All E.R. 295.

3. U.S. ex rel. Schwarzkopf v. Uhl 137 F. 2d 898 (1943)
U.S. ex rel. Zeller v. Watkins 167 F. 2d 279 (1948).

It is in a case of this nature and the failure to see this point that may lead to such decision as was given in Re O'Keefe.[1]

Domicil on the other hand may be able to avoid the serious problems that are raised by nationality. In countries where several legal units form a single political union, the concept of domicil will be the only practicable test of determining the personal law. It may also subject the propositus to a law of a country with which he has some connection. However the development of the concept of domicil has evolved technical rules which may result in fixing a man's legal domicil in a country with which he has not the least connection; for example, in relation to the domicil of origin. The ascertainment of a man's domicil depends on the proof of intention which will often be difficult to ascertain.

On the whole, the concept of domicil has inherent superiority over nationality. The concept of nationality as a connecting factor breaks down in cases of dual nationality or statelessness. Such difficulties will not arise in a system adopting the conception of domicil. In countries like France and Italy where the concept of nationality is the determinant of the personal law there is a growing tendency to advocate the adoption of the concept of domicil and the abandonment of that of nationality.[2]

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1. [1940] 1 Ch.124. For criticism of this case see Note by Morris in 56 L.Q.R. 144 (1940); see also Graveson, Conflict of Laws (1960) 19

2. See J.P. Niboyet, "Territoriality and Universal Recognition of Rules of Conflict of Laws" 65 Harv.L.R.(1952) 582; also Schmidt, "Nationality and Domicile in Swedish Private International Law", (1951) 4 I.L.Q.39.

The conflict between the principles of domicil and nationality at times raises difficulties.[1] Though common law jurisdictions do not adopt the principle of nationality as a connecting factor they may be faced with such a principle in cases where the foreign law, through renvoi, renders the national law of a party applicable. Such conflicts may be eliminated or minimised through international agreements. The First Inter-Scandinavian Convention[2] of February 6, 1931 aimed at providing uniform rules for conflictual issues relating to marriage and the status of infants as between Sweden and Finland which adopted the nationality principle and Denmark and Norway which employed that of domicil. All contracting parties to the Convention agreed to employ the law of domicil as the criterion of personal rights in matters arising among themselves but a minimum period of two years' residence is requisite for the acquisition of a new domicil in a contracting country.[3]

A more recent attempt to eliminate conflicts between the two principles is the Draft Convention[4] adopted by an International Conference on Private International Law in October 1951. Article 1 of the Convention stipulated that

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1. A by-product of this conflict is the famous doctrine of renvoi.

2. Convention concerning certain Provisions of Private International Law regarding Marriage, Adoption and Guardianship signed at Stockholm Feb.6, 1931; entered into force Jan.1932; 126 L.N.T.S.141

3. See also Latey, "Problems of Divorce Jurisdiction" (1952) 1 I.C.L.Q. 229, 233; Graveson, "Recognition of Foreign Divorce Decrees" (1952) 37 T.G.S. 149, 154 et seq.

4. For text of the Convention, see Cmd. 9068 (1954) App.B. The United Kingdom is not a party to the Convention. See further Dicey (ed. Morris) Conflict of Laws, 7th ed. (1958) 80.

> "when the state where the person concerned is domiciled prescribes the application of the law of his nationality, but the state of which such person is a citizen prescribes the application of the law of his domicile, each contracting state shall apply the provision of the internal law of his domicile".

Domicil in this connection is defined as "habitual residence" which is not the meaning attributed to that concept by the common law.

THE CONTENT OF THE LAW OF DOMICIL[1]

The concept of domicil is the core of the common law system of conflict of laws but it can be just as important in matters which do not contain a foreign element. The law of domicil in Nigeria as in England is not to any appreciable extent based on statute.[2] Its content can be derived from the decisions of courts, especially those of the courts in England.

Nature of Domicil

Although there are high judicial observations as to the impossibility or difficulty of giving an exact definition to the concept of domicil it has however developed certain essentials which are capable of legal

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1. See further standard English textbooks on Conflict of Laws. Cheshire, Private International Law, 6th ed.(1961) pp.164-209; Dicey (ed.Morris), Conflict of Laws, 7th ed.(1958) pp.85-126; Graveson, Conflict of Laws, 4th ed.(1960) pp.74-113; Schmitthoff, The English Conflict of Laws, 3rd ed.(1954) pp.69-102; Wolff, Private International Law, 2nd ed.(1950) pp.106-124.

2. See the proposals for reform in England made in the First Report of the Private International Law Committee and its "Code of the Law of Domicile"(Cmd.9068). Some of these proposals were embodied in

[Cont.over....

analysis.[1] Domicil has a strictly technical meaning and is totally different from 'residence'. Its technical character has been explained as "an idea of law" and "the relation which the law creates between an individual and a particular locality or country".[2] The domicil of a natural person is the country which is considered by Nigerian law to be his permanent home.[3] This may be the place in which the law determines his permanent home to be. The determination of a permanent home is usually in a place which a man has voluntarily fixed as the habitation for himself and family with the present intention of having a settled connection with it, unless and until something (which is unexpected or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home.[4] Domicil in its technical sense therefore imports two essentials, the corpus or residence in a place and an animus manendi, an intention to make that place one's permanent abode. In most cases, the determination

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[Continued from previous page]

2. the two Domicile Bills presented to Parliament in 1958 and 1959 but failed to become law. See also the Seventh Rpt. of the Committee (Law of Domicile) Cmnd.1955. See also Domicile Act 1861.

1. Per Sir George Jessell in Doucet v. Geoghegan (1878) 9 Ch.441, 456; Per Branwell B. in Att.-Gen. v. Rowe (1862) 1 H. & C. 31 at 44.

2. Per Lord Westbury in Bell v. Kennedy (1868) L.R. 1 H.L. (Sc.)307,320

3. "By domicile, we mean home, the permanent home...." Per Lord Cranworth in Whicker v. Hume (1858) 7 H.L.C.124, 160; also Halsbury L.C. in Winans v. Att.-Gen. [1904] A.C.288 "the idea of domicile may be quite adequately expressed by the phrase - was the place intended to be the permanent home ?"

4. Lord v. Colvin (1859) 4 Drew 366, 376.

of domicil would present little difficulty. Difficulties arise as regards persons who are accorded a domicil either because they have no permanent home or because they are legally incompetent to acquire one.

Domicil of natural persons is sometimes classified as of two kinds: (i) of choice, (ii) of origin.[1] This dual classification has been criticised by Dicey as not being exhaustive for the domicil of a married woman cannot be said to fall within either of these kinds of domicil.[2] Broadly speaking domicil may be classified into domicil of choice and domicil by operation of law. This last category however includes two kinds of domicil - that of origin and that of dependent persons. It is therefore best to classify domicil as of three kinds:

(i) domicil of origin
(ii) domicil of choice
(iii) domicil of dependent persons.

General Principles of Domicil

The common law concept of domicil has evolved certain principles. It is a settled principle that every person must at all times have a domicil.[3] As domicil is the relation between a person and a particular territorial legal unit which determines questions pertaining to his personal relationship the law ensures that no person can avoid having a

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1. See First Rpt. of the Private International Law Committee (1954) Cmd.9068.Art.1(2) of its Code of Domicil (App.A) states "A domicile is either a domicile of origin or a domicile of choice". See however Graveson, "Reform of the Law of Domicile" (1954) 70 L.Q.R. 492, the illustrations given on pp.496-498.

2. Dicey, Law of Domicil (1879) App.II, 340.

3. Udny v. Udny (1869) L.R.1 Sc. & Div.441.

domicil. It attributes a domicil of origin to every person at birth. It further safeguards the possibility of an incohate attempt to change one's domicil. In order to avoid the possibility of a person not having a domicil, the common law has provided for the doctrine of the revivalof the domicil of origin.[1] If a domicil of choice is abandoned without the acquisition of another one, the law devises a fiction whereby the person's domicil of origin revives and attaches to him once more. According to the common law, the domicil of origin can never be lost but may be "in abeyance",[2] when a person possesses a domicil of choice. In this respect, the English concept of domicil differs from the American which favours the doctrine of the continuance of the existing domicil.[3] The application of the doctrine of the revival of the domicil of origin is illustrated by the famous case of Udny v. Udny[4] and also in the recent case of Harrison v. Harrison.[5] The absurd consequences of the revival doctrine are shown by the decision in Re O'Keefe.[6]

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1. Per Lord Stowell in The Indian Chief (1800) 3 C.Rob.12, 20.

2. Per Lord Westbury in Udny v. Udny (1869) 1 Sc. & Div.458; Wynn-Parry J. in Re Evans [1947] 1 Ch.695; Karminski J. in Gatty v. Att.-Gen.[1951] P.444,456.

3. See Desmare v. U.S. 93 U.S. 605 (1876); see also the Rpt. of the Private International Law Committee which recommends the abolition of the doctrine of the revival of domicil in English law; Cmd.9068, para.14. If this is done, it will be replaced by the doctrine of the continuance of the existing domicil.

4. (1869) L.R. 1 Sc. & Div.441.

5. [1953] 1 W.L.R. 865.

6. [1940] Ch.124.

Another principle of the English concept of domicil is that a person cannot have two simultaneous operative domicils. Since the attribution of a domicil to every person is to establish a territorial system of law to determine his personal relationship, a multiplicity of domicils in a particular person would negate that purpose. The American Restatement gives the example of a dwelling house built on the boundary line between two legal units. It suggests that the domicil of the inhabitants is in that unit in which the preponderant part of the house is situate, and if both parts are equally important, in the unit where the main entrance is located.[1]

The conception of domicil differs from that of residence. The law attributes the same meaning to domicil but the meaning of residence varies considerably. Residence is not synonymous with domicil and where it is used in statutes, its meaning must be determined against the background of the entire subject matter. Confusion often arises in the use of domicil and residence as if they were synonymous but this is an incorrect usage. Residence differs from domicil in that a person may have a multiple of residences but can only have one domicil. Residence is habitual physical presence of limited or unlimited duration in a place.[2] Statutory provisions

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1. American Restatement, Conflict of Laws (1934) p.49 para.25. Lord Coke suggested that the domicil is in that unit where the bed was situate; see Abington v. North Bridgewater (1839) 23 Pick. 170, 179 (Mass.)

2. Residence does not however require actual presence. 'A seaman ordinarily absent from this country is resident in the home which he provides here for his wife. So is a man of business whose employment keeps him abroad'. Raeburn v. Raeburn (1928) 44 T.L.R. 384, 386.

may employ residence[1] as a basis of taxation, voting rights and jurisdiction in certain matrimonial causes e.g. judicial separation, decrees of nullity of marriage. In such cases the term 'residence' may have ~~acquired~~ a special legal or statutory definition.

It is the lex fori which determines whether the facts do or do not constitute domicil. Thus the Nigerian courts would employ their appropriate regional or territorial law to determine the question of domicil.[2] There is a presumption that a man is domiciled in a place where he resides, but this presumption is a rebuttable one. There is also the presumption in favour of the continuance of an existing domicil. The burden of proving a change of domicil rests on those who assert the change.[3]

Domicil of Origin

The law ascribes to every individual at birth a domicil of origin. It is conferred in all cases except one on the basis of parentage. The domicil of origin of a legitimate child, born during its father's lifetime, is the same as its father's domicil at the time of the child's birth; that of a legitimate child born after the death of the father

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1. See e.g. Income Tax Act, Cap.85 Laws of the Federation of Nig. & Lagos 1958 ed.; also Income Tax Law, Laws of W.R.N. 1959 ed., Cap.48 s.2 s.v. 'resident in the region'. Other uses of 'residence are to be found in the Co-operative Societies Act, Laws of the Federation of Nigeria & Lagos Cap.39 s.35; Jury Act, ibid. Cap.90 s.3, Lagos Local Government Act, Cap.93s.18; also Local Government Law, Laws of W.R. Nigeria, 1959 ed., Cap.68 s.18 (1) (a).

2. Cf. Re Martin [1900] p.211; Re Annesley [1926] Ch.692, 705.

3. Winans v. Att.-Gen. [1904] A.C. 287, 289; In re Lloyd Evans [1947] Ch.695.

is the mother's domicil at its birth. An illegitimate child also takes the domicil of its mother at the time of the birth. In the case of foundlings, the domicil of origin cannot be based on parentage. It is the place where a child is found that becomes its domicil of origin. This rule is based on the presumption that a person is domiciled where he resides. Professor Graveson has suggested that in the absence of judicial authority it is not unreasonable to modify this rule in the cases of foundlings where evidence to the contrary exists. He gives the example of a German-speaking child found in England or a child discovered as a stowaway on a ship which had just reached England. In such cases, he suggests that evidence may be adduced in favour of a German-speaking country or in favour of the country from which the ship sailed or that was its last port of call.[1]

A domicil of origin is different from the other kinds of domicil. It has a more enduring character and a stronger hold; it is less easy to shake off.[2] As it is conferred by the law independently of the will of the person, it cannot be extinguished or destroyed by any act of its owner. It continues to operate until its owner acquires another domicil and then it lies in abeyance, ready to spring into operation the moment its owner is without a domicil of choice. The onus of proving an abandonment of the domicil of origin is much heavier than proving an abandonment of a domicil of choice.[3] The English courts'

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1. The Conflict of Laws (1960) 88.

2. See Lord Macnaghten in Winans v. Att.-Gen. [1904] A.C.287, 290, also Lord Westbury in Udny v. Udny (1869) L.R. 1 Sc.& Div.441, 458.

3. See Karminski J. in Gatty v. Att.-Gen. [1951] p.444, 454; see also the observations of Jenkins L.J. in Travers v. Holley [1953] p.246, 252.

insistence on the revival of the domicil of origin is well illustrated by the two cases of Winans v. Attorney-General[1] and Ramsay v. Liverpool Royal Infirmary.[2]

Domicil of Choice

Domicil of choice has been clearly described as "a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time ..... There must be a residence freely chosen and not prescribed or dictated by any external necessity, such as the duties of office...."[3] It can be acquired by persons of full age and capacity. The question whether one is of full age and capacity is determined by the law of his existing domicile.[4] A domicil of choice cannot therefore be acquired by infants, lunatics and married women.[5] The two requisites for the acquisition of a domicil of choice are the physical fact of residence (factum) and the mental fact of intention (animus).[6]

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1. [1904] A.C.287.
2. [1930] A.C.588.
3. Per Lord Westbury in Udny v. Udny (1869) 1 L.R. Sc. & Div.441, 458.
4. See Graveson, "Capacity to Acquire a Domicile" (1950) 3 I.L.Q.149.
5. The Domicile Bill introduced into the United Kingdom Parliament in 1959 would have given capacity to acquire a domicil to all persons of sixteen and over, whether male or female, married or unmarried.
6. Ramsay v. Liverpool Royal Infirmary [1930] A.C.588, 597.

Residence in a place may be prima facie evidence of domicil and the longer the residence the stronger the evidence of an intention to reside there permanently but this is not conclusive. Residence without intention is insufficient to constitute domicil.[1] The residence according to Lord Macmillan must answer a "qualitative as well as a quantitative test".[2] Where a man has more than one place of residence, his principal place of residence may be presumed to be the one in which he is domiciled e.g. the one in which he establishes a home for his wife and family.[3] This presumption may however be rebutted. Once the intention of residing permanently in a place exists, a residence in pursuance of that intention, however short, will establish a domicil.[4] The intention must be one of permanent residence and does not exist if the resident contemplates some event whether certain or uncertain, the occurrence of which will cause him to move his home elsewhere.

It is impossible to lay down hard and fast rules for ascertaining the intention of the de cujus. Every event and incident in a man's

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1. See Udny v. Udny and Ramsay v. Liverpool Royal Infirmary where residence in the same place for thirty-two years and over thirty-five years respectively was not regarded as decisive; see also Att.-Gen. v. Yule (1931) 145, L.T.9.

2. Ramsay v. Liverpool RoyalInfirmary [1930] A.C.588, 598.

3. Platt v. Att.-Gen. for New South Wales (1878) 3 App. Cas. 336. P.C.

4. Bell v. Kennedy (1868) L.R. 1 Sc. App.307, 319; see the American case of White v. Tennant 31 West Virginia 790.

life is relevant in ascertaining his intention. His "tastes, habits, conduct, actions, ambitions, health, hopes and projects" of the individual may all be relevant in the determination of his intention.[1] This element of intention will be vitiated by compulsion. The intention may precede or succeed the establishment of a residence and only when these two elements of intention and residence concur will a domicil of choice be acquired. Such a domicil will continue to be operative even if subsequently the holder changes his mind. Thus "permanently" refers to the residence and not to the intention.

A domicil of choice is abandoned when the two elements which constitute the domicil cease to exist. A person should cease to reside in the country of domicil with the intention of not returning to reside there permanently.[2] It will be insufficient if a person continues to reside in the country of his domicil of choice with an intention of settling in another country; neither is it sufficient to take up residence in another country without an intention of abandoning his residence in the country of his domicil.

Declarations of Intention: In the determination of the intention of the de cujus, very little reliance can be placed upon declarations of intention. Lord Buckmaster said in Ross v. Ross:[3]

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1. Per Lord Atkinson in Casdagli v. Casdagli [1919] A.C.145, 178.

2. See In the Goods of Raffenel (1863) 3 Sw. & Tr.49; Re Evans, National Provincial Bank Ltd. v. Evans [1947] 1 Ch.695.

3. [1930] A.C.1, 6.

> "Declarations as to intention are rightly regarded in determining the question of a change of domicil, but they must be examined by considering the person to whom, the purposes for which and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression."

Such declarations should contain a real expression of intention and be fortified by facts especially if they are unwritten or contained in legal documents or printed forms which parties sign as mere formalities. In Wahl v. Attorney-General[1] a declaration of domicil contained in naturalization papers of a German was not regarded by the House of Lords as conclusive. A similar decision was arrived at by Bennett J. in Re Liddell-Grainger's Wills Trust[2] with respect to a declaration of domicil in a will.

Change of a Domicil of Choice

The acquisition or abandonment of a domicil of choice depends on freedom to choose where one intends to live. The residence must be voluntary, i.e. a matter of free choice. A limitation or restriction of this freedom to choose may affect one's intention to select a permanent home. Thus compulsion may affect the freedom of choice of such persons as prisoners, refugees, fugitives and invalids. A prisoner, whether a prisoner of war or a convict for a long term or transported, is not domiciled in the country to which he is sent.[3]

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1. (1932) 147 T.L.R; See also the declarations in Form E, infra pp. 438-9.
2. [1936] 3 All E.R.173.
3. Re Bonaparte (1853) 2 Rob.Ecc.606.

It may however be possible to bring evidence to show that a prisoner is resigned to his fate and has a settled intention to make his home permanently in the new country. In the case of refugees and fugitives from justice, the circumstances of their flight negates a freedom of choice. This however is rebuttable as "what is dictated by necessity in the first instance may afterwards become a matter of choice"[1] especially when there is continued residence after a return to the original country becomes possible.[2] Difficulties may arise in the case of invalids who choose a residence on account of their health. It is necessary in such cases to consider the pressure of necessity on the individual's mind. Such pressure may or may not be strong enough to deprive him of his freedom of choice. Turner L.J. stated the principle of the law in these situations in Hoskins v. Matthews[3] as follows:

> "That there may be cases in which even a permanent residence in a foreign country, occasioned by the state of health, may not operate as change of domicile may well be admitted .... But such cases must not be confused with others in which the foreign residence may be determined by the preference of climate or the hope or the opinion that the air or the habits of another country may be better suited to the health or constitution. In the one case the foreign abode is determined by necessity; in the other it is decided by choice."[4]

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1. Winans v. Att.-Gen. 85 L.J. (N.S.) 508, 510 per Collins M.R.
2. De Bonneval v. De Bonneval (1838) 1 Curt 856; May v. May [1943] 2 All E.R.146; see also Re Martin [1900], P.211.
3. (1855) 8 De G.M. & G. 13.
4. ibid. at 28.

A change of domicil may also be occasioned by official duties. When a person resides in another country other than his domicil as a public servant of his Government, e.g. ambassador, soldier, the inference is that his residence is not intended to be permanent. He retains his existing domicil unless there is sufficiently strong evidence on which to base a contrary intention. If he continues to reside in the country where he was serving after the period of his service, he becomes a free agent and the normal rules for the acquisition of domicil would apply. A member of the armed forces was held to have acquired a domicil in a foreign country where he was compulsorily resident and liable to be removed at any time on superior orders[1] as there was sufficient evidence of his intention to make the foreign country his permanent home. Such a person may in appropriate circumstances acquire a domicil in a country other than that in which he is serving.[2]

A change of nationality, restrictions or limitations on the duration of an alien's stay in the country of residence have no bearing on the acquisition of a domicil of choice[3] but are merely incidental

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1. Donaldson v. Donaldson [1949] p.363. In Baker v. Baker [1945] A.D.708 the Appellate Div. of the Supreme Court of South Africa followed the view of the Court of Session in Sellars v. Sellars [1942] S.C.206 that a sailor or soldier is not precluded from acquiring a new domicil in a foreign country where he is serving and from which he is liable to be moved under orders.

2. Stone v. Stone [1958] 1 W.L.R.1287.

3. Boldrini v. Boldrini [1932] P.9 (C.A.).

matters to be taken into consideration in the determination of domicil. An alien who has permission to reside for an unlimited period but is liable to deportation[1] or for a limited period which can be extended at discretion[2] can acquire a domicil in the country of residence if in fact he forms the necessary intention. If such a person has acquired a domicil of choice, he does not lose it merely because a deportation order has been made against him;[3] he could however lose his domicil in that country when he is actually deported.[4] He may even continue to be domiciled in a country from which he has been deported if he intends to return and his re-entry would not be illegal.[5] It is however not possible for a person to acquire a domicil of choice in a country if his initial entry and his residence at all times thereafter had been unlawful in terms of the immigration laws.[6]

Domicil of Dependent Persons

The domicil of dependent persons is conferred by operation of law. Dependent persons are infants, married women and persons of unsound mind. The dependency relates to their legal capacity to acquire an

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1. Boldrini v. Boldrini [1932] P.9 (C.A.)
2. Zanelli v. Zanelli (1948) 64 T.L.R.556; May v. May [1943] 2 All E.R 146
3. Cruh v. Cruh [1945] 1 All E.R.545.
4. Exp. Donelly [1915] W.L.D.29; Exp. Gordon [1937] W.L.D.35.
5. Thiele v. Thiele (1920) 150 L.T.J.387; Exp.Macleod [1946] C.P.D.312 where the re-entry would have been illegal.
6. Smith v. Smith [1962] Rh. & Ny. L.R.469.

independent domicil, which is determined by the law of the domicil of the person on whom they are legally dependent.

Infants

An infant acquires a domicil of origin at birth and during minority he is incapable of acquiring an independent domicil of choice. The domicil of origin of a legitimate infant is that of the infant's father at the time of the birth. That of an illegitimate or posthumous child is the domicil of the mother at the time of the birth. The domicil of an infant changes with that of the parent on whom he is dependent. Thus the domicil of a legitimate infant follows that of the father; on the death of the father, the infant's domicil follows that of the mother[1] as long as the infant continues to live with her. But a change in the mother's domicil does not necessarily affect the infant's if it is done for some fraudulent design on the part of the mother or if it is not in the best interest of the infant.[2] Where both parents of an infant are dead, in the absence of any judicial authority, it is doubtful whether the infant's domicil will change with that of his guardian. One view is that the infant's domicil cannot be

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1. Potinger v.Wightman (1817) 3 Mer.67.

2. Re Beaumont [1893] 3 Ch.490-Stirling J.'s judgment. The Private International Law Committee recommended that a change of domicil by a parent should not affect an infant's domicil unless the parent so intends and that the courts should have power to make such provision for varying the domicil of an infant as may be deemed appropriate to his welfare. See Cmd.9068. The Draft Code contained in Art.4 provisions relating to the domicil of infants.

changed.[1] Another is that a change of the guardian's domicil may affect that of the infant if it were for the infant's benefit.[2] The marriage of an infant son does not alter his domicil; his domicil continues to be that of the parent on whom he is dependent. In the case of the marriage of an infant daughter, her domicil no longer follows that of her parent but becomes dependent on that of her husband.[3]

In order to attribute a domicil of origin to a child, its legitimacy has to be determined. Its legitimacy in turn depends on its domicil.[4] Difficulties would therefore arise in the application of these two principles in cases where the parents have different domicils, e.g. where they are not married. There is no direct English authority on this point. It has been suggested, following the observation of Stirling J. in Re Grove[5] that the domicil of the natural father decides the question of legitimacy.[6] Another solution is to regard the child as being legitimate if it is so regarded by the lex domicilii of either parent.[7]

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1. Dicey (ed. Morris) op.cit.115.

2. Graveson, The Conflict of Laws, 4th ed.(1960) 101; see also Spiro, "Domicile of Minors without Parents" (1956) 5 I.C.L.Q. 196; Draft Code of Domicil Art.4.

3. In many jurisdictions of the United States, marriage emancipates persons of either sex. See Spiro, "Resulting Change of Legitimate Minor's Domicile", (1951) 4 I.L.Q. 192.

4. See Welsh, "Legitimacy in the Conflict of Laws" (1947) 63 L.Q.R.65, 70 et.seq.

5. (1888) 40 Ch.D.216, 224.

6. Cheshire, opcit. 424; Schmitthoff, op.cit.,283, Wolff, op.cit.109, 382. But see Dicey (ed.Morris), op.cit. 421.

7. See Graveson, The Conflictof Laws, 4th ed.(1960) 88.

Married Women

The domicil of a married woman follows that of her husband. "One of the effects of marriage is to give to the spouses a common domicil - that of the husband."[1] Any domicil of choice which a woman has on marriage is lost and her domicil of origin ceased to operate. She possesses no capacity whatsoever during coverture to acquire a separate domicil of her own.[2] She retains her husband's domicil as long as the marriage subsists even if they are separated legally or otherwise.[3] The incapacity of a wife to acquire a separate domicil

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1. Att.-Gen. for Alberta v.Cook [1926] A.C.444, 465; per Lord Merivale; see also Lord Advocate v. Jaffrey [1921] 1 A.C.146.

2. The hardship caused by this incapacity of married women to acquire a separate domicil is mitigated in England by certain Acts of Parliament which empower a court under certain circumstances to entertain matrimonial proceedings commenced by wives resident within its jurisdiction. See e.g. Matrimonial Causes Act 1950 s.18 (1)(a), (b). This Act applies also in Nigeria; see Regional Courts (Federal Jurisdiction) Act, Cap.177, Laws of the Federation of Nigeria and Lagos s.4; also Okonkwo v. Eze and anor. (1960) N.R.N.L.R.80, 82 per Hurley Ag.C.J.

3. The Private International Law Committee recommended that a married woman who has been separated from her husband by the order of a court of competent jurisdiction should be treated as a single woman; Cmd.9068 and Art.3 of the Code of Domicil. See also the recommendation of the Royal Commission on Marriage and Divorce that for the purpose of establishing the jurisdiction of the English court in divorce and nullity of marriage, a married woman shall be entitled to claim a separate English domicil if she is living separate and apart from her husband. Cmd.9678 paras.825,894.

of her own has disappeared in the United States of America. It is feared in England that this abandonment of the common-law principle of the unity of the domicil of husband and wife might produce the American situations in which a marriage or divorce is valid in one state but invalid in another.[1]

In order that the wife takes on her husband's domicil, the marriage must not be a nullity. If the marriage is a nullity, i.e. void e.g. for bigamy, the wife retains her existing domicil at the time of the supposed marriage unless by the fact of living with the man in the country of his domicil, she has acquired a similar domicil of choice.[2] If the marriage is only voidable, the wife's domicil follows that of the husband. It is probable that this principle of a common domicil for spouses applies not only to monogamous but also to polygamous marriages as the common law principle of unity applies to polygamous marriages.[3] Therefore all the wives of a polygamous union would have the domicil of the husband. After the dissolution of the

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1. In the United States, a state is not bound by the Full Faith and Credit Clause of the U.S.Constitution to recognise a divorce granted to any of its domiciliaries by another state. See Williams v. North Carolina (No.1) 317 U.S.287 (1942); Williams v. North Carolina (No.2) 325 U.S.226 and the other cases considered in Morris, "Divisible Divorce" 64 Harv.L.R.1287 (1951). For a problem similar to the Williams case in Australia, see Harris v. Harris [1941] V.L.R.44.

2. White v. White [1937] P.111.

3. See Mawji v. The Queen [1957] A.C.126; see also Maleksultan v. Sherali Jerag [1957] J.A.L.58 (E.A.C.A).

marriage by death of the husband or divorce or annulment in the case of a voidable marriage, the wife then has full capacity to acquire a separate domicil but she retains her existing dependent domicil until she abandons it animo et facto. In Re Wallach,[1] Hodson J. held that a widow retained her husband's domicil of choice and that her domicil of origin was not revived automatically when she became a widow. It would require some positive act on her part to acquire another domicil of choice. In Re Scullard,[2] Danckwerts J. following an earlier decision in Re Cooke's Trust,[3] limited the need for some positive act on the part of a widow to acquire a domicil of choice after the death of her husband to cases where they had been living together. Where they were living apart, an intention already formed by the wife, during the marriage, of acquiring another domicil of choice should be effective immediately after the death of the husband.

Persons of Unsound Mind

Where a person has been of unsound mind prior to attaining his majority, his domicil will continue to be that of his father, if alive, as long as the insanity subsists. "The same reasoning which attaches the domicil of the son to that of his father while a minor would continue to bring about the same result after the son had attained

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1. [1950] 1 All E.R.199.
2. [1957] 1 Ch.107.
3. (1887) 56 L.T.737.

majority if he was continuously of unsound mind."[1] Where unsoundness of mind occurred after majority, his last dmicil will remain his domicil during the period of lunacy. Although no direct authority exists, it is generally stated that the domicil of a lunatic cannot be changed either by himself or by his guardian or committee in charge of his affairs. There is also no judicial authority on the effect the unsoundness of mind of a person would have on the domicils of others whose domicils are dependent on him, such as his wife and children. Presumably, his unsound condition would have no effect on the domicils of those dependent on him.[2]

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1. Sharpe v. Crispin (1869) L.R.I.P. & D. 611, 618 per Sir J.P. Wilde.
2. See Graveson, The Conflict of Laws, 4th ed.(1960) 108.

Chapter Ten

DOMICIL -II

Application of the Concept of Domicil to Nigeria

The English common law concept of domicil was imported into the general law of Nigeria through the provision which applied the common law of England as the law in force within the jurisdiction of the then Supreme Court.[1] This provision for the general reception of the common law is now contained in the legislation of the Regions and the Federal territory.[2] In the general law of Nigeria, domicil operates to the same extent as it does in England[3] especially in matters over which the jurisdiction of a Nigerian Court is exercised "in conformity with the law and practice for the time being in force in England.[4]

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1. See Supreme Court Ord. Cap.211, Laws of Nigeria, 1948 ed., s.14.

2. See Interpretation Act, Cap.89, Laws of Federation & Lagos, 1958 ed. s.45(1); Law of England (Application) Law, Cap.60, Laws of W.R. Nigeria, 1959 ed., s.3; High Court Law, E.R. No.27 of 1955, s.14; High Court Law, N.R. No.8 of 1955, s.28.

3. The following matters are to a greater or lesser extent governed by the personal law, which in common law countries depends on domicil:
The essential validity of a marriage,
The mutual rights and obligations of husband and wife, parent and child, guardian and ward,
The effect of marriage on the proprietary rights of husband and wife
Divorce,
The annulment of marriage, though only to a limited degree,
Legitimation and adoption,
Certain aspects of capacity,
Wills of movables, and intestate succession to movables,
See the 7th Rept. of the Private International Law Committee (Law of Domicile) Cmnd.1955 p.8.

4. Supreme Court Ord., Cap.211, Laws of Nigeria, 1948 ed., s.22; Regional Courts (Federal Jurisdiction) Act, Cap.177, Laws of Federation & Lagos, 1958 ed., s.4

For example, the concept of domicil determines whether a High Court has jurisdiction to decree divorce. As Van der Muelen J. said in Shyngle v. Shyngle[1] "whether or not [the Supreme Court of Nigeria] has jurisdiction to deal with these [divorce] proceedings ..... must depend upon whether or not the parties can be deemed to be domiciled in Nigeria"[2] and the domicil of the parties meant the domicil of the husband.[3]

All questions relating to a person's status and capacity are determined by the personal law. Such personal law in Nigeria may be either

(i) the general law which consists of the common law, the doctrines of equity and statutes of general application in force in England on January 1, 1900; or

(ii) the customary law of the de cujus. A member of an ethnic community is subject to the law of that community and questions relating to his status and capacity may be determined by that law. The criterion for applying that law is the fact that he is a member (a "native") of that ethnic community.[4] As regards the general law, the criterion is domicil.

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1. (1923) 4 N.L.R.92.

2. ibid., 93; also Jones v. Jones (1938) 14 N.L.R.12; cf. Le Mesurier v. Le Mesurier [1895] A.C.517.

3. (1923) 4 N.L.R.92, 94.

4. See Re Adadevoh and others (1951) 13 W.A.C.A.304, where it was held that the law to be applied in ascertaining the legitimacy of persons subject to customary law is the customary law applicable to him.

Scope of the Operation of Domicil

As various customary laws exist within the Federal Republic in addition to the general territorial laws of the Regions and the Federal territory, it is necessary to ascertain the scope of the operation of the concept of domicil. Does the concept operate to designate the particular customary law of the de cujus ? Within the Federal Republic matters relating to personal relationships are in most cases the subject of customary law.[1] The concept of domicil denotes a person's relation with a territorial unit. This relation never "arises from membership of a community as distinguished from the country in which the community resides".[2] It is the general territorial law that governs each individual domiciled in the territory and it is this territorial law that assigns an individual to a particular personal law. A reference therefore to the relevant customary law of a de cujus is arrived at in two stages.[3] Firstly the concept of domicil refers to the whole territorial law of the

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1. The High Courts of the Regions have no original jurisdiction in any matter subject to the jurisdiction of a customary court relating to marriage, family status, guardianship of children and inheritance or disposition of property on death. See W.R.H.C.L., Cap.44 Laws of W.R. Nigeria, 1959 ed., s.9(1); E.R.H.C.L. No.27 of 1955, s.13; N.R.H.C.L. No.8 of 1955, s.16(1)(b); see also former Supreme Court Ordinance, Law of Nigeria, 1948 ed., Cap.211, s.12.

2. Halsbury's Laws of England, 3rd ed., vol.7, p.15.

3. See Graveson, Conflict of Laws, 4th ed.(1960) 80; Cheshire, op.cit. 172-3, also Graveson, "The Recognition of Foreign Divorce Decrees" (1951) 37 T.G.S.149, 154, 158.

Region as the lex domicilii of the de cujus and secondly the lex domicilii refers to the particular customary law applicable to the subject-matter. The concept of domicil is thus not necessarily applied in the internal reference to a particular customary law. It is the general territorial law as the lex domicilii which decides whether the general law applies or whether customary law is applicable. As Osborne C.J. correctly observed in Savage v. Macfoy[1] that "the mere fact that Macfoy having made Lagos his domicile of choice would not necessarily make him subject to or given the benefit of native law and custom, and his ordinary relations would be governed by English and not by native law". However as it is the lex domicilii that applies customary law, that customary law is itself usually referred to as the lex domicilii of the de cujus.[2]

Area of Domicil

Underlying the whole law of domicil is the conception of the necessity for a single law to determine personal relationships. It is therefore necessary to fix a person's domicil in a territory under one sovereign and subject to one body of laws.[3] If a wider area is

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1. (1909) Ren.504, 508; cf. Casdagli v. Casdagli [1919] A.C.145.

2. See Bamgbose v. Daniel, 14 W.A.C.A.111, 116.

3. See Dicey (ed. Morris) op.cit. 86; see also the American Restatement of Conflict of Laws, Tentative Draft No.2 (1954) section 9(g) p.40, which states "Domicil cannot be fixed in a broader unit than a territory having a single system of law, otherwise the concept would not serve its essential purpose of designating the personal law of the individual involved".

chosen, the conflict is not resolved. Thus in a federation like the United States or Canada which is made up of different legal components, a person is usually said to be domiciled in one of the component parts, e.g. a state in the United States or a province in Canada.

The recent constitutional changes in Nigeria may raise problems in the determination of the area of domicil. Prior to 1956 there was one legislature for the whole of Nigeria and consequently a Supreme Court exercising a single legal jurisdiction over the whole country. As such it was sufficient to fix a person's domicil in Nigeria.[1] After 1956 when the judiciary was regionalised, the unitary jurisdiction exercised by the old Supreme Court devolved in the various High Courts of the Regions and the Federal Territory, each exercising jurisdiction within its own region or territory.[2] As a result of this devolution, it is necessary to consider what is now the area of domicil as regards the Federation of Nigeria.

Three solutions seem possible. The first is that the pre-1956 position should continue and that domicil should be located in the Federation as a whole. This solution is untenable and takes no account of the devolution of legislative and judicial powers that resulted from the constitutional changes. It will not be necessary to consider it any further. The other two solutions come from two

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1. See Shyngle v. Shyngle (1923) 4 N.L.R.92.

2. See British Bata Shoe Co. Ltd. v. Melikian (1956) 1 F.S.C.100, 102 ff.

recent decisions in different High Courts in the Federation. The second solution is that there should be a regional (territorial) domicil for all matters. This solution was approved by Hurley Ag.C.J. in the High Court of the Northern Region in the case of Okonkwo v. Eze and anor.[1] The third solution is that there should be a Federal domicil for matters within the legislative competence of the Federal Parliament, e.g. divorce and a regional (territorial) domicil for matters within regional legislative competence, e.g. legitimacy and succession. This was the position adopted by Onyeama J. sitting in the High Court of Lagos in Nwokedi v. Nwokedi[2] but was expressly disapproved by Hurley Ag. C.J. in the Okonkwo case.

These two cases are, it is believed, the first to deal with this problem before the courts of the Federation.[3] Nwokedi v. Nwokedi was a petition for dissolution of marriage before Onyeama J. in the High Court of Lagos. The learned judge held that there was only one Nigerian domicil for the purposes of divorce jurisdiction. His reasoning is illuminating and as the case is unreported, the material portion of the judgment will be reproduced. In assuming jurisdiction, he said:

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1. (1960) N.R.N.L.R. 80.

2. Suit No.WD/17/1958; Judgment delivered on December 19, 1958.

3. See however Fonseca v. Passman (1958) W.R.N.L.R.41, 42, where Hedges J.spoke of the establishment of "a domicil of choice in Nigeria". The problem here discussed was not present in the judge's mind and did not call for a decision.

> "I agree .... that on the issue of jurisdiction the decisive factor is the domicile of the husband. There is only one domicile in this country for matrimonial causes and that is the Nigerian domicile.
>
> There is only one system of law relating to matrimonial causes (other than matrimonial causes arising under native law and custom or Moslem law) in Nigeria, and that is the law as enacted by the Federal Legislature. There is no power in the regional legislatures to enact laws pertaining to matrimonial causes. It follows that although there is a High Court of Justice in each region, yet in matrimonial causes the jurisdiction of all the High Courts is the same irrespective of the regional residence of the parties, and derives from the same source.
>
> At the present moment the law in matrimonial causes throughout Nigeria is the law for the time being in force in England (except in causes arising under native law and custom and Moslem law).
>
> I therefore consider that it was competent for the petitioner to bring her petition in any division or any of the regional High Courts or in the High Court of Lagos without regard to the place of residence of the respondent, and that the High Court concerned would have full jurisdiction to entertain the petition."

The case of Okonkwo v. Eze and another[1] was similarly concerned with a petition for dissolution of marriage filed by a wife petitioner in the High Court of the Northern Region. The petition averred that the parties were domiciled in Nigeria. Hurley Ag. C.J. held that the court had no jurisdiction as it was not averred and there was no evidence to show that the parties were domiciled in the Northern Region. The learned judge argued that the jurisdiction of the High Court of the Northern Region in matrimonial matters is exercised by virtue of the Regional Courts (Federal Jurisdiction) Ordinance[2] in conformity with

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1. (1960) N.R.N.L.R.80.

2. Laws of the Fed. of Nigeria & Lagos, 1958 ed. Cap.177.

the law and practice for the time being in force in England. It follows that as the jurisdiction of the High Court of England in relation to dissolution of marriages is confined to cases where the husband was domiciled in England, so too would the jurisdiction of the High Court of the Northern Region be confined to such cases where the husband is domiciled in the Northern Region. It was contended that since Parliament has exclusive legislative competence in regard to matrimonial causes for the whole of the Federation, the Federation should be considered as subject to one system of law and as such a unit for the purposes of domicil in matrimonial causes. In rejecting this contention, the learned judge maintained that it would result in a person having one domicil for regional matters and another for Federal matters and this would be contrary to the fundamental rule that a person cannot have more than one domicil at the same time. He therefore concluded that a person can only be domiciled in one of the Regions or in the Federal territory of Lagos for all purposes.

This conflict of judicial opinion was later considered by de Lestang, C.J. sitting in the High Court of Lagos in Lydia E. Machi v. Raymonde E. Machi,[1] a petition for divorce which averred that the parties are "domiciled in Nigeria". The learned Chief Justice, after reviewing the authorities, found in favour of Hurley's view. He based his decision on the fact that the power of making and administering law in Nigeria is shared between the Central Government and the Regional

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1. [1960] L.L.R. 103.

Government and that the law, even on matters within the exclusive jurisdiction of Parliament, need not necessarily be the same throughout Nigeria.[1] He therefore concluded:

> "[I]t seems to me that Nigeria cannot properly be described as a territory with one system of law. That description however fits each Region better, and .... I hold that a subject may acquire a domicile in a Region but not in Nigeria generally."[2]

The views of Hurley Ag.C.J. and de Lestang C.J. coincide with the traditional view of the law of domicil; support for which is found in many judicial statements.[3] Thus as the law stands at the moment, domicil in one of the regions or the Federal territory is necessary for all purposes. The scanty legislative evidence shows a tendency towards this view. In the Legitimacy Law[4] of the Western Region, section 3(1) contains the phrase 'domiciled in the Region' and its section 9(1) refers to a person being 'domiciled in a place other than within the Region' and 'place' is defined by section 9(3) as including "any part of Nigeria other than the Region or any part of

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1. If there is a Federal legislation on a subject within the exclusive jurisdiction of Parliament, the law must necessarily be the same throughout Nigeria.

2. [1960] L.L.R.103, 107.

3. See the dictum of Hill J. in Borton v. Borton (1928) unreported; see 167 L.T.4; the observation of Lord Dunedin in Wahl v. Att.-Gen. (1932) 147 L.T.382, 383; see also Karminski J. in Gatty v. Att.-Gen. [1951] P.444, 454; Jenkins L.J. in Travers v. Holley [1953] P.246, 253; Trottier v. Rajotte [1940] 1 D.L.R.433, 439; Johnson v. Johnson [1931] A.D.391, 406.

4. Laws of W.R. of Nigeria, 1959 ed., Cap.62.

Her Majesty's dominions, as well as a foreign country". The Legitimacy Act[1] which is a Federalstatute applying only to Lagos however still makes mention of a domicil in Nigeria,[2] as it has not been amended in the light of recent constitutional changes.[3]

This problem has also attracted attention in other Federations. The most important case which actually decided the point was the opinion of the Judicial Committee of the Privy Council in the Canadian appeal of Attorney-General for Alberta v. Cook.[4] The Board had to decide the question "whether the domicil of persons settled in one of the provinces of the Dominion of Canada is domicil not in the particular province, but in the Dominion, in such sense that rights dependent upon domicil within the Dominion having jurisdiction locally over the subject matter". The case before the Board concerned the dissolution of a marriage and the contention that there was a Canadian domicil was founded on the terms of the Constitution of Canada which gave exclusive legislative authority in respect of marriage and divorce to the Parliament of Canada.[5] The Board inquired whether there was uniformity

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1. Laws of the Federation & Lagos, 1958 ed., Cap.103.

2. See ibid. s.3(1).

3. See however the view of de Lestang C.J. in Machi v. Machi [1960] L.L.R. 103, 108.

4. [1926] A.C.444. P.C. This decision overruled an earlier Canadian case of Nelson v. Nelson [1925] 3 D.L.R. (Alta.) where Boyle J. held that as the Dominion Parliament had "exclusive legislative jurisdiction in the subject of divorce" there could be a Canadian domicil for divorce purposes.

5. See British North America Act 1867 s.91(26).

of laws in respect of such matters throughout Canada and found that unity of laws in respect of matters which depend on domicil did not then extend to the Dominion. They concluded that domicil must therefore be located in a province.[1]

This decision of the Board supports the conclusion reached by Hurley Ag.C.J. in the Okonkwo case[2] but it should be appreciated that as regards matrimonial causes, the set-up in the Federation differs from that in the Dominion. The Board found that in the Dominion, the provinces have divers laws in respect of jurisdiction as to marriage and divorce and that in some provinces no means existed for divorce a vinculo by judicial process. No mention was made of any Dominion statute which dealt with the question of jurisdiction of the courts of the provinces as regards the dissolution of marriages. In the Federation, marriage and divorce are matters within Federal legislative competence and the law on these matters are substantially the same in all the Regions and the Federal territory.[3] There is also a Federal statute[4] which empowers Regional High Courts to exercise the

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1. Cf. Robinson-Scott v. Robinson-Scott [1957] 3 All E.R. 473, 474, where the substantive law in matrimonial dispute is in the Swiss federal code but procedural law (including questions of jurisdiction is regulated by the law of the canton, and domicil is located within the canton.

2. (1960) N.R.N.L.R. 80.

3. See e.g. the Marriage Act, Cap. 115 Laws of the Federation & Lagos.

4. Regional Courts (Federal Jurisdiction) Act Cap.177, Laws of the Federation & Lagos.

same jurisdiction in respect of marriages, annulment and dissolution of marriages "in conformity with the law and practice for the time being in force in England".[1] But as regards other matters such as legitimacy which are dependent on domicil, the laws of the different Regions of the Federation and the Federal territory need not be the same.[2]

It is interesting to notice that the decision of the Board requiring domicil in a province to found jurisdiction in a suit for dissolution of marriage has been held in the recent Canadian case of Voghell v. Voghell & Pratt[3] not to apply to the Northwest Territories as they are not sovereign states with courts having independent authority and where the laws of England as they existed on July 15, 1870 continue to apply. The Board's decision has also been severely criticised as unrealistic and as indicating "an appalling lack of appreciation of the way life is carried on in [Canada, a] country of branch offices and frequent changes of residence from one province to another".[4] In his book on the Law of Divorce in Canada,[5] Power

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1. Regional Courts (Federal Jurisdiction) Act, Cap.177, Laws of the Federation & Lagos. s.4.

2. See Okonkwo v. Eze & anor. (1960) N.R.N.L.R.80, 81.

3. (1960) 22 D.L.R. (2nd.) 579 per Sissons J. - held that the Territorial Court can exercise jurisdiction where the husband is domiciled anywhere in Canada and the wife is a bona fide resident of the Territories.

4. See Power in (1956) 34 Can.Bar.Rev.1181, 1191.

5. (1948 ed.) p.280-81.

further suggested that the decision "did not give effect to the fact that the same substantive law of divorce was in force in each of the western provinces[1].... If at some future time .... a Canadian divorce law is to be enacted, a statutory change in this rule as to domicile, in so far as it applies to at least eight of the provinces would seem to be logical and desirable ... The sound and humane policy would seem to be to give jurisdiction where the husband is domiciled anywhere in Canada and either party is bona fide resident in the province wherein the action is brought".

The decision of Onyeama J. in Nwokedi v. Nwokedi,[2] though contrary to the traditional view finds support in recent re-appraisals of the concept of domicil. Professor Graveson in the recent edition of his book on Conflict of Laws[3] emphasises the benefits of a Federal domicil in certain matters. He says the traditional view "ignores the fact that the several states of a federation are subject to two concurrent legal systems, state and federal .... Domicile somewhere (undefined) within the territory of a federation may well be relevant to a particular issue ..... Important developments have taken place in the British Commonwealth since the first era of domicile in the 1860s. First in Canada ... Australia ... and .. in Nigeria .., the legal duality of federation has sought to operate on the old unitary concept of domicile .... Although domicile is traditionally based on a single

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1. He cited the judgment of Trueman J.A. in Baker v. Baker [1941] 3 D.L.R. 581, 584.

2. Suit No. WD/17/1958 unreported.

3. 4th ed. (1960).

territorial system of law, yet the citizen of a federation is subject to two legal systems, state and federal, in both of which domicile may be relevant. Surely this common situation calls for a new and two-dimensional concept of domicile, so that a citizen may have federal or national domicile as a basis for application of the law of the federation to which he belongs and a state or provincial domicile as a basis for applying the law of that legal unit of the federation in which he habitually lives."[1]

There is thus a trend towards a re-appraisal of the traditional view and the necessity for a Federal domicil, especially in cases where a person intends to settle in a federation without fixing his permanent home in a component part.[2] The Commonwealth of Australia recently realised the need for a Federal domicil. The traditional view had been criticised as "a legal anachronism, a vestigial remnant in legal science which has no relevance to the realities of Australian social conditions".[3] And in Lloyd v. Lloyd,[4] Barry J. sitting in the

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1. 4th ed. (1960), 74-75.

2. See Pollak, "Domicile" 50 S.A.L.J. (1933) 449, 459 et seq.; but see Lord Dunedin's observations in Wahl v. Att.-Gen. (1932) 147 L.T.382, 383.

3. Armstead v. Armstead [1954] V.L.R.733, 736 per Herring C.J.; see also Fullerton v. Fullerton (1958) 2 F.L.R.391, 399 per Kriewaldt J.

4. (1961) 2 F.L.R.349.

Supreme Court of Victoria observed that there is no reason "inherent in the common law concept of domicile why the Parliament of the Commonwealth is not competent to create or recognise the existence of an Australian domicile for the purposes of its laws with respect to matrimonial causes, even though for other purposes the domicile of an Australian citizen may be connected only with a State or Territory".[1] Commonwealth legislation has now been passed creating an Australian domicil for the purposes of matrimonial causes.[2]

Change of Domicil from one Region to Another

As the traditional view locates domicil in a region or the federal territory, a question arises as to whether less evidence is sufficient to show a change of domicil from one region of the Federation to another than is necessary to establish a change from one country to another. Judicial dicta in England is in favour of the view that somewhat less evidence is required for a change of domicil from one region or jurisdiction within the same country.[3] A similar view has been

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1. (1961) 2 F.L.R. at 351.

2. Matrimonial Causes Act 1959 (Australia) s.23.

3. See Whicker v. Hume 7 H.L.C.124, 159 per Lord Cranworth; Lord v. Colvin (1857-59) 4 Drew 366, 422-23 per Kindersley V-C; Winans v. Att.-Gen.[1904] A.C.287, 291 (H.L.) per Lord Macnaghten. "A higher degree of proof is necessary to establish a change from a domicile in the United Kingdom to one in an alien country than to establish a change from one part of the United Kingdom to another part." Halsbury's Laws of England, 3rd ed., 1954, vol.7, pp.19-20.

expressed in Australia.[1] The courts in Australia easily draw inferences of fact to establish a change of domicil from one state of Australia to another than in cases involving a foreign country as in the Australian community with a common nationality and common language, social ideas and customs are substantially the same throughout the continent.[2] There is authority to support the same view in the Dominion of Canada.[3] Some Canadian cases have suggested that because of the marked similarity between the laws of the common-law provinces, a lesser degree of proof should suffice.[4] It has been said that similarity of laws should not be the basis of such a rule.[5]

It is uncertain what trend the Courts of the Federation of Nigeria would adopt. However the view which favoured lesser degree of proof for a change of domicil from one jurisdiction to another under the same general government has been prompted in Australia and Canada by a variety of reasons such as that they are immigrant countries and social conditions and customs are substantially the same, which would

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1. See Fleming, "Recent Australian Decisions in Private International Law", 3 I.L.Q. (1950) 86.

2. See Walton v. Walton [1948] V.L.R. 487, 489 per Barry J.

3. Walsh v.Herman (1908) 13 B.C.R.314, 315; Fairchild v. McGillivray (1910) 16 W.L.R.562; but see Gunn v. Gunn & Savage (1955) 16 W.W.R. 44; White v. White [1950] 4 D.L.R. 474, Young v.Young (1960) 21 D.L.R.(2d.) 616; see also comment by Hossie in 34 Can.Bar.Rev.210 (1956).

4. Adams v. Adams (1909) 14 B.C.R.301; White v. White [1952] 1 D.L.R. 133.

5. See Castel, Private International Law (1960) p.59; also comment by Hossie in 34 Can.Bar.Rev.210 (1956).

not be very applicable to the Federation.[1] With freedom of movement from one region to the other within the Federation, the new trend may be towards an emphasis more on residence than on domicil.

Domicil of Corporations

The domicil of a corporation is free from statutory influences. The Companies Act[2] does not refer to the domicil of companies formed under it. Therefore the domicil of a corporation must be determined by reference to the common law and the relevant decisions of the courts.

The conception of domicil has been ascribed to corporations on the analogy with individuals. Every person whether natural or juristic acquires a domicil of origin by operation of law at birth. Natural persons derive their domicil of origin from that of a parent at the time of the birth. In the case of corporations, the domicil would be in the country which gave birth to it and this is the country of its incorporation or registration.[3] The question of domicil of a corporation has rarely engaged the attention of the courts. Recently

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1. See the cautious attitude of Canadian judges in White v. White [1950] 4 D.L.R.474 (Williams C.J.); Young v. Young (1960) 21 D.L.R. (2d.) 616 (Schultz J.A.).

2. Cap.37, Laws of the Federation & Lagos, 1958 ed.

3. Several judicial statements have described the place of incorporation as the place of birth of a corporation. See Huddleston B. in Cesena Sulphur Co.Ltd. v. Nicholson (1876) L.R. 1 Ex.428, 453; Lord Cave in Bradbury v. English Sewing Cotton Co.Ltd. [1923] A.C.744, 753; Lord Sumner in Egyptian Delta Land and Investment Co. v. Todd [1929] A.C.1, 13.

the question came up for decision before MacNaghten J. in Gasque v. I.R.C.[1] and he held that the domicil of a corporation is the place of its incorporation and went further to add that this "domicil of origin or the domicil of birth, using with respect to a company a familiar metaphor, clings to it throughout its existence".[2] Dr. Farnsworth has demonstrated from two cases[3] that it is theoretically possible for a corporation to have a domicil of choice but concluded that a consideration of the effects of domicil on a corporation makes such acquisition of a domicil of choice impossible in law.[4]

A corporation's domicil is important as its status is governed by the law of its domicil which decides all questions relating to its creation, its continuance or its dissolution. Questions relating to the rights and liabilities of individual members of a dissolved corporation,[5] whether its transactions are ultra vires are determined by the rules of its constitution as interpreted by its lex domicilii.

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1. [1940] 2 K.B.80.

2. ibid. at 84. MacNaghten J. applying the statement of Sargant L.J. in Todd v. Egyptian Land and Investment Co. [1928] 1 K.B.152, 173; see also Kuenigl v. Donnersmarck [1955] 1 Q.B.515, 535.

3. These were Egyptian Delta Land & Investment Co. v. Todd [1929] A.C.1 and Swedish Central Railway Co. v. Thompson [1925] A.C.495.

4. Residence and Domicil of Corporations (1939) 218 et seq.

5. General Steam Navigation Co. v. Guillou (1843) 11 M. & W. 877.

The law of the domicil also determines whether the rights and obligations of the dissolved corporation devolve on its universal successor but the existence of such rights and obligations is a matter for the proper law of the contract creating them.[1]

Commercial Domicil

This must be distinguished from domicil. Like nationality, commercial domicil is a criterion for the determination of enemy character.[2] According to the test of commercial domicil, any person or firm of whatever nationality who is resident or carries on business in enemy[3] or enemy-occupied[4] territory is deemed to be identified with that territory as to share its national character whether belligerent or neutral. This test is mainly used to determine the liability of property to seizure[5] as a person who resides or carries on business in enemy country adds to the resources of that country.

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1. See Metliss v. National Bank of Greece and Athens S.A. [1957] 2 Q.B.33 (C.A.); [1958] A.C.509 (H.L.); Adams v. National Bank of Greece and Athens [1958] 2 Q.B.59; Adams v. National Bank of Greece S.A. [1960] 3 W.L.R.8 (H.L.).

2. Enemy character may arise from (1) enemy nationality (2) from residence (3) from domicil in the ordinary sense and (4) from commercial domicil. Halsbury's Laws of England, 3rd ed.,vol.7,p.25

3. Porter v. Freundenberg [1915] 1 K.B.857.

4. Sovfracht v.Van Udens [1943] A.C.203.

5. The Harmony (1800) 2 C.Rob.322; The Indian Chief (1801) 3 C.Rob.12 La Virgine (1804) 5 C.Rob.98.

Thus a local citizen may acquire a commercial domicil in an enemy state; conversely a subject of a belligerent state may acquire a commercial domicil in a neutral state which would protect his property from condemnation after capture at sea.[1] An occasional visit in a belligerent state for business purposes of a temporary character or mere presence there in transitu does not create a commercial domicil there.[2]

Domicil in the ordinary sense need not coincide with commercial domicil and in fact they are two independent concepts and are distinguishable. Commercial domicil comes into operation only in time of war and a person may have more than one commercial domicil,[3] which is contrary to the rule that no person may have more than one operative domicil at the same time. This aspect of commercial domicil constitutes no exception to that rule as commercial domicil is in no sense a true domicil. Domicil in its ordinary sense connotes residence in a country with the intention to make it one's permanent home. A commercial domicil on the other hand signifies residence in a country for the purpose of trading and thereby making such trade or business contribute to or form part of the resources of that country.

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1. The Hypatia [1917] P.41.
2. The Jonge Klassina (1804) 5 C.Rob.297, 302.
3. ibid.

The hostile, friendly or neutral character of such a person carrying on the trade or business is then determinable by reference to the character of that country. The residence and intention which constitute domicil in the ordinary sense are different from the residence and intention constituting a commercial domicil. The intention for a commercial domicil is an intention to continue residing and trading in that country for the present. Residence is not required for a commercial domicil if a business is being carried on in an enemy or enemy-occupied country.[1] The distinction between a domicil of origin and a domicil of choice is of little importance in cases of commercial domicil.

The rules as to abandonment of a commercial domicil are different from those of ordinary domicil. A commercialdomicil is lost from the moment when a person puts himself in motion bona fide to quit that country sine animo revertendi.[2] A mere intention to move unaccompanied by some overt act is insufficient.[3] An actual or complete abandonment is not necessary[4] but on the outbreak of war a person must within a reasonable time discontinue or dissociate himself from the trade or business.[5]

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1. See however The Hypatia [1917] P.36, 41.
2. The Indian Chief (1801) 3 C.Rob.12, 20; Tingley v. Muller (1917) 86 L.J.Ch.640.
3. The President (1804) 5 C.Rob.277.
4. The Ocean (1804) 5 C.Rob. 90.
5. The Anglo-Mexican [1918] A.C.422 P.C.

Reform of the law of domicil in England.

As the courts in Nigeria exercise jurisdiction in some matters which admit of the operation of domicil "in conformity with the law and practice for the time being in force in England,"[1] any reform of that concept in England will affect its application in Nigeria. Recently proposals for the reform of the concept in England have been suggested. On September 18, 1952, the Lord Chancellor appointed a Private International Law Committee to consider alterations that may be desirable in such rules of private international law as may be referred to them, and to consider also certain subjects proposed for discussion at any international conferences on private international law in which the United Kingdom may be participating and make recommendations. On December, 19, 1952 as its first task, the Committee was asked to consider

> "what amendments are desirable in the law relating to domicile, in view especially of the decisions in Winans v. Attorney-General [1904] A.C. 287 and Ramsay v. Liverpool Royal Infirmary [1930] A.C. 588 and whether, in the light of any alterations which the Committee may recommend in that law, it appears desirable that Her Majesty's Government should become a party to the draft Convention to regulate conflicts between the law of the nationality and the law of the domicile."

1. See Regional Courts (Federal Jurisdiction) Act, Cap. 177, Laws of the Federation & Lagos, 1958 ed.

In its First Report,[1] presented in 1954, the Committee set out their views on what the law of domicil should be in a Code of Domicil and recommended legislation in conformity with it. The Code has been referred to when necessary in the consideration of the content of the law of domicil.[2] In its five concise Articles, it deals with the doctrine of the revival of domicil of origin, presumptions for the ascertainment of a person's intentions, the domicil of married women and children, and lunatics. The Code, which is by no means a complete statement of all the rules on this topic,[3] preserves much of the existing law, including the generally accepted meaning of domicil. It categorises domicil as being either of origin or of choice and therefore places the domicil of dependent persons into one of these two categories. The Code, however, embodies recommendations which introduce substantial changes in many respects. The Committee suggested that these changes should not be made without prior consultation with other members of the Commonwealth. In their view, "nationality legislation was required to be uniform; the law of domicile should at any rate aim at being so."

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1. Cmd. 9068 (1954)

2. See supra p. 324 et seq.

3. For matters on which the Code is silent, see Graveson, "Reform of the Law of Domicile" (1954) 70 L.Q.R. 492, 493-4

The recommendations of the Committee are designed to cure two serious defects of the law of domicil which are illustrated by the two cases referred to them. These defects are

(a) the excessive importance attached to the domicil of origin, and

(b) the difficulties involved in proof of intention to change a domicil.

The excessive importance of the domicil of origin lies in the doctrine of its automatic revival when a domicil of choice is abandoned and in the rule that it is harder to change a domicil of origin than a domicil of choice. The Committee recommended the abolition of the doctrine of the revival of a domicil of origin. This innovation is contained in Article 1 (5) of the Code which provides:

"A domicile, whether of origin or of choice, shall continue until another domicile is acquired."

This innovation of the continuance of the existing domicil has been widely adopted in the United States and it greatly weakens the tenacity of the domicil of origin. Although the Committee recommended that legislation should give effect to the Code, they were well aware that the facts of each case vary so widely that most problems are insoluble by legislation. They, therefore, suggested that "in cases where it is uncertain whether a domicile of origin has been abadoned or not, it will still be a question of

fact whether there exists a definite intention to return or merely a fond hope; the latter ought not to be sufficient to justify retention of the domicile of origin, but the question escapes definition and must be left to the court."

The Committee also considered the difficulties attendant on proof of intention to change a domicil. In the Code, they included certain rebuttable presumptions as to a person's domicil. The most important of the presumption is that in Article 2(2), Rule 1 which provides that "where a person has his home in a country, he shall be presumed to live there permanently." The other presumptions deal with a person having more than one home and a person stationed in a country for the principal purpose of carrying on a business, profession or occupation and whose wife and children have their home in a different country. A person entitled to diplomatic immunity, or who is a member of the armed forces, a civil servant or a servant of an international organisation are excepted from the application of these presumptions.

As regards the position of married women, which they stated to be perhaps the most difficult in this branch of the law involving consideration of questions of social policy of some importance; the Committee considered four possible solutions but was unable to recommend any of them. The first solution was that "a married woman should be able to acquire a separate domicile in exactly the same

way as an unmarried woman." This solution is widely adopted in the United States and has some adherents in the Commonwealth. They admitted that it was also in conformity with modern tendencies, as evidenced in the British Nationality Act, 1948 under which a woman does not necessarily acquire her husband's nationality on marriage. They thought however that the practical results of adopting this solution would not be very great as in any event a married woman's domicil would normally be the same as that of her husband's by virtue of the rules proposed in Article 2 of the Code. They concluded that it was desirable that the doctrine of the unity of the domicil of spouses should be maintained so as to avoid the many complications which in practice follow its abandonment. The second conclusion was that "a married woman who has been deserted by her husband should be able to acquire a separate domicile." They considered that the difficulties of the deserted wife arise mainly from jurisdiction in matrimonial causes, which are matters primarily for the Royal Commission on Marriage and Divorce. They felt it inadvisable to assist the deserted wife by adopting a solution which will affect quite distinct matters. The other two solutions would have enabled a married woman or a deserted wife to acquire a separate domicil for certain limited purposes such as the making of a will. The Committee did not recommend any alteration in the law as regards the position of married women except in one respect. This is contained as a proviso to Article 3 of the Code by which a married woman who has been separated from her husband by the order of a

court of competent jurisdiction is able to acquire a separate domicil.

Article 4 of the Code deals with the domicil of infants. The recommendations were that on the termination of the marriage of the infant's parents, the domicil of the infant should normally follow that of the person in whose custody he is; and that a court of competent jurisdiction should have power to vary an infant's domicil as is deemed appropriate for his welfare. A married male infant should also have the capacity to acquire his own domicil of choice. The Committee recommended and embodied in Article 5 of the Code that the person having charge of a lunatic should be able to change the lunatic's domicil subject to the approval of a Court of competent jurisdiction.

The Committee took the opportunity to state that the Domicile Act, 1861[1] which is the only statute having any bearing on the law of domicil, might be repealed. The Act empowered Her Majesty by Order in Council to give effect to any convention laying down rules to determine a person's domicil. As no such convention has been concluded, the Act is a dead letter.

The Royal Commission on Marriage and Divorce has also considered the reform of the concept of domicil. In their report,[2] presented

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1. 24 & 25 Vict. c.121.

2. Report, 1951-55, Cmd. 9678 (1956)

in March 1956, they considered (i) whether a change should be made in the English and Scottish concept of domicil and (ii) whether a wife should be entitled to acquire a separate domicil. In view of the Commission's terms of reference, their consideration was confined "to the influence of domicil on a person's marital status, and in particular, to its impact upon the applicant's right to obtain in the country of his or her residence a decree which will command international validity."[1] They had the advantage of the report of the Private International Law Committee and on the first question, they agreed with the recommendations of that Committee. As regards a wife's separate domicil, the Commission, while noting that they favoured changes which place husband and wife on the same footing, went on to record their objections to allowing a husband and wife separate domicils as follows:

> "Domicil is equivalent to permanent home and to say that a husband and wife are at liberty to acquire and retain separate permanent homes seems to us entirely inconsistent with a life-long union and indeed with the duty of one spouse to cohabit with the other spouse. Moreover, there is the practical objection that to have two laws regulating the mutual rights and obligations of husband and wife would introduce uncertainly in the law."[2]

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1. ibid para. 815

2. ibid para. 820

They therefore considered that husband and wife should continue to share a common domicil. But the Commission took a different view in cases where the marriage has broken down and recommended that "a wife who is living separate and apart from her husband should be entitled to claim a separate English or Scottish domicil for the purpose of establishing the jurisdiction of the English or Scottish court to entertain divorce proceedings by her, not-withstanding that her husband is not domiciled in England or Scotland as the case may be."[1] This recommendation differred from that of the Private International Law Committee which confined the acquisition of a separate domicil to a wife who has been separated from her husband by a court order.

The second part of the Private International Law Committee's task was to advise whether Her Majesty's Government should become a party to the Hague Draft Convention of 1951,[2] in the light of the alterations they recommended in the law of domicil. The Convention was "a compromise between those countries which take domicile and those which take nationality as their guide to the choice of law," and aimed at the reduction of the difficulties caused by the doctrine of renvoi. It was a triumph for the law of domicil. Domicil was however defined by Article 5 of the Convention as "the place where the person habitually resides unless the domicile

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1. ibid, para 825

2. Draft Convention to Regulate Conflicts between the Law of the Nationality and the Law of the Domicil. See Cmd. 9068, App. B; reproduced in my Appendix II, infra.

of such person depends on the domicile of another person or on the seat of some public body (autorité)". The Committee considered that it was not desirable to regard domicil as being equivalent to habitual residence as it would have consequences unacceptable to public opinion in the United Kingdom. As their recommendations for alterations in the law of domicil will make the English law of domicil sufficiently similar to the continental law, the Committee advised Her Majesty's Government to accept the Draft Convention subject to the following statement:

> "in ratifying the present Convention Her Majesty's Government wish to state with reference to Article 5 that, while under the law of the of the United Kingdom habitual residence is not the absolute test of domicile, recent legislation has brought the two conceptions sufficiently close to serve all the practical purposes of the Convention."

The Domicile Bills.

The main recommendations of the Private International Law Committee were embodied in a Domicile Bill laid before Parliament in May, 1958. Its object was threefold. Firstly, it would have abolished the domicil of origin. Secondly, it would have given a married woman the capacity to acquire an independent domicil when separated from her husband by a court order and thirdly, it contained three presumptions for the ascertainment of domicil.

Unfortunately, this Bill lapsed at the end of the parliamentary session. During the debates in the House of Lords,[1] objection was taken by foreign businessmen in England of the consequences of the principal presumption in section 3(1) of the Bill which read:

> "Subject to the following provisions of this section, a person who has a home in a country is presumed to intend to live permanently in that country."

The objection was that this presumption would cast on foreign business men with foreign sources of income,[2] the burden of proving to the inland revenue authorities that they do not intend to make their permanent home in the country.[3]

A second Bill, which merely made certain amendments to the law of domicil, was introduced in January, 1959. It contained the

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1. See House of Lords, Official Report Vol. 211 Cols. 206 et seq. See further Mann, "The Domicile Bills" (1959) 8 I.C.L.Q. 457.

2. Domicil is relevant in determining liability to United Kingdom income tax in respect of the foreign emoluments of non-citizens resident in the United Kingdom. Estate duty is similarly dependent on domicil. See Income Tax Act 1952 s.156; Finance Act 1956 s.10(1).

3. Dr. Clive Schmitthoff suggested in a letter to The Times, April 2, 1959, that he would have broadened the area of exceptions to clause 4(2) of the Bill to include not only persons such as diplomats but also "persons residing in a country exclusively for purposes of business, study or other purposes, which by their nature are of a purely transitional character."

abolition of the revival of domicil of origin but omitted all the presumptions of the first Bill. An amendment made in the first Bill that the domicil of a married woman should for all purposes be determined as if she were a feme sole also appeared in the second Bill. This new Bill passed the Third Reading in the House of Lords[1] but on April 16, 1959, the sponsors of the Bill decided to drop it.[2]

Reconsideration of the law of domicil by the Committee

On November 13, 1959, the Lord Chancellor again asked the Committee

"(1) to re-consider the recommendations for the reform of the law of domicile contained in the Committee's First Report in the light of the objections taken to the two Domicile Bills recently before Parliament; and

(2) to recommend what provisions are required to avoid any legal difficulties which may be expected from an alteration of the law placing a married woman in the same position as any other person of full age and capacity for the purposes of the law of domicile."

The Committee presented its Report[3] in January 1963. They considered

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1. House of Lords, Official Reports, Vol. 214 col. 451, February 24, 1959.
2. The Times April 16, 1959.
3. Cmnd. 1955 (1963)

the objections to the Domicile Bills and felt that the fears of Commonwealth and foreign business community in the United Kingdom to liability to United Kingdom income tax and estate duty for property situated out of the country, on account of the presumption in Art 2(2) Rule 3 of the Code, were exaggerated. They suggested that one way of overcoming this difficulty was to extend the class of persons to whom the presumption arising from residence is not to apply so as to include persons who reside in the country in question for business purposes and drafted a revised code to cover this point.[1] The Report also outlines the objections of the Board of Inland Revenue and a number of organisations and individuals to the revised draft.[2]

As regards the Hague Convention, the Committee's attention was directed to a view, which, since the publication of the First Report, was expressed in certain quarters connected with the Hague Conference on Private International Law. It was formulated as follows:

"(1) The Convention applies in the following cases and only in the following cases:

(a) the State of habitual residence of the person concerned requires the application of his national law and the State of which he is a national requires the application of the law of the place of habitual residence (Article 1);

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1. Reproduced in part C of my Appendix II infra.

2. See Cmnd. 1955 (1963) paras. 10, 11.

(b) the State of habitual residence of the person concerned and the State of which he is a national both require the application of the law of the place of habitual residence (Article 2);

(c) The State of habitual residence of the person concerned and the State of which he is a national both require the application of his national law (Article 3).

(ii) In cases in which the State of habitual residence of the person concerned or the State of which he is a national is a country which applies the common law concept of domicile, the Convention applies and only applies if the person concerned is both domiciled in the common law sense and habitually resident in the same place."[1]

The Committee thought that the existence of this view cast further doubt on the interpretation of the Convention and might create additional conflicts. In the circumstances, they advised that Her Majesty's Government should not adhere to the Convention.

The Committee then turned to a reconsideration of the position of married women in this branch of the law.[2] They took note of the recommendati of the Royal Commission on Marriage and Divorce and considered both the difficulties arising from a separate domicil and the possible hardship caused by the unity of domicil. They concluded that to confer capacity on a married woman not separated from her husband by an order of a court of

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1. ibid. para. 15.

2. See Cmnd. 1955 (1963) Appendix D for an analysis of the position as regards the separate domicil of a wife in the U.S.A.

competent jurisdiction, to acquire a separate domicil for all purposes, would involve legal complications outweighing any advantages that might accrue. If it were decided to confer a separate domicil on a married woman for all purposes, or a right to acquire a separate domicil, the Committee suggested that it would be necessary, at least to provide

> "(a) that it should be open to a married woman to acquire or to retain her husband's domicile, or personal law, by intention alone and that she should be presumed so to intend in the absence of evidence to the contrary, and
>
> (b) that, in any case where existing rules of private international law would not work if the husband and wife had different personal laws, the personal law of one of them should, in the case of conflict, prevail."[1]

Consideration as regards Nigeria

A reappraisal of the law of domicil in the Nigerian legal system is definitely necessary. The greatly increased complexity of life in a modern society than a century ago when the rules were being formulated by the English courts, the constitutional development in Nigeria, and the renewed importance given to customary laws are all factors which create a situation in which domicil must be overhauled if it is to deal

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1. See ibid paras. 25, 26, 29 and 34.

with the problems of today. There is therefore a need for change and the change must be accompanied with certainty in the legal rules. A study of the problems of domicil in the different parts of the common law world is a worthwhile prerequisite for any proposal for reform.

As long as the Nigerian courts exercise jurisdiction in certain matters in accordance with the law and practice of England, in a reappraisal of this concept, special attention ought to be paid to proposals for reform in England. In this connection, the two reports of the Private International Law Committee[1] and that of the Royal Commission on Marriage and Divorce[2] are invaluable. It is particularly gratifying that the Private International Law Committee suggested that there should be consultations with other Commonwealth countries before reform in this branch of the law is effected, even though such a process makes for slower progress. As Nigeria is a Federation, the experience of other Federations can also be studied. The American Restatement[3] will serve a useful purpose; so also will a study of the operation of the concept in Australia. The discussions of the Conference of Commissioners on Uniformity of Legislation in Canada on the reform and codification of the Law of domicil are also invaluable in this connection.[4]

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1. First Report, Cmd. 9068 (1954); Seventh Report Cmnd. 1955 (1963)

2. See Cmd. 9678 (1956)

3. Conflict of Laws, Tentative Draft No. 2 (1954); Revision of Restatement First Draft (1957)

4. See Proceedings of the Annual Meetings of the Conference, 39th Annual Meeting (1957) p.153 et seq., also (1959) p.91 et seq., (1960) p.104 et seq., (1961) p.139

A simplification of the rules of the law of domicil involves that abolition of out of date rules, the liberalisation of the factors determining domicil and the formulation of new rules to meetthe needs of new situations. The Private International Law Committee set out to cure two serious defects in the Law of domicil and consequently recommended the abolition of the doctrine of the revival of the domicil of origin. Such an innovation produces the simplification needed and in the place of this doctrine can be substituted that of the continuance of an existing domicil, which is widely favoured in the United States. The Draft Code of the Committee still resorts to intent and defines domicil in its Article 2 as the country in which a person has his home and intends to live there permanently.[1] Perhaps the suggestion that domicil be equated with habitual residence[2] may remove the difficulties attendant on the proof of intention in this branch of the law. Such an equation of domicil with habitual residence will also tend to liberalise that rigid element of "residence" in the determination of domicil. It will be recalled that it was the difference between the common law concept of domicil and the continental doctrine of habitual residence that prevented the Private International Law Committee from recommending the adherence of Her Majesty's Government to the Hague Convention of 1951.

As most matters which admit of the operation of the personal law

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1. See also the para. 1 of the revised draft in part C of my Appendix II infra.

2. See Castel, Private International Law (1960) 69; also Graveson, "Law of Domicile in the Twentieth Century" Sheffield Jubilee Lectures (1960) 9

are governed by the customary law of the de cujus, such an equation of domicil with habitual residence will not cause very material changes in the Nigerian legal systems. The substitution will affect only those areas in which domicil plays an important role at the moment, i. e. in matters and to classes of persons subject to the general law and not to customary law. Under the present law, an Ibo from Onitsha who habitually resides in Lagos but domiciled in the Eastern Region, has questions relating to his personal relationships determined by Onitsha customary law in matters subject to customary laws; and for matters under the general law, the questions are determinable by the general law of the Eastern Region. If domicil is equated with habitual residence, matters subject tocustomary law will continue to be governed by Onitsha customary law; for matters under the general law, the laws of the Federal territory will replace those of the Eastern Region.[1]

The next major problem is the clarification of obscure points in the existing law and the formulation of new rules to meet new situations. There is a great deal of uncertainty in the law of

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1. At the present moment, the law of the Eastern Region on matters which admit of the operation of domicil are substantially the same as that of the Federal territory and the other regions.

domicil as regards such matters as the law that governs the capacity to acquire a new domicil, the relationship between legitimation and domicil, the domicil of dependants of a dependent person e.g. a lunatic, and the domicil of minors without parents. There are also the questions relating to the need for a separate domicil for married women[1] and for attributing domicil to legal entities such as corporations. All these aspects have to be examined with the aim of making the rules clearer or conform with the needs of modern social conditions. The effect of the constitutional changes on the concept of domicil must also be appreciated. Recently the legal duality of a federation has been imposed on the former unitary concept of domicil in Nigeria. This calls for a new and two-dimensional concept of the law of domicil, which, in addition to the traditional approach, will provide for a federal domicil. It is to be hoped that when reforms in the law of domicil is being considered in Nigeria, the recent trend in Australia culminating in the Matrimonial Causes Act 1959 will be followed in establishing a federal domicil for matters within the exclusive legislative competence of Parliament or, at least, for some of those matters. The question whether there should be a federal domicil for certain purposes or a regional domicil for all purposes can also be considered

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1. A similarity can be drawn between customary law and the "unity of domicil" rule as a married woman is subject to the customary laws of her husband.

from the customary law aspect. Matters which admit of the operation of the concept of domicil are governed by customary law, if the de cujus were subject to such a law. Such a customary law can be determined without reference to domicil; for there are rules determining those who are members of a particular ethnic group and subject to its laws. Domicil operates in this connection merely as "the first part of accumulative choice of jurisdiction rule", the second part of which is related to the particular customary or religious law.[1] Thus as the general law of any region or the federal territory will determine matters subject to customary laws by the particular customary law of the de cujus, it is irrelevant in which region he happens to be domiciled.[2] Since customary laws cut across regional boundaries, it is unnecessary to advert to the regional membership of the de cujus and his territorial lex domicilii. For example a person subject to customary laws is not held to be legitimate under such a law because he is domiciled in the Eastern, Northern or Western Region but because of his membership of the particular ethnic group, i.e. being a Yoruba or an Ibo man. Therefore the various customary laws are not regarded as being part of the law of a particular region but as part of the laws of Nigeria as a whole.

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1. See Graveson, "The Recognition of Foreign Divorce Decrees" (1951) 37 T.G.S. 149, 154.

2. This relates to inter-regional conflicts as opposed to international conflicts.

A P P E N D I C E S

APPENDIX I

ANNOTATED TEXT OF THE CITIZENSHIP LEGISLATION

THE CONSTITUTION OF THE FEDERAL REPUBLIC.

1963, No. 20

AN ACT TO MAKE PROVISION FOR THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA.

Commencement [1st October, 1963]

Having firmly resolved to establish the Federal Republic of Nigeria,

With a view to ensuring the unity of our prople and faith in our fatherland,

For the purpose of promoting inter-African co-operation and solidarity,

In order to assure world peace and international understanding, and

So as to further the ends of liberty, equality and justice both in our country and in the world at large,

We the people of Nigeria, by our representatives here in Parliament assembled, do hereby declare, enact and give to ourselves the following Constitution:-

CHAPTER I

THE FEDERATION AND ITS TERRITORIES

Effect of this Constitution

1. This Constitution shall have the force of law throughout Nigeria and, subject to the provisions of section 4 of this Constitution, if any other law (including the constitution of a Region) is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Establishment of the Federal Republic

2. Nigeria shall be a Federation comprising Regions and a Federal territory, and shall be a Republic by the name of the Federal Republic of Nigeria.

Territories of the Federation.

3.-(1) There shall be four Regions, that is to say, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-Western Nigeria.

(2) The Regions and the Federal territory shall consist of the areas comprised in those territories respectively on the thirtieth day of September, 1963.

Alteration of this Constitution.

4.-(1) Parliament may alter any of the provisions of this Constitution :

Provided that, in so far as it alters any of the provisions of this section, sections, 1, 2, 5, 6, 18 to 36,[1] 38, 41, 42, 43, 50, 51, 52, 62, 67 to 94, 104 to 113, 115, 117, 119, 120, 122 to 125, 127, 129, 130, 133 to 147, 150, 152, 154 to 161, 166 and the Schedule to this Constitution or (in so far as they apply to any of those provisions) sections 66 and 165 of this Constitution, an house of at least three Regions has passed a resolution signifying consent to its having effect.

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1. Sections 18 to 33 (Chapter III) deal with the Fundamental Rights.

CHAPTER II

CITIZENSHIP.

Persons who become citizens on 1st October, 1960.

7.-(1) Every person who, having been born[1] in the former Colony[2] or Protectorate[3] of Nigeria, was on the thirtieth day of Septemner, 1960 a citizen of the United Kingdom and Colonies[4] or a British protected person[5] shall become a citizen of Nigeria on the first day of October 1960.[4]

Provided that a person shall not become a citizen of Nigeria by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Nigeria.[5]

(2) Every person who, having been born[1] outside the former Colony[2] and Protectorate[3] of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies[4] or a British protected person[5] shall, if his father[6] was born in the former Colony or Protectorate

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1. As to births on ships and aircraft, see s. 17(2) infra; also Nigerian Citizenship Act 1960 s.2(2).

2. For definition, see Colony of Nigeria Boundary Order in Council 1913.

3. For definition, see Nigeria (Constitution) Order in Council, 1954-60, s. 2(1)

4. Under and by virtue of the British Nationality Acts 1948 and 1958.

5. For definition, see s. 17(1) infra; see also British Protectorate etc. Order in Council 1949-60 ss. 9, 11, 13, First and Third Schedules.

4. In relation to persons connected with the Northern Cameroons, this section is to be read in conjunction with s.10 infra.

5. As to persons affected by this proviso, see s.8(1) infra and Nigerian Citizenship Act s.3A(1) under which they can register as citizens.

6. i.e. father of a legitimate child or a child legitimated prior to

and was a citizen of the United Kingdom and Colonies or a British protected person on the thirtieth day of September, 1960, (or, if he died before that date, was such a citizen or person at the date of his death or would have become such a citizen or person but for his death)[7] become a citizen of Nigeria on the first day of October, 1960.

Persons entitled to be registered as citizens.

8.-(1) Any person who, but for the proviso to subsection (1) of section 7 of this Constitution, would be a citizen of Nigeria by virtue of that subsection shall be entitled,[1] upon making application before the first day of October 1962,[2] in such manner[3] as may be prescribed by Parliament, to be registered as a citizen of Nigeria.[4]

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.[5]

September 30, 1960 (or May 31, 1961 for persons connected with the Northern Cameroons; see s. 10(infra.) As to legitimacy in Nigerian Law, see Lawal v. Younan & Sons (1961) 1 All N.L.R. 245.

7. In relation to a father who died before January 1, 1949

1. i.e. as of right; but see Nigerian Citizenship Act s.3A(1)

2. See however ibid s. 3A(1) which omits the time-limit

3. see ibid, Third Schedule, Form A.

4. In relation to persons connected with the Northern Cameroons, this section is to be read in conjunction with s.10 infra.

5. See also Nigerian Citizenship Act 1960, s.3A(2)

(2) Any woman, who on the thirtieth day of September, 1960[1] was a citizen of the United Kingdom and Colonies[2] or a British protected person[3] and who is or has been married[4] to a person:-

(a) who becomes a citizen of Nigeria by virtue of section 7 of this Constitution; or

(b) who, having died before the first day of October, 1960,[5] would, but for his death, have become a citizen of Nigeria by virtue of that section,

shall be entitled,[6] upon making application in such manner[7] as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(3) Any woman who is or has been married[8] to a person who becomes a citizen of Nigeria by registration under subsection (1) of this section and is at the date of such registration a citizen of the United Kingdom and Colonies[9] or a British protected person[10] shall be entitled[11] upon

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1. In relation to persons connected with the Northern Cameroons, see s.10 infra.
2. Under and by virtue of the British Nationality Acts 1948 and 1958.
3. For definition, see s.17 (1) infra; see also British Protectorate etc. Orders in Council 1949-60 ss. 9, 11, 13, First and Third Schedules.
4. The marriage must be valid accorording to the laws of Nigeria.
5. June 1, 1961 in relation to persons connected with the Northern Cameroons, s. 10 infra.
6. As of right; but see Nigerian Citizenship Act 1960 s.3B.
7. See ibid, Third Schedule, Form B.
8. The marriage must be valid according to the laws of Nigeria.
9. Under and by virtue of the British Nationality Acts 1948 and 1958.
10. For definition, see s.17(1) infra; see also British Protectorate etc. Orders in Council 1949-60 ss. 9, 11, 13, First and Third Schedules.
11. i.e. as of right, see Nigerian Citizenship Act 1960 s.3C(1)

upon making application within such time[1] and in such manner[2] as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(4) Any woman who on the thirtieth day of September, 1960,[2A] was a citizen of the United Kingdom and Colonies[3] or a British protected person[4] and who has been married[5] to a person who, having died before the first day of October 1960,[6] would, but for his death, be entitled to be registered as a citizen of Nigeria under subsection (1) of this section, shall be entitled upon making application before the first day of October, 1962, in such manner[7] as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions of section 7 of this Constitution.

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1. i.e. within 12 months or such extended period as the Minister may allow after the date of the husband's registration; see ibid.

2. ibid. s.3C(2) and Third Schedule, Form B.

2A. May 31, 1961 in relation to persons connected with the Northern Cameroons, see s.10 infra.

3. Under and by virtue of the British Nationality Acts 1948 and 1958.

4. For definition, see s.17(1) infra; see also British Protectorate etc. Orders in Council 1949-60 ss. 9, 11, 13, First and Third Schedules.

5. The marriage must be valid according to the laws of Nigeria.

6. June 1, 1961 in relation to persons connected with the Northern Cameroons see s.10 infra.

7. See Nigerian Citizenship Act, 1960, s.3D (1) for the re-enactment of this provision. For the form of application, see ibid s.3D(2) and Third Schedule, Form B.

Special provisions as to Northern Cameroons[1]

10.-(1) For the purpose of determining the status of persons connected with the part of Northern Nigeria which was not included in the Federation[2] on the thirty-first day of May, 1961, the foregoing provisions[3] of this Chapter and subsection (3) of section 17 of this Constitution shall have

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1. Special provisions as to the Northern Cameroons were first introduced into the Federal Constitution of 1960 as s.12A by the Nigeria Constitution First Amendment Act, No. 24 of 1961 (now repealed by the Constitution (Transitional Provisions Act 1963.) Section 12A stated:-

   Citizenship in case of Northern Cameroons
   12A(1) Subject to the provisions of this section, the provisions of sections 7 to 12 (inclusive) of this Chapter shall, with all necessary modifications, extend and apply to every person who immediately before the coming into operation of the Nigeria Constitution First Amendment Act 1961 -
   (a) is, or is deemed to be a citizen of the United Kingdom and Colonies or a British protected person by reason of his birth in or outside as the case may be the former trust territory of the Northern Cameroons, or
   (b) being a woman is, or has been married to any such citizen or British protected person

   (2) Any reference in this Chapter to Nigeria shall as from the date of the coming into operation of the Nigerian Constitution First Amendment Act, 1961, include the Northern Cameroons.

   (3) Any reference to a particular date in this Chapter shall so far as a person affected by subsection (1) of this section is concerned, be extended by a period of nine months from the particular date.

2. i.e. the Northern Cameroons.

3. i.e. ss. 7, 8, 9, *supra*

effect as if -

(a) for any reference to a particular date there were substituted a reference to the last day of the period of eight months beginning with the day next following that date,[1] and

(b) for any reference to the former Colony or Protectorate of Nigeria (other than the second reference in section 7) there were substituted a reference to the part aforesaid,[2] and

(c) that other reference included a reference to the part aforesaid[2]

(2) Nothing in subsection (1) of this section shall prejudice the status of any person who is or may become a citizen of Nigeria apart from that subsection[3].

Persons naturalised or registered before 1st October, 1960

9. Any person who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies -

(a) having become such a citizen under the British Nationality Act by virtue of his having been naturalised in the former Colony[4] or Protectorate[5] of Nigeria as a British subject[6] before that

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1. i.e. for September 30, 1960 and October 1, 1960 substitute May 31, 1961 and June 1, 1961 respectively.

2. i.e. the Northern Cameroons.

3. This subsection was not in s.12A of the Federal Constitution 1960.

4. For definition, see Colony of Nigeria Boundary Order in Council, 1913.

5. For definition, see Nigeria (Constitution) Order in Council, 1954-60, s.2(1).

6. See the British Nationality and Status of Aliens Acts 1914-43 (Imperial) s.8; Naturalisation of Aliens Ordinance, Cap. 146, Laws of Nigeria, 1948 ed; British Nationality Act, 1948 ss. 12(1) (b), 32(b).

Act came into force[1A] or

(b) having become such a citizen by virtue of his having been naturalised[1] or registered[2] in the former Colony or Protectorate of Nigeria under that Act,

shall be entitled, upon making application before the first day of October 1962, in such manner[3] as may be prescribed by Parliament, to be registered as a citizen of Nigeria:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married)[4] may not make an application under this sub section himself but an application may be made on his behalf by his parent or guardian.[5]

Persons born in Nigeria after 30th September, 1960.

11. Every person born[6] in Nigeria[7] after the thirtieth day of September, 1960, shall become a citizen of Nigeria at the date of his birth.[8]

1A. i.e. January 1, 1949,

1. British Nationality Act, 1948 s.10 and Second Schedule.

2. ibid. ss. 6-9

3. See Nigerian Citizenship Act, 1960s.3E for the re-enactment of this provision. For the form of application, see ibid. Third Schedule, Form C.

4. The marriage must be valid according to the laws of Nigeria.

5. This proviso is not included in the re-enactment of ibid s.3E.

6. As to births in ships and aircraft, see s.17(2) infra; also Nigerian Citizenship Act 1960 s.2(2).

7. Includes the Northern Cameroons after May 31, 1961; see s.10 supra and s.12A Federal Constitution, 1960.

8. i.e. a citizen by birth.

Provided that a person shall not become a citizen of Nigeria by virtue of this section if at the time of his birth[1] -

(a) neither of his parents was a citizen of Nigeria and his father[2] possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to the Federation,[3] or

(b) his father[2] was an enemy alien and the birth occurred in a place then under occupation by the enemy.

Persons born outside Nigeria after 30th September, 1960.

12. A person born[4] outside Nigeria[5] after the thirtieth day of September, 1960 shall become a citizen of Nigeria at the date of his birth[6] if at that date[7] his father[2] is a citizen of Nigeria otherwise than by virtue of this section or subsection (2) of section 7 of this Constitution.

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1. In the case of a posthumous child, see s.17(3) infra.

2. i.e. father of a legitimate child. As to legitimacy in Nigerian law, see Lawal v. Younan & Sons (1961) 1 All. N.L.R. 245.

3. See the Diplomatic Immunities and Privileges Act, No. 42 of 1962

4. As to births in ships and aircraft, see s. 17(2) infra; also Nigerian Citizenship Act, 1960 s.2(2)

5. Includes the Northern Cameroons after May 31, 1961; see s. 10 supra and s.12A Federal Constitution, 1960.

6. i.e. a citizen by descent.

7. In the case of a posthumous child, see s. 17(3) infra.

Dual citizenship

13. Any person who, upon his attainment of the age of twenty-one years, was a citizen of Nigeria and also a citizen of some country other than Nigeria shall cease to be a citizen of Nigeria upon his attainment of the age of twenty-two years[1] (or, in the case of a person of unsound mind, at such later date as may be prescribed by Parliament)[2] unless he has renounced his citizenship of that other country, taken the oath of allegiance[3] and, in the case of a person who is a citizen of Nigeria by virtue of subsection (2) of section 7 of this Constitution, has made such declaration of his intentions concerning residence or employment as may be prescribed by Parliament.[4]

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed by Parliament.[5]

Commonwealth citizens.

14.-(1) Every person who under this Constitution or any Act of Parliament[6] is a citizen of Nigeria or under any enactment for the time being in force in any country[7] to which this section applies is a citizen of that country

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1. See Nigerian Citizenship Act, 1960, s.3F for the re-enactment of this provision.
2. See ibid. s.3F (b), (c).
3. As prescribed by the Oaths Act 1963, First Schedule.
4. See Nigerian Citizenship Act, 1960, s.3F and Third Schedule Form E. Form E however relates to citizens by registration.
5. See ibid s.3F(a) and Third Schedule, Form D.
6. The Nigerian Citizenship Acts 1960 and 1961.
7. See subsection (3) infra

shall by virtue of that citizenship have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act[1] or who continues to be a British subject under section two of that Act[2] shall by virtue of that status have the status of a Commonwealth citizen.

(3) The countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, the Federation of Rhodesia and Nyasaland,[3] Ceylon, Ghana, the Federation of Malaya,[4] the State of Singapore,[4] the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda and such other countries as may be prescribed by Parliament.[5]

Criminal liability of Commonwealth citizens.

15.-(1) A Commonwealth citizen[6] who is not a citizen of Nigeria or a citizen of the Republic of Ireland who is not a citizen of Nigeria shall not be guilty of an offence against any law in force in Nigeria[7] by reason

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1. See British Nationality Act 1948, s.13 and Third Schedule.
2. Relating to citizens of the Republic of Ireland, who remain, by claim, British subjects.
3. The Federation was dissolved on December 31, 1963.
4. Now included in the Malaysia Federation.
5. Zanzibar and Kenya are now members of the Commonwealth.
6. see s. 14(1) supra.
7. Includes the Northern Cameroons after May 31, 1961.

of anything done or omitted in any part of the Commonwealth[1] other than Nigeria or in the Republic of Ireland or in any foreign country[2] unless-

(a) the act or omission would be an offence if he were an alien[3]; and

(b) in the case of an act or omission in any part of the Commonwealth or in the Republic of Ireland, it would be an offence if the country in which the act was done or the omission made were a foreign country.[2]

(2) In this section "foreign country" means a country (other than the Republic of Ireland) that is not part of the Commonwealth.[4]

Powers of Parliament.

16. Parliament may make provision -

(a) for the acquisition of citizenship of Nigeria by persons who do not become citizens of Nigeria by virtue of the provisions of this Chapter[5];

(b) for depriving of his citizenship of Nigeria any person who is a citizen of Nigeria otherwise than by virtue of subsection (1) of section 7 or section 11 of this Constitution[6]; or

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1. i.e. in the countries mentioned in s.14(3) supra, Zanzibar and Kenya, see s.165 (1) infra.

2. For definition, see subsection (2) infra

3. For definition, see s.17(1) infra.

4. i.e. Nigeria, Zanzibar, Kenya and the other countries listed in s.14(3) supra; see s.165 (1) s.v. "Commonwealth", infra.

5. See Nigerian Citizenship Act, 1960, Part II.

6. See ibid, Part III, ss. 8, 9, 10, 11.

(c) for the renunciation by any person of his citizenship of Nigeria[1].

Interpretation.

17.-(1) Without prejudice to this generality of section 165 of this Constitution, in this Chapter -

"alien" means a person who is not a citizen of Nigeria, a Commonwealth citizen other than a citizen of Nigeria, a British protected person or a citizen of the Republic of Ireland; "The British Nationality Act" means the Act of the Parliament of the United Kingdom entitled the British Nationality Act, 1948[2]; and "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act[3]

(2) For the purposes of this Chapter a person born in a ship or aircraft registered[4] in Nigeria or belonging to the Government of the Federation shall be deemed to have been born in Nigeria.

(3) Any reference in this Chapter to the National status of the father[5] of a person at the time of that person's birth shall, in relation to a

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1. See ibid, Part III, ss. 7, 11.

2. 11 & 12 Geo. 6 ch. 56.

3. See British Nationality Act 1948, s.32(1) and the British Protectorates, Protected States and Protected Persons Orders 1949-63.

4. As to the registration of ships, see Merchant Shipping Act, No. 30 of 1962, Part IX; as to the registration of aircraft, see Colonial Air Navigation Orders in Council, 1955-58; Arts. 3-10 in Laws of the Federation and Lagos, 1958 ed., Vol XI, p.413 et seq

5. i.e. father of a legitimate or legitimated child. As to legitimacy in Nigerian law, see Lawal v. Younan & Sons (1961) 1 All N.L.R. 245.

person born after the death of his father,[1] be construed as a reference to the national status of the father[1] at the time of his father's death; and where that death occurred before the first day of October, 1960,[2] and the birth occurred after the thirtieth day of September, 1960,[2] the national status that the father[1] would have had if he had died on the first day of October, 1960[2] shall be deemed to be his national status at the time of his death.

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Interpretation, etc. - general.

165.-(1) In this Constitution, unless it is otherwise expressly provided or required by the context -

"Act of Parliament" means any law made by Parliament;

"the Advisory Council" means the Advisory Council on the Prerogative of Mercy of the Federation;

"chieftaincy question" means any question as to the validity of the selection, appointment, approval of appointment, recognition, installation grading, deposition or abdication of a chief;

"the Commonwealth" means Nigeria, any country to which section 14 of this Constitution applies and any dependency of any such country;

"the Concurrent Legislative List" means the list in Part II of the Schedule to this Constitution;

"the Exclusive Legislative List" means the list in Part I of the Schedule to this Constitution;

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1. i.e. father of a legitimate or legitimated child. As to legitimacy in Nigerian law, see Lawal v. Younan & Sons (1961) 1 All N.L.R. 245.
2. May 31, 1961 and June 1, 1961 in relation to persons connected with the Northern Cameroons, see supra s. 10

"financial years" means any period of twelve months beginning on the first day of April in any year or such other date as Parliament may prescribe;

"the Legislative Lists" means the Exclusive Legislative List and the Concurrent Legislative List;

"oath" includes affirmation;

"the oath of allegiance" means such oath of allegiance as may be prescribed by Parliament;[1]

"Parliament" means the Parliament of the Federation ;

"the President" means the President of the Republic;

"produce" means such animal or vegetable products, whether processed or in a natural state (other than tobacco, hides or skins) as may with the consent of the Governments of the Regions be designated by the President by order ;

"the public service of the Federation" means the service of the Republic in a civil capacity in respect of the government of the Federation ;

"quarter" means a quarter of a financial year;

"the state" means the Government of the Federation or a Region, and "office of emolument under the state" includes office as the Governor of a Region or as a member of the Government of the Federation or a Region so however that a person shall not be treated as holding an office of emolument under the state by reason only of his receiving a pension or other like benefit in respect of such an office; and

"territory" means a Region or the Federal territory.

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1. See Oaths Act 1963, First Schedule.

Short title and commencement.

166.-(1) This Act may be cited as the Constitution of the Federation and, subject to the provisions of section 127 of this Constitution, shall come into force on the first day of October, 1963.

(2) On and after the date mentioned in subsection (1) of this section, Chapter II of this Constitution (except section 10) shall be deemed to have come into force on the first day of October, 1960, and section 10 of this Constitution shall be deemed to have come into force on the first day of June, 1961.

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No. 43 of 1960

AN ACT RELATING TO CITIZENSHIP OF NIGERIA.

Commencement [1st October, 1960]

43 of 1960

9 of 1961

57 of 1961

1 of 1962

L.N. 10 of 1962

L.N. 171 of 1962

23 of 1963.

Preamble - WHEREAS it is proposed that, upon the relinquishment by Her Majesty's Government in the United Kingdom of their

responsibility for the Government of the Federation of Nigeria,[1] the Constitution[2] of Nigeria will contain certain provisions relating to citizenship of Nigeria[3] including provisions for the acquisition of citizenship by birth[4] and by descent[5]

And WHEREAS it is further proposed that under the said Constitution it will continue to be within the competence of the Legislature of the Federation of Nigeria[6] to make laws consistent therewith for the acquisition and termination[7] of and other matters relating to citizenship:

And WHEREAS it is considered expedient to provide for the acquisition of citizenship by registration and naturalisation,[8] the termination of citizenship[9] and other matters relating to citizenship generally[10] with the intent that such provisions will come into operation simultaneously with the coming into operation of the proposed Constitutional provisions:-[11]

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1. i.e. on October 1, 1960.
2. Constitution of the Federation of Nigeria, 1960; S.I.1960 No.1652; L.N. 159 of 1960
3. ibid Chapter II.
4. ibid ss. 7(1), 10; now in Republican Constitution, No. 20 of 1963, ss. 7(1), 11.
5. Federal Constitution 1960, ss.7(2), 11; now in Republican Constitution, No. 20 of 1963, ss.7(2), 12.
6. See Federal Constitution s.15(a) ; Republican Constitution s.16(a)
7. Federal Constitution s.15(b), (c); Republican Constitution s.16(b), (c).
8. See Part II, infra, as amended by the Nigerian Citizenship Act, 1961.
9. See Part III, infra. as amended by the Nigerian Citizenship Act, 1961
10. See Part IV, infra.
11. i.e. October 1, 1960; see Nigerian(Constitution) Order in Council, 1960 s.1(2); Republican Constitution s.166(2)

Enactment. NOW, THEREFORE, BE IT ENACTED by the Legislature of the Federation of Nigeria as follows -

PART I - PRELIMINARY

Short title, commencement and application. 57 of 1961

1. (1) This Act may be cited as the Nigerian Citizenship ~~Ordinance~~ Act 1960, and shall come into operation on the 1st October, 1960.

(2) This Act shall apply throughout the Federation.

Interpretation 57 of 1961

2. (1) In this Act, unless the context otherwise requires -

"alien" means a person who is not a Commonwealth citizen,[1] a protected person[2] or a citizen of the Republic of Ireland;

"certificate of naturalisation" means a certificate of naturalisation granted under this Act[3];

"the Commonwealth" means Nigeria, any country mentioned in subsection (5) of section 3[4] and any dependency of any such country;

"the Constitution" means the Constitution of Nigeria;[5]

"foreign country" means a country (other than the Republic of Ireland) that is not part of the Commonwealth;

"the Minister" means the Minister charged with responsibility for matters relating to citizenship of Nigeria;[6]

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1. See Republican Constitution, No. 20 of 1963, s. 14(1), (3).
2. Cf. ibid s.17(1) s.v. "alien", where the definition only excepts British protected persons.
3. See s.6 and Second Schedule, infra.
4. Cf. Republican Constitution s. 14(3) for a more recent list of other Commonwealth countries.
5. See Act No. 20 of 1963.
6. Minister of Internal Affairs.

"minor" means a person who has not attained the age of twenty-one years, and when used adjectivally shall be construed accordingly;

"Nigerian consulate" means an office of a consular officer of the Government of the Federation where a register of births is kept, or where there is no office, such office as may be prescribed;

"protected person" means any person who under any enactment for the time being in force in any country that is part of the Commonwealth is a British protected person[1] or a protected person of that country.

(2) For the purposes of this Act a person born in a ship or aircraft registered[2] in Nigeria or belonging to the Government of the Federation shall be deemed to have been born in Nigeria. 57 of 1961

(3) A person shall for the purposes of this Act be of full age if he has attained the age of twenty-one years and of full capacity if he is not of unsound mind. 57 of 1961

(4) For the purposes of this Act a person shall be deemed not to have attained a given age until the commencement of the relevant anniversary of the day of his birth. 57 of 1961

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1. For definition, see Republican Constitution, s.17(1).

2. As to the registration of ships, see Merchant Shipping Act, No. 30 of 1962, Part IX; as to the registration of aircraft, see the Colonial Air Navigation Orders, 1955-1958, S.I. 1955 No. 711, as amended, in Laws of the Federation & Lagos, 1958 ed., Vol. XI p.413 et seq.

PART II - CITIZENSHIP BY REGISTRATION & NATURALISATION

Registration of certain persons as citizens

3. (1) Subject to the provisions of subsection (4), a citizen of country mentioned in subsection (5) or of the Republic of Ireland[1] or a protected person,[2] being a person of full age and capacity on making application therefore to the Minister in the prescribed manner,[3] may[4] be registered as a citizen of Nigeria if he satisfied the Minister -

(a) that he is of good character;

(b) that he has a sufficient knowledge of a language in current use in Nigeria; and

(c) that he is ordinarily resident[5] in Nigeria and has been so resident throughout the period of five years, or such shorter period as the Minister may[4] in the special circumstances of any particular case accept, immediately preceding his application

(2) Subject to the provisions of subsection (4), any person of

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1. For definition, see s.2(1) supra
2. For definition, see s.2(3), (4), supra
3. For the form of application, see Third Schedule Form F, infra
4. As to the absolute character of the Minister's discretion, see s.13, infra
5. This expression is not definied in the Act. For cases where its meaning has been considered, see Govt. v. Cimitian [1922] 1 A.C.105; Stransky v. Stransky [1954] 2 All E.R. 536, 540 et seq; R. v. Edgehill [1963] 1 All E.R. 181, 184.

full age and capacity[1] born[2] outside Nigeria whose father[3] was at the time of that person's birth[4] a citizen of Nigeria by descent[5] may[6], on making application therefor to the Minister in the prescribed manner,[7] be registered as a citizen of Nigeria.

(3) Subject to the provisions of this Act[8], a woman who is or has been married[9] to a citizen of Nigeria, or who has been married[9] to a person who would but for his death have become a citizen of Nigeria may[10], on making application therefor to the Minister in the prescribed manner,[11] be registered as a citizen of Nigeria whether or not she is of full age and capacity.[12] 9 of 1961 57 of 1961

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1. For definition, see s. 2(3), (4), supra.

2. As to births in ships and aircraft, see s.2(2) supra

3. i.e. father of a legitimate child. As to legitimacy in Nigerian law, see Lawal v. Younan & Sons (1961) 1 All. N.L.R. 245, 250

4. In the case of a posthumous child, see s.12, infra.

5. By virtue of ss. 7(2), 12 of the Republican Constitution, supra

6. As to the absolute character of the Minister's discretion, see s.13, infra

7. No form of application has yet been prescribed.

8. Amended by No. 9 of 1961, s.3. This sub-section does not appear to be subject to s.6, infra.

9. The marriage must be valid according to Nigerian law.

10. By virtue of Republican Constitution, ss. 7(1), (2), 8(1), supra.

11. As to the absolute character of the discretion of the Minister, see s.13, infra.

12. For the form of application, see Third Schedule, Form B, infra.

13. For definition, see s.2(3), (4), supra.

(4) A person shall not be registered as a citizen of Nigeria under this section unless and until he has made a declaration in writing of his willingness to renounce any other nationality or citizenship he may possess and has taken an oath of allegiance prescribed by the Oaths Act 1963.[1] 23 of 1963

(5) (a) The following are the countries[1A] hereinbefore referred to - that is to say, the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, the Federation of Rhodesia and Nyasaland[2], Ceylon, Ghana, the Federation of Malaya[3] and the State of Singapore[3]. 1 of 1962

(b) The Governor-General[4] may by order amend paragraph (a) of this subsection for the purpose of adding any country to the countries mentioned therein.[5]

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1. See Oaths Act, 1963, First Schedule.

1A. For a more recent list of countries in the Commonwealth, see Republican Constitution, s.14(3).

2. The Federation dissolved into its component territories on December 31, 1963.

3. Now included in the Malaysia Federation.

4. Now President of the Federal Republic.

5. See Republic of the Union of South Africa Act, No. 1 of 1962; Zanzibar and Kenya may now be added.

Application for registration as a special case by person born in Nigeria. 9 of 1961 57 of 1961

3A (1)[1] Any person born in the former Colony[2] or Protectorate[3] in Nigeria who, but for the fact that none of his parents or grandparents was born in the former Colony[2] or Protectorate[3] of Nigeria, would on the 1st day of October, 1960 have become a citizen of Nigeria by birth,[4] may apply for registration as a citizen of Nigeria in the Form A in the Third Schedule to this Act.

(2) Every application under this section by an infant[5] not being a married woman or a widow, may be made by the parent or guardian of the infant[5] as the case may be; but nothing in this or any other Act shall be construed so as to require the application of an infant[5] who is a married woman or a widow to be made by any person on her behalf.[6] 57 of 1961

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1. This subsection re-enacts s.8(1) of the Republican Constitution, but with variations.
2. As defined by the Colony of Nigeria Boundaries Order in Council, 1913.
3. As defined by the Nigeria (Constitution) Order in Council, 1954-60 S.I. 1954, No. 1146, as amended, s.2(1).
4. By virtue of Republican Constitution s. 7(1)
5. Not defined; but see the definition of "minor"; s.2(1) supra
6. See also Republican Constitution s.8(1), proviso.

Application by married woman or widow as special case — 9 of 1961, 57 of 1961

3B.[1] Any woman who on the 30th day of September, 1960 being a citizen of the United Kingdom and Colonies[2] or a protected person[3] and married[4] or having been married[4] to a person who on the 1st day of October, 1960 by reason of his birth[5] or the birth of his father[6] is a citizen of Nigeria, or but for his death before such last-mentioned date the husband would have become a citizen of Nigeria by birth[5] or by the birth of his father[6], may apply for registration as a citizen of Nigeria in the Form B in the Third Schedule to this Act.

Application by wife of citizen by registration as special case — 9 of 1961

3C.[7] (1) Any woman married[4] or having been married[4] to a person who by reason of his birth in Nigeria before the 1st day of

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1. This section re-enacts s. 8(2) of the Republican Constitution, but with variations.
2. By virtue of the British Nationality Acts 1948-and 1958 (Imperial)
3. See Republican Constitution s. 8(2) which limits the pre-requisite status to that of a British protected person.
4. The marriage must be valid according to Nigerian law.
5. Under Republican Constitution s. 7(1)
6. Under ibid s. 7(2)
7. This section re-enacts s. 8(3) of the Republican Constitution, but with variations.

October, 1960 becomes a citizen of Nigeria by registration on or after the 1st day of October, 1960,[1] and being herself a citizen of the United Kingdom and Colonies[2] or a protected person[3] at the date of such registration, may apply to be registered as a citizen of Nigeria within 12 months or such extended period as the Minister may[4] allow after the date of registration of her husband as a citizen of Nigeria.

(2) Applications under this section may be made in the Form B in the Third Schedule to this Act. 9 of 1961 57 of 1961

Application by widow as special case. 9 of 1961

3 D.[5] (1) Subject to the provisions of this section, any woman who on the 30th day of September, 1960 being a citizen of the United Kingdom and Colonies[6] or a protected person[7] has been

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1. By virtue of Republican Constitution s. 8(1)
2. By virtue of the British Nationality Acts 1948 and1958 (Imperial)
3. See ibid s. 8(3) which limits the pre-requisite status to that of a British protected person.
4. As to the absolute character of the Minister's discretion, see s. 13, infra
5. This section re-enacts s. 8(4) of the Republican Constitution, but with variations.
6. By virtue of the British Nationality Acts 1948 and 1958.
7. See Republican Constitution s. 8(4) which limits the pre-requisite status to that of a British protected person

married[1] to any person shall, if that person has died before the 1st October, 1960 and would have been, but for his death, entitled to have been registered[2] as a citizen of Nigeria, be herself entitled[3] to be registered as a citizen of Nigeria.

(2) Applications under this section shall be lodged with the Minister before the 1st day of October, 1962 and may be made in the Form B in the Third Schedule to this Act. 9 of 1961 57 of 1961

Application by naturalised citizen of United Kingdom and Colonies. 9 of 1961 57 of 1961

3. E.[4] Any person who on the 30th day of September, 1960 was a citizen of the United Kingdom and Colonies by reason of his naturalisation[5] or registration[6] as the case may be in the former Colony[7] or Protectorate[8] of Nigeria, whether before or after the

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1. The marriage must be valid according to Nigerian Law.

2. By virtue of Republican Constitution s. 8(1) and s.3A (1), supra

3. i.e. as of right.

4. This section re-enacts s.9 of the Republican Constitution without its proviso.

5. By virtue of Cap. 146 Laws of Nigeria, 1948 ed; British Nationality and Status of Aliens Act 1914-43 s.8 (Imperial); British Nationality Act 1948 ss. 12(1) (b), 32(b), 10 and Second Schedule.

6. By virtue of ibid ss. 6-9

7. As defined by the Colony of Nigeria Boundaries Order in Council, 1913.

8. As defined by the Nigeria (Constitution) Order in Council, 1954-60, S.I. 1954, No. 1146, as amended, s.2(1)

passing of the British Nationality Act, 1948, shall be entitled[1] to registration as a citizen of Nigeria on application made by him before the 1st day of October, 1962 in the Form C in the Third Schedule to this Act.

Dual Citizenship or nationality — 9 of 1961, 57 of 1961

3F. Where any person is entitled to citizenship of Nigeria and to citizenship or nationality of any other country and by any enactment[2] or rule of law is required to elect whether to retain his Nigerian citizenship or the citizenship or nationality as the case may be of that other country, he shall when of the age of 21 years -

(a) if of sound mind and desirous of remaining a citizen of Nigeria and before he attains the age of 22 years, renounce his citizenship or nationality of that other country by such means as the Minister may prescribe,[3] or where renunciation is not possible under the law of the other country, make a declaration in the Form D in the Third Schedule to this Act, and thereupon take the prescribed oath of allegiance;[4] and where as a former

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1. i.e. as of right before October 1, 1962.
2. See Republican Constitution s.13.
3. Not yet prescribed.
4. Oaths Act 1963, First Schedule

citizen of the United Kingdom and Colonies[1] or a protected person[2] on the 30th day of September 1960, he became a citizen of Nigeria[3] by reason of the fact that his father[4] was born in the former Colony[5] or Protectorate[6] of Nigeria he shall, in addition, declare his intentions as to residence or employment, as the case may be, in the Form E[7] in the Third Schedule to this Act.

(b) if resident in Nigeria and of unsound mind to the satisfaction of the Minister, be deemed for the purposes of his citizenship of Nigeria to be under the age of 21 years; and where the person of unsound mind is, on such evidence as the Minister may[8] require, thereafter of sufficient mental capacity to understand the nature and quality of

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1. By virtue of British Nationality Acts 1948 and 1958.

2. The pre-requisite status required under s. 7(2) of the Republican Constitution is that of a British protected person; see next note.

3. By virtue of Republican Constitution, s. 7(2) i.e. a citizen by descent.

4. i.e. father of a legitimate or legitimated child, As to legitimacy in Nigerian law see Lawal v. Younan & Sons (1961) 1 All N.R. 245, 250

5. As defined by the Colony of Nigeria Boundaries Order in Council, 1913.

6. As defined by the Nigeria (Constitution) Order in Council, 1954- 60, S.I. 1954, No. 1146, as amended, s.2(1).

7. Form E, however, relates to citizen by registration and not citizens by descent.

8. As to the absolute character of the Minister's discretion, see s.13, infra

his acts, he shall cease to be a citizen of Nigeria at the expiry of such time as the Minister may prescribe after considering the report on the case, unless the person shall within the prescribed time take the oath of allegiance[1] and do all such other acts as the case may require and as are prescribed for a person of sound mind under this section.

(c) if resident outside Nigeria and of unsound mind be deemed for the purposes of his citizenship of Nigeria to be under the age of 21 years unless the Minister on such evidence as he may[2] require is satisfied to the contrary; and if the person arrives in Nigeria[3] without having made his election, the person may at any time thereafter be dealt with as prescribed by this section.

Registration of minors.

4. (1) The Minister may[2] cause the minor[4] child of any citizen of Nigeria to be registered as a citizen of Nigeria upon application made in the prescribed manner[5] by a parent or guardian of the child.

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1. Oaths Act 1963, First Schedule.
2. As to the absolute character of the Minister's discretion, see s.13 infra
3. Includes the Northern Cameroons as from June 1, 1961.
4. For definition, see s.2(1) supra
5. No form of application has yet been prescribed.

(2) The Minister[1], in such circumstances as he thinks fit, may cause any minor[2] to be registered as a citizen of Nigeria.

Effect of registration as a citizen. 9 of 1961
57 of 1961

5. A person registered under this Part of this Act shall be a citizen of Nigeria by registration as from the date on which he is registered.

Naturalisation of aliens.

6. The Minister, if application therefor is made to him in the prescribed manner[3] by any alien of full age and capacity[4] who satisfies him that he is qualified under the provisions of the Second Schedule for naturalisation, may[1] grant to him a certificate of naturalisation[5], and the person to whom the the certificate is granted shall, on taking an oath of allegiance prescribed by the Oaths Act 1963, and on making a 23 of 1963 declaration in writing of his willingness to renounce any other nationality or citizenship he may possess and any claim to the protection of any other country[6], be a citizen of Nigeria by naturalisation as from the date on which that certificate is granted.

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1. As to the absolute character of the Minister's discretion, see s. 13 infra
2. For definition, see s.2(1), supra
3. For the form of application, see Nigerian Citizenship (Naturalisation) Regulations, 1961, L.N.11 of 1961, Second Schedules, Form A.
4. For definition, see s.2(3) (4) supra
5. For the form of certificate, see Nigerian Citizenship (Naturalisation) Regulations, 1961, L.N.11 of 1961, Second Schedule, Form B.
6. For the form of declaration, see ibid, Form C.

PART III - RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

Renunciation of Citizenship by reason of dual citizenship or nationality. 9 of 1961

7. (1) If any citizen of Nigeria of full age and capacity[1] who is also or on ceasing to be a citizen of Nigeria will become -

(a) a citizen of any country that is part of the Commonwealth[2] or of the Republic of Ireland; or

(b) a national of a foreign country,[3]

makes a declaration in the prescribed manner[4] of renunciation of citizenship of Nigeria, the Minister shall cause the declaration to be registered; and, upon the registration, that person shall cease to be a citizen of Nigeria;

Provided that the Minister may[5] withhold registration of any such declaration if it is made during any war in which Nigeria may be engaged by a person who is a national of a foreign country[3] or if in his opinion it is otherwise contrary to public policy.

(2) For the purposes of this section any woman who has been married shall be deemed to be of full age.

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1. For definition, see s.2(3), (4) supra
2. For the countries of the Commonwealth, see Republican Constitution s.14(3); also Zanzibar and Kenya.
3. For definition, see s.2(1), supra
4. No form has yet been prescribed.
5. As to the absolute character of the Minister's discretion, see s.13 infra; but note the limitation on the exercise of this particular discretion contained in this subsection.

Deprivation of citizenship on naturalisation or exercise of certain rights in other countries or failure to renounce other nationality or citizenship. 9 of 1961

8.(1) The Minister mayl by order deprive any person, other than a person who is a citizen of Nigeria by virtue of his having been born in Nigeria,[2] of his Nigerian citizenship if the Minister is satisfied that that person has at any time while a citizen of Nigeria and of full age and capacity[3] -

(a) acquired the nationality or citizenship of a foreign country[4] by any voluntary and formal act other than marriage; or

(b) voluntarily claimed and exercised in a foreign country[4] or in any other country[5] under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens[6] generally, any right available to him under the law of that country, being a right accorded exclusively to its own citizens,

and that it is not conducive to the public good that he should continue to be a citizen of Nigeria.

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1. As to the absolute character of the Minister's discretion, see s.13 infra; but note the limitation on the exercise of this particular discretion contained in this subsection.

2. i.e. those acquiring citizenship by virtue of Republican Constitution ss. 7(1), 8(1), 11; Cf. the legislative power in ibid s.16(b)

3. For definition, see s.2(3), (4), supra

4. For definition, see s.2(1) supra

5. i.e. the Republic of Ireland, countries listed in Republican Constitution s.14(3); Zanzibar and Kenya.

6. See Republican Constitution, s.14(1), (3)

(2) The Minister may[1] require any such citizen of Nigeria as is referred to in section 7 to renounce his nationality or citizenship of any other country within such period as the Minister may[1] specify and in the event of any such person failing to renounce such nationality or citizenship within the time specified the Minister may[1A] by order deprive that person of his citizenship of Nigeria.

(3) Upon an order being made under this section in respect of any person, he shall cease to be a citizen of Nigeria.

Deprivation of citizenship of citizens by registration and naturalised persons

9. (1) A citizen of Nigeria who is such by registration[2] or naturalisation[3] shall cease to be a citizen of Nigeria if he is deprived of that citizenship by an order of the Minister made under this section or section 10.

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1. As to the absolute character of the Minister's discretion, see s.13, infra.

1A. As to limitations on the exercise of this particular discretion, see Republican Constitution s.16(b).

2. By virtue of ss. 3, 3A, 3B, 3C, 3D, 3E, and 4, supra

3. By virtue of s.6, supra and Second Schedule, infra

(2) Subject to the provisions of this section, the Minister may[1] by order deprive any such citizen of his citizenship if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.

(3) Subject to the provisions of this section the Minister may[2] by order deprive any citizen of Nigeria who is such by naturalisation[3] of his citizenship if he is satisfied that that citizen -

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Nigeria; or

(b) has, during any war in which Nigeria was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(c) has within seven years after becoming naturalised been sentenced in any country to imprisonment for a term of not less than twelve months.

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1. As to limitations on the exercise of this particular discretion by the Minister, see sub-section (5) infra and Republican Constitution s.16(b)

2. As to the absolute character of the Minister's discretion, see s.13 infra; as to limitation of this particular discretion, see sub-section (5) infra and Republican Constitution s. 16(b).

3. By virtue of s.6 supra and Second Schedule, infra.

(4) The Minister[1] may by order deprive any citizen by naturalisation[2] of his citizenship of Nigeria if he is satisfied that that person has been ordinarily resident[3] in a foreign country[4] or foreign countries[4] for a continuous period of seven years and during that period has not registered annually in the prescribed manner[5] at a Nigerian consultate, or by notice in writing to the Minister, his intention to retain his citizenship of Nigeria.

(5) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Nigeria.

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1. As to the absolute character of the Minister's discretion, see s.13 infra; as to limitation of this particular discretion, see sub-section (5) infra and Republican Constitution s. 16(b)

2. By virtue of s. 6 supra and Second Schedule, infra

3. This expression is not definied in the Act. For cases where its meaning has been considered, see Govt. v. Cimitian [1922] 1 A.C. 105; Stransky v. Stransky [1954] 2 All E.R. 536, 540 et seq; R. v. Edgehill [1963] 1 All E.R. 181, 184.

4. For definition, see s. 2(1), supra

5. Not yet prescribed.

Deprivation of Citizenship of Nigeria when persons deprived of citizenship elsewhere

10. When a naturalised person[1] who was a citizen of any country that is part of the Commonwealth[2] or of the Republic of Ireland has been deprived of that citizenship on grounds which, in the opinion of the Minister, are substantially similar to any of the grounds specified in subsection (2), (3) and(4) of section 9, then, if that person is a citizen of Nigeria, the Minister may[3] by an order made under this section deprive him of his Nigerian citizenship, if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Nigeria.

Effect of renunciation or deprivation of citizenship.

11. The renunciation by any person of his Nigerian citizenship or the deprivation of any person's Nigerian citizenship under the provisions of this part shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

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1. Not defined in the Act. Cf. British Nationality Act, 1948 s.32(1) s.v. "naturalised person".

2. For definition, see s.2(1), supra

3. As to the absolute characterof the Minister's discretion, see s.13, infra. As to the limitation on this discretion, see the limitation contained in this section.

PART IV - SUPPLEMENTAL

Posthumous children — 57 of 1961

12. Any reference in this Act to the national status of the father[1] of a person at the time of that person's birth shall, in relation to a person born after the death of his father,[1] be construed as a reference to the national status of the father[1] at the time of the father's death; and where that death occurred before the 1st October, 1960,[2] and the birth occurred after the 30th September, 1960,[2] the national status that the father would have had if he had died on the 1st October, 1960,[2] shall be deemed to be his national status at the time of his death.

Decision of Minister to be final — 57 of 1961

13. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

Certificate of citizenship in cases of doubt.

14. The Minister may[3] in such cases as he thinks fit, on the application of any person with respect to whose citizenship of

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1. i.e. father of a legitimate child. As to legitimacy in Nigerian law, see Lawal v. Younan & Sons (1961) 1 All N.R. 245, 250

2. May 31, 1961 and June 1, 1961 in relation to persons connected with the Northern Cameroons; see Republican Constitution ss. 10, 17 (3).

3. As to the absolute character of the Minister's discretion, see s.13, supra.

of Nigeria a doubt exists, whether on a question of fact or law, certify that that person is a citizen of Nigeria; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be prima facie evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

British subject without citizenship — 9 of 1961, 57 of 1961

14A(1) If by any enactment for the time being in force in any country mentioned in subsection (5) of section 3 of this Act[1] provision is made for enabling persons to remain or to become British subjects without citizenship,[2] any person who by virtue of that enactment is a British subject without citizenship, shall be deemed also to be a British subject without citizenship by virtue of this section.

(2) So long as a person remains a British subject without citizenship, he shall be treated for the purposes of any application made by him for registration as a citizen of Nigeria under this Act, as if he were a citizen of one of — 57 of 1961

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1. See further Republican Constitution, s. 14(3)

2. See British Nationality Act, 1948 s. 13 and Third Schedule (U.K.)

the countries mentioned in subsection (5) of section 3 of this Act[1]

Power to appoint commissioners for oaths. 9 of 1961
57 of 1961

14.B(1) Notwithstanding the provisions of any Act or rule of law, the Minister after consultation with the Chief Justice may -

(a) for any Region appoint fit persons to be commissioners for oaths, and

(b) for Lagos appoint any officer in the Ministry not below the substantive rank of senior assistant secretary to be a commissioner for oaths.

(2) Appointments under this section shall be published in the Gazette and have effect only for the purposes of this Act.

Evidence 57 of 1961

15 (1) Every document purporting to be a notice, certificate, order or declarations, or an entry in a register, or a subscription of an oath of allegiance, given, granted or made under this Act or under the Constitution, shall be received in evidence, and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.

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1. See further Republican Constitution, s.14 (3)

(2) Prima facie evidence of any such document as aforesaid may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.[2]

(3) Any entry in a register made under this Act or under the Constitution,[1] shall be received as evidence of the matters stated in the entry.

Offences 57 of 1961

16(1) Any person who for the purpose of procuring anything to be done or not to be done under this Act or under the Constitution[1] makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and on conviction be liable to a fine of one hundred pounds and to imprisonment for six months.

(2) Any person who fails to comply with any requirement imposed on him by regulations made under this Act with respect to the delivering up of certificates of naturalisation[3] shall be guilty of an offence and on conviction be liable to a fine of one hundred pounds and to imprisonment for six months.

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1. Act No. 20 of 1963.

2. By virtue of s. 17(a) infra

3. See ibid s. 17(e)

17. The Governor-General[1] may by regulations make provision generally for carrying into effect the purposes of this Act, and in particular -

(a) for prescribing anything which under this Act is to be prescribed;

(b) for the registration of anything required or authorised under this Act to be registered;

(c) for the administration and taking of oaths of allegiance under this Act, for the time within which oaths of allegiance shall be taken and for the registration of oaths of allegiance;

(d) for the giving of any notice required or authorised to be given to any person under this Act;

(e) for the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship under this Act, and for requiring such certificates to be delivered up for those purposes;

(f) for the registration by officers in the service of the Government of the Federation of the births and deaths of persons of any class or description born or dying elsewhere than in Nigeria;

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1. Now President of the Federal Republic.

(g) for enabling the births and deaths of citizens of Nigeria born or dying in any country in which the Government of the Federation has for the time being no diplomatic or consular representatives to be registered by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with the Government of the Federation, has undertaken to represent that Government's interest in that country, or by a person authorised in that behalf by the Governor-General;[1]

(h) for the imposition and recovery of fees in respect of any application made to the Minister under this Act or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath of allegiance, authorised to be made, granted or taken by or under this Act, and in respect of supplying a certified or other copy of any notice, certificate, order, declaration or entry, given, granted or made as aforesaid and for the application of any such fees.

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1. Now President of the Federal Republic.

Inconsistency with Constitutional provisions — 57 of 1961

18. The provisions of this Act shall have effect subject to any provision inconsistent therewith for the time being contained in the Constitution.[1]

Repeals Cap. 22. Cap. 146, — 22 of 1949

19. The British Nationality and Status of Aliens Fees Ordinance, the Naturalisation of Aliens Ordinance and the British Nationality (Offences and Fees) Ordinance, 1949, and all subsidiary legislation made under those Ordinances are repealed.

FIRST SCHEDULE (ss. 3 & 6)

OATH OF ALLEGIANCE.

(Repealed by the Oaths Act 1963, Third Schedule)[2]

SECOND SCHEDULE (s.6)

QUALIFICATIONS FOR NATURALISATION

The qualification for naturalisation of an alien who applies therefor are -

(a) that he has resided in Nigeria throughout the period of twelve months immediately preceding the date of the application; and

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1. See also Republican Constitution s.1

2. For the oath of allegiance, see Oaths Act 1963, First Schedule. The oath is as follows:
"I.....swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria and that I will preserve, protect and defence the Constitution. So help me God."

(b) that during the seven years immediately preceding the said period of twelve months he has resided in Nigeria for periods amounting in the aggregate to not less than five years; and

(c) that he has an adequate knowledge of a language in current use in Nigeria; and

(d) that he is of good character; and

(e) that he intends, if naturalised, to continue to reside permanently in Nigeria.

THIRD SCHEDULE

FORM A

Application for Registration as a citizen of Nigeria.

(Under section 3A of the Nigerian Citizenship Act 1960.)

PART I - APPLICATION.

1. I,..... Full name in block letters

..... Address in block letters

hereby apply to be registered as a citizen of Nigeria on the grounds that I was born in the former Colony/Protectorate of Nigeria before the 1st day of October, 1960, and would but for the fact that none of my parents or grandparents were born there have been a citizen of Nigeria by birth.

2. In support of my application, particulars of my birth are set out in Part II of this Application.

Dated at..... this.....day of..... 19....

.....

Signature or mark

Witness to signature or mark -

PART II - PARTICULARS OF APPLICATION.

3. Place and date of birth of applicant.....

4. Place, name of country and date of birth of Parents:

Father .....

Mother .....

5. (To be completed as additional information by married women applicants only).

Name of husband.....

Place and date of birth of husband.....

.....

Nationality (citizenship) of husband now or at time of death

.....

Is the marriage still subsisting ? (YES) (NO)

6. Applicant's Nationality (citizenship) status is:

(a) British subject, citizen of..... Delete (a) or (b) which is not applicable.

7. The nationality (citizenship) status stated by me in paragraph 7 was acquired (by birth) (by birth of father) (by registration) (by naturalisation) (by marriage). Delete words ( ) which do not apply.

7 was acquired (by birth) (by birth of father) (by registration) ( ) which do not apply.

(by naturalisation) (by marriage).

8. Particulars of all proceedings taken against the applicant at any time and in any country in civil or criminal courts of law, including those relating to trafficeoffences:

.....

.....

PART III - CERTIFICATES OF SPONSORS

9. I, ...

of.....

being a citizen of Nigeria, otherwise than by naturalisation, hereby certify that the applicant herein is a person known to me and of good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

DATED this.....day of.....19.....

.....

Signature of Sponsor

Witness to signature -

Note.- The sponsor in the case of paragraph 9 must be a Senator, a member of the House of Representatives, a Minister of Religion, a barrister, solicitor, doctor, dentist, accountant, or a Civil Servant specially qualified by salary.

10. I, ...

of.....

being a citizen of Nigeria, otherwise than by naturalisation, hereby certify that the applicant herein is a person known to me

andof good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

DATED this.....day of.....19.....

.....

Signature or mark of Sponsor

Witness to signature or mark -

(Note.- The sponsor in the case of paragraph 10 need not be in the class mentioned in the note to paragraph 9).

PART IV - DECLARATION BY APPLICANT.

11. I,..... Full name of applicant

do solemnly and sincerely declare that the particulars stated in Part II of this application are true, and in the event of my application being granted I undertake to do all things necessary to evidence my new allegiance.

.....

Signature or Mark of Applicant.

Declared at.....this.....day of.....19..

Before me -

.....

(Judge of the High Court) (Magistrate) (Commissioner for Oaths) Delete words ( ) which do not apply.

FORM B

Application by Married Woman or Person entitled

(Under subsection (3) of section 3 or 3B, 3C, or 3D

of the Nigerian Citizenship Act, 1960).

PART I - APPLICATION.

1. I,..... Full name in block letters

of..... Address in block letters

hereby apply for registration as a citizen of Nigeria* under * (Delete section references not applicable.)

subsection (3) of section 3 or section 3 B, 3C, 3D of the Nigerian Citizenship Act 1960 on the grounds that I am or have been married to a citizen of Nigeria or to a person who but for his death would have been a citizen of Nigeria. L.N.10 of 196

2. I am aware that notwithstanding my marriage to (insert name of husband) my application may be rejected as being made out of time.

DATED at .....this.....day of.....19....

.....

Signature or mark

Witness to signature or mark -

PART II - PARTICULARS OF APPLICANT

3. Place and date of marriage.....

4. Place and date of birth.....

5. Previous name.....

6. Present nationality (citizenship) status.....

How acquired: (by birth) (by descent) (by registration) (by naturalisation) (by marriage). Delete ( ) words which

7. Place and date of birth of husband.....

8. Husband's present address (or last address if deceased)

.....

9. How husband's citizenship was acquired: (by birth) (by descent) (by registration) (by naturalisation).

Delete ( ) words which do not apply.

10. Is the marriage still subsisting (YES (NO)

If marriage is terminated state reason.....

Delete ( ) words which does not apply.

.....

11. Particulars of previous marriage(s).....

.....

PART III - CERTIFICATE OF SPONSORS

12. I,.....

of.....

being a citizen of Nigeria, otherwise than by naturalisation, hereby certify that the applicant herein is a person known to me and of good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

DATED this.....day of.....19.....

.....

Signature of Sponsor

Witness to signature -

Note.- The sponsor in the case of paragraph 12 must be a member of the House of Representatives, a Minister of Religion, a barrister, solicitor, doctor, dentist, accountant, or Civil Servant specially qualified by salary.

13. I,.....

of.....

being a citizen of Nigeria, otherwise than by naturalisation, hereby certify that the applicant herein is a person known to me and of good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

DATED this.....day of.....19....

.....

Signature or mark of Sponsor

Witness to signature or mark -

Note:- The sponsor in the case of paragraph 13 need not be in the class mentioned in the note to paragraph 12.

PART IV - DECLARATION BY APPLICATION.

14. I, ... Full name.

do solemnly and sincerely declare that the particulars stated in Parts I and II of this application are true, and in the event of my application being granted I undertake to do all things necessary to evidence my new allegiance.

Declared at.....this.....day of.....

Before me:- .....

(Judge of High Court) (Magistrate) Delete words
( ) which do
(Commissioner for Caths) not apply.

NOTES: 1. The applicant under section 3(3) need not be a L.N. 10 of 196

citizen of the United Kingdom and Colonies or a British protected person, and in any other case must be a citizen of the United Kingdom and Colonies or a British protected person and references in the application to the Act are to be amended to suit the case

2. Applicants under section 3B are women whose husbands became citizens of Nigeria by birth or but for their deaths before 1st October, 1960 would have been such citizens by birth. There is no time limit.

3. An applicant under section 3C is required to apply for registration with 12 months or such extended time as may be allowed after her husband is registered as a citizen of Nigeria.

4. Widow applicants under section 3D must apply before the 1st October, 1962, for registration as citizens of Nigeria.

FORM C.

Application for registration as a Citizen of Nigeria

(Under section 3E of the Nigerian Citizenship Ordinance, 1960)

PART I - APPLICATION

1. I,..... Full name in block letters

of..... Address in block letters

being a citizen of the United Kingdom and Colonies by naturalisation in the former Colony or Protectorate of Nigeria before the 1st day of October, 1960 which citizenship has not been revoked, hereby apply to be registered as a citizen of Nigeria.

State Commonwealth country.

2. I am aware that my application may be rejected as being made out of time.

DATED at.....this.....day of.....19.....

.....

Signature or Mark.

Witness to signature or Mark -

PART II - PARTICULARS OF APPLICANT.

3. Citizenship status as set out in the application was acquired by registration at.....in.....
on the.....day of.....19.., and attached hereto and marked with the letter "A" is a true copy of the certificate of naturalisation.

4. Reasons for present application.....
.....

PART III - CERTIFICATES OF SPONSORS.

5. I, ...
of.....
being a citizen of Nigeria otherwise than by naturalisation hereby certify that the applicant herein is a person known to me and of good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

DATED this.....day of.....19.....

.....

Signature of Sponsor

Witness to signature -

NOTE:- The sponsor must be a Senator, a member of the House of Representatives, a Minister of Religion, a barrister, solicitor, a doctor, dentist, accountant, or a Civil Servant specially qualified by salary.

6. I,.....

of.....,.....

being a citizen of Nigeria otherwise than by naturalisation hereby certify that the applicant herein is a person known to me and of good character and that the particulars in Part II of this application are correct to the best of my knowledge and belief.

Dated this.....day of.....19...

.....

Signature of Sponsor

Witness to signature -

PART IV — DECLARATION BY APPLICANT

I,.....

do solemnly and sincerely declare that the particulars stated in Parts I and II of this application are true, and in the event of my application being granted, I undertake to do all things necessary to evidence my new allegiance.

.....

Signature or Mark of applicant.

Declared at .....this.....day of.....19.....

Before me:-

.....

*(Judge of the High Court) (Magistrate) (Commissioner for Oaths)

NOTE:- This form of application is intended for use by a naturalised citizen of the United Kingdom and Colonies and must be lodged before the 1st day of October, 1962.

* Delete words which do not apply.

FORM D.

Renunciation of Citizenship Declaration

(Under section 3F of the Nigerian Citizenship Ordinance, 1960).

I,.....

do solemnly and sincerely declare :-

1. That I was born at.....

in Nigeria/(name of the country) and am the age of 21 years.

2. That I am a citizen of Nigeria by birth /registration and am also a national of (state country concerned).

3. That as I am desirous of retaining my status as a citizen of Nigeria I hereby renounce so far as it lies within my power my status as a citizen/national of (name of country) and my claim I have to the protection of that country.

.....

Signature or mark of Applicant.

Declared at..... this.....day of.....19....

before me.....

*(Judge of the HighCourt)(Magistrate) (Commissioner for Oaths),

---

* Delete words which do not apply.

FORM E.

Declaration by registered Citizen of Nigeria

(Under section 3F of the Nigerian Citizenship Ordinance, 1960)

I,.....of.....

do solemnly and sincerely declare as follows:-

1. That as a citizen of Nigeria by registration I am affected by the provisions of section 3F of the Nigeria Citizenship Ordinance 1960 and am required to declare my intentions as to residence/ employment.

*2. That so far as it lies within my power, I have renounced my nationality/citizenship of..... and intend to reside permanently in Nigeria if permitted.

or

*2. That I have declared my willingness to renounce my citizenship of.....and intend to reside permanently in Nigeria if permitted.

*3. That while in Nigeria I shall be employed by.....

...../be self employed.
(name of employer)

or

*3. That although I have renounced my nationality/citizenship of...../declared my willingness to renounce my nationality/citizenship of.....and intend my domicile of choice to be Nigeria it may be necessary in the course of my employment with...../as self employed to be absent from time to time from Nigeria.

.....

Signature or Mark of Applicant.

Declared at.....this.....day of.....19....

before me:-

.....

Judge of the High Court or Magistrate

or Commissioner for Oaths.

---

* Delete paragraphs or words not applicable.

FORM F.

Application by Commonwealth Citizens for Registration as Nigerian Citizens. L.N.171 of 1962

(Under section 3 of the Nigerian Citizenship Act 1960)

PART 1 - APPLICATION

1. I,..... Full name in block letters

of.....

(Residential address as well as P.O. Box No., if any, in block letters.

being a Commonwealth Citizen hereby apply for the issue of a Certificate of Registration as a Citizen of Nigeria.

2. I am of good character and have a sufficient knowledge of one of the languages in current use in Nigeria namely.....

.....

To the best of my knowledge I am financially solvent.

3. If a Certificate of Registration is issued to me I shall apply for the registration as citizens of Nigeria of my wife.....

.....
(Full name)

and minor children :-

* Name.....(Aged.....)

* Name.....(Aged.....)

* Name.....(Aged.....)

who are not citizens of Nigeria.

Date..... Signature or Mark.....

Witness to Signature or Mark.....

PART II - PARTICULARS OF APPLICANT

4. Previous or alternative names(if any).....

5. Place and date of birth.....

6. Name of (Husband) (wife)* .....

Place and date of birth of (husband) (wife)*.....

Nationality of (husband) (wife) * now or at time of death.....

.....Is the marriage still subsisting ? (YES) (NO)*

7. (i) Names (in full) and nationalities of Parents:

Father.....

Mother.....

---

* delete words which do not apply.

(ii) Place and date of birth of Parents:

Father.....

Mother.....

8. Applicant's present nationality status is:

.....

9. Applicant's present nationality status was acquired (by birth) (by descent) (by registration) (by naturalisation) (by marriage)*

10. Applicant's previous nationality status (if any) and circumstances of the change:-.....

.....

11. Date of first arrival in Nigeria.

12. Particulars of subsequent periods of absence:-

(i)// .....

(ii)// .....

(iii)// .....

(iv) // .....

13. Particulars of employment in Nigeria :-

(i) .....

(ii).....

(iii).....

(iv).....

14. Particulars of properties owned in Nigeria:-

(i) .....

(ii) .....

---

* Delete words which do not apply.
// Insert date, countries visited and reasons for journey

15. Intentions as to future residence: Does the applicant intend to live permanently in Nigeria ? (YES (NO).*

16. Particulars of all proceedings taken against the applicant at any time and in any country in civil or criminal Courts of Law, including those relating to traffic offences:

.....

.....

17. Date of any composition made with creditors.....

.....

Date of being adjudicated.....

Date of discharge from bankruptcy.....

18. Approximate date of any previous application for Registration...

.....

PART III - CERTIFICATES

19. I, ...
(Full name)

of.....
(Address)

hereby state that I am a citizen of Nigeria otherwise than by naturalisation;

that I am a.....
(Here state occupation and status)

and that I am not the solicitor or agent of.....

.....
(Name of applicant)

whose application for Registration I am prepared to support from my

---

* delete words which do not apply.

personal knowledge and intimate acquaintance with him over.....

.....years
(State period of association with applicant)

I can vouch for (his) (her)* good character and loyalty.

Date.....

Signature or Mark.....

Witness to Signature or Mark.....

20. I,.....
(Full name)

of.....
(Address)

hereby state that I am a citizen of Nigeria otherwise than by naturalisation; that I am a.....
(Here state occupation status)

and that I am not the solicitor or agent of.....

.....
(Name of applicant)

whose application for Registration I am prepared to support from my personal knowledge and intimate acquaintance with him over...

.....years.
(State period of association with applicant)

I can vouch for (his) (her)* good character and loyalty.

Date.....

Signature or Mark.....

Witness to Signature or Mark.....

---

* Delete words which do not apply.

PART IV - DECLARATION BY APPLICANT

21. I, ...

do solemnly and sincerely declare that the particulars stated in Parts I and II of this application are true; and I make this solemn declaration believing the same to be true.

.....

Signature or Mark of Applicant.

Declared at.....this.....day of.....19...

before me.....
(Judge of the Supreme Court or the High Court) (Magistrate)
(Commissioner for Oaths) *

NOTE:- Any citizen of Nigeria may sign the certificates at paragraphs 19 and 20 provided at least one is either :

A Senator or a Member of Parliament,

A Minister of Religion,

A Barrister, Solicitor, Doctor, Dentist,

Accountant or

Government servant earning not less than £2,000 per annum.

---

* Delete words which do not apply.

NIGERIAN CITIZENSHIP ACT, 1961

Assented to in Her Majesty's name this 27th day of May 1961

1961, No. 9.

AN ACT TO AMEND THE LAW AS TO CITIZENSHIP AND TO MAKE FURTHER PROVISION FOR REGISTRATION AS A CITIZEN OF NIGERIA

Commencement [1st June 1961]

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows -

Short title, etc.

1. This Act may be cited as the Nigerian Citizenship Act, 1961, and shall be read as one with and be deemed part of the Nigerian Citizenship Ordinance,[1] 1960 (hereinafter referred to as the Ordinance)[1]

(2) This Act shall be of Federal application.

2. (1) Where reference is made in this Act to a Third Schedule to the Ordinance,[1] the Schedule to this Act shall be construed as the Third Schedule.

(2) Where under this Act reference is made to sponsors in any prescribed form, the reference shall be construed as reference to persons who are citizens of Nigeria otherwise than by naturalisation,

---

1. Now Nigerian Citizenship Act, 1960; see the Designation of Ordinances Act, No. 57 of 1961.

and if provision is made in any form for more than one sponsor, one of the sponsors shall be in the prescribed class; and for the purposes of this subsection "the prescribed class" means:-

(a) a Senator or Member of/House of Representatives,

(b) a Minister of Religion, that is to say, a Minister of a recognised church or mosque,

(c) a barrister or solicitor,

(d) a doctor,

(e) an accountant,

(f) a dentist,

(g) any Civil Servant in receipt of a salary of not less than £2,000 per annum.

(3) Where by this Act any declaration is to be made for the purposes of a prescribed form, it shall be sufficient compliance with this Act if the declaration is made in the presence of a judge of the High Court, or a Magistrate or a Commissioner for Oaths.

[Sections 3 to 8 incorporated in the Nigerian Citizenship Act 1960.]

Fees.

9.(1) The fees payable in respect of any application for citizenship under this Act shall be prescribed by regulations under the Ordinance,[1] and until the making of regulations, the fee prescribed for the making of any application under the Ordinance[1] shall be deemed to be the total

---

1. Now Nigerian Citizenship Act, 1960, see the Designation of Ordinances Act No. 57 of 1961.

fee payable for a certificate of a naturalisation[1] under this Act and the fee shall be paid with the application.

(2) No fees paid under this section shall be refunded.

10. (1) The Ordinance[2] is amended by inserting the Schedule to this Act as a third schedule to the Ordinance[2] immediately following the Second Schedule.

(2) The Governor-General[3] in Council may by Order published in the Gazette, add to, alter, amend or replace the Third Schedule to the Ordinance.[2]

(3) Any Order made under subsection (2) of this section shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then in session, and if not, shall be laid before Houses of Parliament as soon as may be after the commencement of this next ensuing session. If the Order is not so laid or either House of Parliament within seven sitting days after the laying passes a resolution disallowing the Order, it shall thenceforth be void but without prejudice to the validity of anything previously done under the Order.

---

1. See Nigerian Citizenship (Naturalisation) Regulations, 1961, L.N. 11 of 1961, First Schedule.

2. Now Nigerian Citizenship Act, 1960, see the Designation of Ordinances Act No. 57 of 1961.

3. Now President of the Federal Republic.

L.N.11 of 1961

NIGERIAN CITIZENSHIP ORDINANCE, 1960[1]

(No. 43 of 1960)

Nigerian Citizenship (Naturalisation) Regulations, 1961

In exercise of the powers conferred by section 6 of the Nigerian Citizenship Ordinance 1960, the Governor-General acting in accordance with the advice of the Council of Ministers has made the following regulations :-

Citation

1. These regulations may be cited as the Nigerian Citizenship (Naturalisation) Regulations, 1961.

Interpretation.

2. In these regulations, -

"the Ministry" means the Ministry under the control of the Minister responsible for citizenship;

"the Ordinance" means the Nigerian Citizenship Ordinance, 1960;[1]

"the Permanent Secretary" means the Permanent Secretary of the Ministry.

Applications generally

3. (1) Every application under these regulations shall be made to the Permanent Secretary of the Ministry, who shall file or otherwise record applications as the Minister may direct.

---

1. Now Nigerian Citizenship Act, 1960; see the Designation of Ordinances Act No. 57 of 1961

(2) An application shall be accompanied by the fee prescribed in the First Schedule.

Application for naturalisation

4. (1) An application for a certificate of naturalisation as a Nigerian citizen under section 6 of the Ordinance shall be in the Form A in the Second Schedule to these regulations or with the approval of the Minister to the like effect. The applicant shall satisfy the Minister that he possesses the prescribed qualifications; and if required the applicant shall furnish such further information to the Minister as may be necessary to assist the Minister in determining whether the applicant is a fit and proper person to be granted a certificate of naturalisation.

(2) The application shall, if signed in Nigeria, be witnessed by a Judge of the Supreme Court or of a High Court, or a Magistrate or Commissioner of Oaths, and if signed outside Nigeria shall be witnessed by the officer in charge of any Nigerian Consulate or Nigerian Overseas Mission.

(3) The application shall be sponsored by four persons or such less number as the Minister may in his discretion direct, who are citizens of Nigeria. One at least of the sponsors shall be a Senator, a Member of the House of Representative, a Minister of religion, or a barrister, solicitor, doctor, dentist, accountant, or Government Servant earning not less than £2,000 per annum.

Certificate of naturalisation

5. A certificate of naturalisation granted by the Minister shall be in the Form B in the Second Schedule to these regulations and shall be signed by the Minister.

Fees

6. (1) Subject to the provisions of this regulation, the fees in the Second Schedule to these regulations shall be payable to the Permanent Secretary or to an officer authorised by him to receive the fees.

(2) In respect of the grant of a certificate of naturalisation, the fee prescribed shall be paid on the receipt of the decision to grant a certificate of naturalisation :

Provided that where a husband and wife apply at the same time for certificates of naturalisation and are residing together at the time of the applications and a fee is payable in respect of the grant of a certificate of naturalisation to one of them, no fee shall be payable in respect of the grant of a certificate of naturalisation to the other.

(3) If the registration fee is not paid within fourteen days after notification to the applicant of the decision of the Minister to grant the application the decision may be rescinded.

Oath of allegiance, etc., to be sworn.

7. The oath of allegiance as prescribed by the Ordinance[1] and the declaration in the Form C in the Second Schedule to these regulations shall be respectively sworn and made within fourteen days after notification to the applicant of the intention of the Minister to grant the certificate of naturalisation.

1 See Oaths Act 1963, First and Third Schedules

Certified copies.

8. An application may be made to the Permanent Secretary for a certified copy of any document or entry issued or made under these regulations, and the Minister may grant or refuse the application as he thinks fit without assigning any reason. If the Minister grants the application a document or entry shall be sufficiently certified as a true copy of the document or entry as the case may be, if it has endorsed a statement in writing that it is a certified copy and the statement is signed by the Minister.

SCHEDULES

FIRST SCHEDULE Regs. 1, 6 and 8

Particulars	Fees £
Application for any purpose	1
Registration fee on grant of certificate of naturalisation (including issue of certificate and filing fee on declaration, etc.)	20
Supplying certified copy of any document or entry given, granted or made under the Ordinance or these regulations, for every document or entry	1

SECOND SCHEDULE

FORM A

(Regulation 4)

Application for a Certificate of Naturalisation as a Citizen of Nigeria (By an alien or stateless person)

PART I - APPLICATION.

1. I,..... Full name in block letters.

of..... Address in block letters.

being an (alien)(stateless person) hereby apply for the Delete words ( ) which do not apply.
issue of a Certificate of Naturalisation as a citizen of Nigeria.

2. I am of good character and have a sufficient knowledge of one of the languages in current use in Nigeria namely

.....

To the best of my knowledge I am financially solvent.

3. If a Certificate of Naturalisation is issued to me I shall apply for the registration as citizens of Nigeria of my wife

..... Full name.

and minor children.

.....(Aged.....) Names and ages.

.....(Aged.....) Delete if not applicable.

.....(Aged.....)

who are not citizens of Nigeria.

Date..... Signature of Mark.....

Witness to Mark .....

PART II - PARTICULARS OF APPLICANT

4. Previous or alternative names (if any).....

5. Place and date of birth.....

6. Name of (husband) (wife)..... Delete words ( ) which do not apply

Place and date of birth of (husband) (wife).....

Nationality of (husband) (wife) now or at time of death..... Delete words ( ) which do not apply

..... Is the marriage still subsisting? (YES)(NO)

7. Place and date of birth of parents :

Father.....

Mother.....

8. Applicant's present nationality status is;

.....

9. Applicant's present nationality status was acquired (by birth) Delete word ( ) which do not appl (by descent) by registration) (by naturalisation) (by marriage).

10. Applicant's previous nationality status (if any) and circumstances of the change:

.....

.....

11. Date of first arrival in Nigeria.....

12. Particulars of subsequent periods of absence:-

(i) ..... Insert dates, countries visited and reasons for journey.

(ii) .....

(iii).....

(iv).....

13. Particulars of employment in Nigeria:-

(i).....

(ii).....

(iii).....

(iv).....

14. Particulars of properties owned in Nigeria:-

(i).....

(ii).....

15. Intentions as to future residence.....

16. Particulars of all proceedings taken against the applicant at any time and in any country in civil or criminal courts of law, including those relating to traffic offences:

.....

.....

17. Date of any composition made with creditors.....

Date of being adjudicated.....

Date of discharge from bankruptcy.....

18. Approximate date of any previous application for naturalisation.....

PART III – CERTIFICATES.

19. I,..... Full name

of..... Address

hereby state that I am a citizen of Nigeria otherwise than by naturalisation that I am a ..... and that I am Here state occupation and status

not the solicitor or agent of..... whose
(name of applicant)

application for naturalisation I am prepared to support from my person knowledge of an intimate acquaintance for..... years State period of associati with applica

I can vouch for (his (her) good character and loyalty.

Date..... Signature or Mark.....

Witness to Mark.....

20. I,..... Full name

of..... Address

hereby state that I am a citizen of Nigeria otherwise than by naturalisation; that I am a..... and that I am not the solicitor or agent of..... whose application for naturalisation I am prepared to support from my person knowledge of the intimate acquaintance for .... years

Here state occupation and status

State period o association with applicant

I can vouch for (his)(her) good character and loyalty

Date..... Signature or Mark.....

Witness to Mark.....

21. I,..... Full name

of..... Address

hereby state that I am a citizen of Nigeria otherwise than by naturalisation; that I am a..... and that I am not the solicitor or agent of..... whose application for naturalisation I am prepared to support from my person knowledge of and intimate acquaintance for .... years

(Name of applicant)

Here state occupation and status

State period association with applican

I can vouch for (his) (her) good character and loyalty

Date..... Signature or Mark.....

Witness to Mark.....

22. I do solemnly and sincerely declare that the particulars stated in Part II of this application are true; and I make this solemn declaration believing the same to be true.

Signature or Mark of Applicant.....

Declared at.....this.....day of.....19.....

before me.....

(Judge of the Supreme Court or of the High Court) (Magistrate) (Commissioner for Oaths)

Delete words ( ) which do not apply

* Note:- Any citizen of Nigeria may sign the certificates at paragraphs 19, 20, 21, and 22 provided at least one is either:

A Senator or a Member of Parliament,

A Minister of Religion.

A barrister, Solicitor, Doctor, Dentist.

Accountant, or

Government servant earning not less than £2,000 per annum.

FORM B.

(Regulation 5)

Certificate of Naturalisation.

No..... of 19.....

(File No.....)

Nigerian Citizenship Ordinance, 1960 (No..... of 1960)

WHEREAS.....

has applied to me for a certificate of naturalisation, alleging with respect to (himself) (herself) the particulars set out below, and has satisfied me that the conditions prescribed for the grant

of a certificate of naturalisation are fulfilled:

NOW, THEREFORE, in exercise of the Powers conferred upon me by the Nigerian Citizenship Ordinance, 1960, I do hereby grant to the said..... this certificate of naturalisation, and declare that upon taking the oath of allegiance within the time and in the manner prescribed by the Ordinance or by regulations made in that behalf thereunder (he) (she) shall be a citizen of Nigeria as from the date of this certificate.

In witness whereof I have hereto subscribed my name this..... day of..... 19.....

Minister of .....

PARTICULARS RELATING TO APPLICANT

Full name.....

Addres.....

Profession or Occupation.....

Plate and date of birth.....

Previous Nationality.....

Single, Married etc.....

Name of wife or husband.....

Names and nationalities of parents:

Father .....

Mother .....

FORM C

(Regulation 7)

FORM OF DECLARATION

I, ...

do solemnly and sincerely declare that I am willing to renounce my..... nationality and any claim I may have to the protection of.....

.....

Signature or Mark of Applicant.....

Declare at..... this.....day of.....19...

before me.....

(Judge of the Supreme Court or of the High Court) (Magistrate) (Commissioner for Oaths)

Delete words ( ) which do not apply.

C. C. LAWSON,

Acting Deputy Secretaty to

the Council of Ministers.

Lagos, 16th January, 1961.

APPENDIX II

A. CODE OF THE LAW OF DOMICILE.

Article 1

(1) Every person shall have a domicile but no person shall have more than one domicile at the same time.

(2) A domicile is either a domicile of origin or a domicile of choice.

(3) A domicile of origin is the domicile assigned to every person at his birth in accordance with the provisions of Article 4 (1) of this Code.

(4) A domicile of choice is the domicile acquired through the exercise of his own will by a person who is legally capable of changing his domicile, or a domicile acquired by virtue of an order or with the approval of a court of competent jurisdiction in accordance with Article 4 (3) or Article 5 of this Code.

(5) A domicile, whether or origin or of choice, shall continue until another domicile is acquired.

Article 2.

(1) Subject to the provisions of this Code, the domicile of a person shall be in the country in which he has his home and intends to live permanently.

(2) Unless a different intention appears, the following are rules for ascertaining a person's intention to live permanently in a country:-

Rule 1: Where a person has his home in a country, he shall be presumed to intend to live there permanently.

Rule 2: Where a person has more than one home, he shall be presumed to intend to live permanently in the country in which he has his principal home.

Rule 3: Where a person is stationed in a country for the principal purpose of carrying on a business, profession or occupation and his wife and children (if any) have their home in another country, he shall be presumed to intend to live permanently in the latter country.

(3) Paragraph (2) shall not apply to persons entitled to diplomatic immunity or in the military, naval, air force or civil service of any country, or in the service of an international organisation.

Article 3.

The domicile of a married woman shall be that of her husband:

Provided that a married woman who has been separated from her husband by the order of a court of competent jurisdiction shall be treated as a single woman.

Article 4.

(1) Subject to Articles 1 and 5 of this Code, the domicile of an infant shall be:-

(i) that of his father, if the infant is legitimate or legitimated, provided that, as from the termination of the marriage of his parents, an infant's domicile shall be that of the person (if any) in whom the custody of the infant is from time to time lawfully vested or, if it is vested in more than one person, that of such one of them as they may agree;

(ii) that of his mother, if the infant is illegitimate;

(iii) that of the adopter, if the infant has been lawfully adopted, so however that where an infant has been lawfully adopted jointly by two spouses he shall, for the purposes of this Code, be treated as if he were a legitimate child of the marriage.

(2) If any such person as is referred to in the proviso to paragraph 1 (1) of this Article changes his domicile, the domicile of the infant shall not thereby be changed unless that person so intends.

(3) Notwithstanding anything herein contained, a court of competent jurisdiction shall have power to make such provision for the purpose of varying an infant's domicile as it may deem appropriate to the welfare of the infant.

(4) "Infant" means a person who has not attained the age of 21 years and who has not married.

Article 5.

A lunatic shall retain during lunacy the domicile which he had immediately before he became a lunatic:

Provided that the person or authority in charge of the lunatic shall have power to change the lunatic's domicile with the approval of a court of competent jurisdiction in the country in which the lunatic is domiciled.

B. DRAFT CONVENTION TO REGULATE CONFLICTS BETWEEN THE LAW OF THE NATIONALITY AND THE LAW OF THE DOMICILE

Article 1

When the state where the person concerned is domiciled prescribes the application of the law of his nationality, but the state of which such person is a citizen prescribes the application of the law of his domicile, each contracting state shall apply the provisions of the internal law of his domicile.

Article 2.

When the state where the person concerned is domiciled and the state of which such person is a citizen each prescribe the application of the law of his domicile, each contracting state shall apply the provisions of the internal law of his domicile.

Article 3.

When the state where the person concerned is domiciled and the state of which such person is a citizen each prescribe the application of his national law, each contracting state shall apply the provisions of the internal law of his nationality.

Article 4.

No contracting state shall be obliged to apply the rules laid down in the preceding Articles when its rules of private international law do not prescribe the application to a given case either of the law of the domicile or of the law of the nationality.

Article 5.

For the purpose of the present Convention, domicile is the place where the person habitually resides unless the domicile of such person depends on the domicile of another person or on the seat of some public body (autorité).

Article 6.

In each of the contracting states the application of the law laid down by the present Convention may be rejected for reasons of public policy (ordre public).

Article 7.

No contracting state shall be obliged to apply the provisions of the present Convention when the state where the person concerned is domiciled or the state of which the person is a citizen is not one of the contracting stat

Article 8

Each contracting state, when signing, ratifying or adhering to the present Convention may declare that it excludes from the application of the present Convention the conflicts of laws relating to certain subjects.

A state which uses the right given in the preceding paragraph may not claim the application of the present Convention by other contracting states so far as regards excluded subjects.

C. DRAFT CLAUSES INCLUDING THE "BUSINESSMAN'S FORMULA"

1. The rules set out in this Act shall replace the rules of the common law for determining a person's domicile.

2. A person's domicile is in the country where he ordinarily resides and where he intends to live permanently.

3. Except in the cases mentioned in section 4 of this Act, a person who ordinarily resides in a country is presumed to intend to live there permanently; but the presumption may be displaced by evidence of a different intention.

4. Where a person either -

(a) performs the duties of an office or employment or carries on a trade, profession or vocation in a country in which he did not ordinarily reside immediately before doing so, or

(b) ordinarily resides in a country as a member of the household of such person as is mentioned in paragraph (a) of this section.

his ordinary residence in that country does not raise the presumption that he intends to live there permanently.

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