NATIONAL OPEN UNIVERSITY OF NIGERIA

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COURSE DEVELOPMENT

COP 315 :COOPERATIVE LAW

COURSE GUIDE

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LAW COOPERATIVE LAW

1.0 INTRODUCTION

Cooperative law is concerned with the law regulating the affairs of the cooperative societies. The Nigerian cooperative law, as would be seen in the historical perspective was adopted from the English legal system based solely on the fact that we inherited the English legal system by reason of our affiliation with them through the instrument of colonialism. The practice of family law is influenced by the general legal context that prevailed in England. The major statutes that guide cooperative law in Nigeria are the …………………. Act, as contained in the Laws of the Federation 1999. This course deals with basic points typical and relevant as found in the Commonwealth jurisdiction most of which gained independence from Britain. These topics had been broken down into units generally borders on the relationship within the cooperative societies in Nigeria. They most importantly touch on the underlying values and features which concern the way which cooperative laws is put to use in a democratic and law governed society.

2.0 WHAT YOU WILL LEARN IN THIS COURSE

This course guide tells you briefly what to expect from reading this course. The study of cooperative law is to familiarize you with this subject matter which is dealt with herein and of which are expected to know much about after reading through

3.0 COURSE AIMS

The aim of the course is to help the learner become reasonably well-informed about cooperative law. The primary aim of this course is to familiarize you with this subject matter which is dealt with herein and which you are expected to know much about at the end of reading through

4.0 COURSE OBJECTIVES

The major objectives of this course, as designed, are to enable the students to know all the relevant enactments and legislations in relation to cooperative law in Nigeria. As well, students should be able to:

(a) discern the differences between the various types of marriages i.e. customary and statutory marriages.

(b) know the rights and duties and obligations of the parties under a customary marriage.

(c) determine when actually a party is married under the law.

(d) learn about the jurisdiction of courts.
(e) know the judicial remedies available to a party whose rights have been wrongly infringed within the family set up.

(f) know the basic operational features of the family system.

(g) differentiate between customary and statutory marriages.

(h) understand ways and manners disputes arising from breach of contract of marriage could be redressed.

(i) know the basic ingredients, operations and effects of separation of the marriage.

5.0 WORKING THROUGH THIS COURSE

For you to excel in this course, you are required to carefully read each unit, and understand the contents. You are also required to attempt each unit self-assessment exercises and submit your assignment for assessment purposes. Apart from studying the course material on your own, you also need to attend tutorial sessions for exchange of ideas with your Facilitator.

You are expected to compile the questions that bug you and the grey areas in the course materials and bring these for discussion with fellow learners and the Facilitator. You are expected to carve out specific time each day, every day for your study. Try to form good study habits. Remember that you are a self-learner. In other words, you are on your own. If you study hard everyday and do your assignments, you will achieve your goal.

6.0 COURSE MATERIALS

You will be provided with the following materials:

- Course Guide
- Course Material containing Study Units
- References as well as Sources for further reading (Textbooks)
- Assignment file
- Presentation Schedule.

7.0 STUDY UNITS

The study units in this course are as follows:

MODULE 1:

Unit 1: History of applicable Laws of Cooperative Society in Nigeria from 1935 – 1993
Unit 2: Laws Governing Cooperative Legislation in Nigeria
Unit 3: Cooperative Legislation, Practice and Procedure
Unit 4: Sources of Cooperative Law in Nigeria
Unit 5: Sources of Law II (Received English Law – Common Law)

MODEL 2:

Unit 1: Registration of Cooperative Society

Unit 2: General Principles of Contract and Cooperatives
Unit 3: Transfer of a Dead Member's Interest

MODULE 3:

Unit 1: Property and Fund of Registered Cooperative Society
Unit 2: Relationship with other Registered Societies
Unit 3: Power to Grant Loans
Unit 4: Power of Investment

MODULE 4:

Unit 1: Compulsory and Voluntary Liquidation of Cooperative Societies
Unit 2: Appointment of a Liquidator and Powers of a Liquidator
Unit 3: Arbitration and Cooperative Society
Unit 4: Applicable Laws in the Federation
Unit 5: Applicable Laws in Lagos State

MODULE 5:

Unit 1: Privileges of Cooperative Society
Unit 2: Powers of Cooperative Society
Unit 3: Register of Members of Cooperative Society
Unit 3: The Petition II

All these units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the scope of Family Law generally. You will then have a clearer picture into which to paint these topics. Subsequent courses are written on the assumption that you have completed these units.

Each study units consists of one week's work and includes specific objectives, directions for study, reading materials and self assessment exercises (SAEs). Together with tutor marked assignments (TMAs), these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

8.0 ASSIGNMENT FILE

There assignment file will be posted on the Web CT OLE in due course. In this course, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the assignment file itself and later in the section on assessment in this course guide. There are 15 tutor-marked assignments in this course; the student should also do at least 12.

9.0 PRESENTATION SCHEDULE

The presentation schedule included in your course materials gives you the important dates for this year for the completion of tutor-marked assignments (TMAs) and attending tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

10.0 TEXTBOOKS AND REFERENCES

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise.

11.0 ASSESSMENTS

There are two types of assessment for this course: the Tutor Marked Assignment (TMA), the end of course examination.

In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the ***Presentation Schedule*** and the ***Assignment File***. The work you submitted to your tutor will count for 30% of your total course mark.

At the end of the course, you will need to sit for a final written examination of 'three hours' duration. This examination will also count for 50% of your total course mark.

12.0 TUTOR-MARKED ASSIGNMENT (TMAs)

The re is a Tutor Marked Assignment (TMA) at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three performances will be used for assessment. The assignment carry 10% each.

When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that teach assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

13.0 FINAL EXAMINATION AND GRADING

The end of course examination carries 70% of the total score for the course. You will be notified of the time of the examination. You should prepare thoroughly for the examination by studying very hard. You should also submit yourself for the examination.

14.0 COURSE SCORE DISTRIBUTION

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

ASSESSMENT	MARKS
Assignment 1 – 4 (TMAs) (the best three of all the assignments submitted)	Four assignments. Best three marks of the four count at 30% of course marks
Final Examination	70% of overall course marks
Total	**100% of course marks**

15.0 COURSE OVERVIEW

This table brings together the units and the number of weeks you should take to complete them and the assignment that follow them.

Unit	Title of work	Weeks activity	Assessment (end of unit)
1	History of applicable Laws of Cooperative Society in Nigeria from 1935 – 1993		
2	Laws Governing Cooperative Legislation in Nigeria		
3	Cooperative Legislation, Practice and Procedure		
4	Sources of Cooperative Law in Nigeria		
5	Sources of Law II (Received English Law – Common Law)		
6	Registration of Cooperative Society		
7	The Nigerian Court System II		
8	Duty and Privileges of Registered Cooperative Society		
9	Transfer of a Dead Member's Interest		
10	Property and Fund of Registered Cooperative Society		
11	Relationship with other Registered Societies		
12	Power to Grant Loans		
13	Power of Investment		
14	Compulsory and Voluntary Liquidation of Cooperative Societies		
15	Appointment of a Liquidator and Powers of a Liquidator		
16	Arbitration and Cooperative Society		
17	Applicable Laws in the Federation		
18	Applicable Laws in Lagos State		
19	Privileges of Cooperative Society		
20	Powers of Cooperative Society		

21	Register of Members of Cooperative Society		
	Revision		
	Total		

16.0 HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units are specially developed and designed to replace the university lecturer. Hence, you can work through these materials at your own pace, and at a time and place that suits you best. Visualize it as reading the lecture instead listening to a lecturer.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you must go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a ***Reading Section***. You will be directed when you need to use a computer and guided through the tasks you must do. The purpose of the computing work is two-fold. First, it will enhance your understanding of the material in the unit. Second, it will give you practical experiences of using programmes which you could well encounter in your work outside your studies. In any event, most of the techniques you will study are applicable on computers in normal working practice, so it is important you encounter them during your studies.

Activities are interspersed throughout the units, and answers are given at the end of the units. Working through these tests will help you to achieve the objectives of the units and prepare you for the assignments and the examinations. You should do each activity as you come to it in the study unit. There are also numerous examples given in the study units, work through these when you come to them, too.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your facilitator or post the questions on the Web CT OLE's discussion board. Remember that your facilitator's job is to help you. When you need help, don't hesitate to call and ask your tutor to provide it. In summary,

- Read this course guide.

- Organise a study schedule. Refer to the course overview for more details. Note the time you are expected to spend on each unit and how the assignments relate to the unit. Important information e.g. details of your tutorials, and the date of the first day of the semester is available from the Web CT OLE. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.

- Once you have created your own study schedule, do everything you can to stick to it. The major reason that students fail is that they get behind with their coursework. If you get into difficulties with your schedule, please let your facilitator know before it is too late for help.

- Turn to unit 1 and read the introduction and the objectives for the unit.

- Assemble the study materials. Information about what you need for a unit is given in the 'Overview' at the beginning of each unit. You will always need both the study unit you are working on and one of your set books, on your desk at the same time.

- Work through the unit. The content of the unit itself has been arranged to provide a sequence for you to follow. As you work through this unit, you will be instructed to read sections from your set books or other articles. Use the unit to guide your reading.

- Keep an eye on the Web CT OLE. Up-to-date course information will be continuously posted there.

- Well before the relevant due dates (about 4 weeks before the dates) access the Assignment file on the Web CT OLE and download your next required assignment. Keep in mind that you will learn a lot by doing the assignments carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due dates.

- Review the objectives for each study unit confirm that you have achieved them. If you feel unsure about any of the objectives, review the study material or consult your tutor.
- When you are confident that you have achieved a unit's objectives, you can then start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.

- When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your facilitator's comments. Consult your tutor as soon as possible if you have any questions or problems.

- After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives and the course objectives.

17.0 TUTORS AND TUTORIALS

There are 20 hours of tutorials (ten 2-hour sessions) provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the names and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter as they would provide assistance to you during the course. You must mail your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible. Do not hesitate to contact your tutor by telephone, e-mail, or discussion board if you need help. The following might be circumstances in which you would find help necessary: when

- you do not understand any part of the study units or the assigned readings.
- you have difficulty with the self-tests or exercises.
- you have a question or problem with an assignment with your tutor's comment on an assignment or with the grading of an assignment.

You should try your possible best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participations in discussions.

18.0 SUMMARY

The course examines the contents of Family Law. The course is designed and developed for your benefit as a law student.

I hope that you will find this course interesting and exciting. The course is a living course. As you go through it, you will develop more insight into family law and the family property.

We hope you enjoy your acquaintances with the National Open University of Nigeria (NOUN). We wish you success in this course. Success in this course will help you attain your life goals. Best wishes and regards.

MODULE ONE

UNIT 1 COOPERATIVE SOCIETIES

Table of Contents

1.0 INTRODUCTION

Cooperation exists among men from time immemorial. However, such cooperation in the early stages of man's development was in loose form; mostly unarranged and uncoordinated. The concept of cooperation, in its formal or commercial sense, as we have it today, did not develop until the end of the first half of 19th century. This appears to have its root in the industrial revolution in the continental Europe a little bit before that period. The main effect of the industrial revolution is the placing of premium on capital rather than labour as a factor of production in the creation of wealth.

In this unit, we shall discuss the origin of cooperative societies, definition of terms and concepts. We shall also dealt on the universal principles governing cooperatives, enumerate and explain the types of cooperative society.

2.0 OBJECTIVES

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

- Trace and discuss the history of cooperative society in Nigeria and the whole world;
- Know how the cooperative law evolved in Nigeria;
- Define the term cooperative societies in Nigeria;
- Trace the origin of cooperative society in Nigeria;

- Enumerate and explain the types of cooperative societies.

3.0 MAIN CONTENT

3.1 Origin of Cooperative Societies

The main effect of industrial revolution is the placing of premium on capital rather than labour as a factor of production in wealth creation. This brought out a dwindling fortune on the part of labour. To handle the problems associated with this dwindled fortune, new strategies had to be evolved in the realm of workers' welfare. One of the strategies was the formation of organised labour society.

The earliest one was the "Equitable Pioneer of Rochdale" formed on the 15th of August, 1944 in England with the aim of getting supply of basic consumer goods from source at low cost for the benefit of the 28 member weavers; who had been adversely affected by the industrial revolution. It was reasoned that with this strategy in place, the workers would reap maximum benefit from their meager earnings. The success of Equitable Pioneer opened a floodgate of organised cooperation as workers of different classes in various parts of the world quietly embraced the concept.

In Nigeria, the idea was pioneered by some European residents in Lagos and its environs who, as one of the officers of the First World War established a consumers' cooperative society with a view to selling essential commodities to the members at a reduced price.

The first indigenous cooperative society in Nigeria was recorded in 1926. In that year, some educated Nigerians in Ibadan, Abeokuta and its environ organised themselves into cooperative society for the purpose of selling their cocoa in retaliation to the exploitation of individual cocoa farmers by the European buyers of the produce.

The fervour with which the idea was pushed by the inhabitants of other parts of Nigeria led to the first legislative attempt towards recognizing the concept by the then colonial administration in Nigeria in 1935 and the Law was known as Cooperative Ordinance No. 39 of 1935. This Act was repealed by the Cooperative Development Act, 1974 (Now Cap 67 Laws of the Federation of Nigeria). This Act repealed and replaced the Cooperative Ordinance, 1935 (Cap 39).

The Act did more than establish a division under the Federal Ministry of Employment, Labour and Productivity known as the Cooperative Development Division, and it also established an Advisory Council to deliberate on cooperative development in Nigeria and render advice to the Minister.

The Nigeria Cooperative Society Decree 90 of 1993 is the current law that is applicable to Cooperative Societies in Nigeria.

3.2 Definition of Terms

In term of definition, cooperative society is an unsettled concept. Because it cuts across all strata of society, it does not admit of generally accepted definition. Its definition depends on the angle it is being perceived. But in ordinary parlance, it simply means "the will to cooperate".

The International Labour Organisation defines cooperative society as follows:

> "*An association of persons who have voluntarily joined together to achieve a common end through the formation of democratically-controlled organisation, making equitable contribution to the capital required and accepting a fair share of the risk and benefits of the undertaking in which the members actively participate*".

The United Nations Research on Social Development states that cooperative societies are all organisations "*legally recognized as such which is subject or organised supervision and which claim to follow cooperative principles*".

The Economic Commission for Africa (ECA) in its study called: "The Cooperative Movement in Africa" defined a cooperative as "*a legally incorporated body with an economic purpose common to all its members, a society of persons and services rather than capital, open to all who may benefit by its activities and democratically controlled by its members, with provision in the rules for roughly equal contribution of capital per member and for the equitable distribution to them of any profit arising from the undertaking*".

The Cooperative Societies Decree 1993 defines cooperative society to mean "*a voluntary association of individuals, united by common bond, who have come together to pursue their economic goals for their own benefit*". No matter the definition adopted, one thing that is clear is that cooperative society is a voluntary association based on democratic norms and controlled collectively by the members. There must be the will to cooperate.

Self Assessment Exercise 1:

Define the term cooperative society.

3.3 Universal Principles of Cooperatives

These principles were formulated at Rochdale by the Equitable Pioneers. Having been reformed and adopted by the International Cooperative Alliance in 1937, they are now the bedrock on which cooperative management and principle are based.

The principles are taking into consideration in formulating Cooperative Society Regulations and/or bye-laws. These principles are:

(i) it is an association of persons who have voluntarily joined together to achieve a common end;

(ii) the formation of democratically-controlled organisation;
(iii) making of equitable contribution to the capital required;
(iv) acceptance of a fair share of the risk and benefits of the undertaking in which the members actively participate.

Self Assessment Exercise 2:

Discuss the universal principles of cooperative societies.

3.4 Types of Cooperative Society

The cooperative law divides cooperative societies into the following:

(i) Primary Cooperative Society;
(ii) Secondary Cooperative Organisation;
(iii) Central Financing Society;
(iv) Central Society; and
(v) Apex Cooperative Society

3.4.1 Primary Cooperative Society:

This is a cooperative organisation whose membership is made up of at least ten persons. It is the commonest type of cooperative society as it can be found all over the state including the urban and rural areas.

It is formed by people with common interest either as residents of a particular area, or trader in a particular commodity etc. It must have at least ten (10) persons and such persons must have individually satisfied the provision of Section 24, which state expressly that

"*no person must be a member of more than one registered society whose primary objective is to grant loans to its members, except such a person has been given prior consent to do so by the registered society concerned*".

3.4.2 Secondary Cooperative Organisation:

This refers to a cooperative organisation whose membership is made up of primary cooperative societies. Each of the above type of cooperative societies can either have its liability limited or unlimited, but in practice, one will find out that most cooperative societies are limited liability.

3.4.3 Central Financing Society:

This is a registered society of which the principal object is to make loans available to other registered societies.

3.4.4 Central Society:

This is a registered society established to facilitate the operations of registered societies in accordance with cooperative principles and includes a central financing society. However, this type of society can only be registered under the Cooperative Law if it has at least two registered societies as its members.

3.4.5 Apex Cooperative Society:

This is a cooperative organisation whose membership is made up of secondary cooperative societies.

Self Assessment Exercise 3:

What are the minimum requirements for the formation of a primary cooperative society?

4.0 CONCLUSION

In this unit, you saw how the cooperative society evolved over the time. You also saw how different it is to define the concept 'cooperative society', but there is an internationally accepted minimum which all definition and practice must conform with. It is this universally accepted requirement set or laid down in Equitable Pioneer's case that is often referred to as the universal principle of cooperative society.

5.0 SUMMARY

In this unit, you learnt:

(1) the definition of cooperative society;
(2) the meaning of cooperative society;
(3) the historical evolution of cooperative society;
(4) the types of cooperative society we have in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the term cooperative societies.
2. Discuss the universal principles of cooperative society.

7.0 REFERENCES AND FURTHER READINGS

Sullivan, Arthur and Sheffrin, Steven, M. (2003). Economics: Principles in Action. New Jersey: Pearson Prentice Hall.

The 1999 Constitution of the Federal Republic of Nigeria.

Decree 90 of 1993.

Dada, T.O. (1998). General Principles of Law.

Owolabi, N.B. and Badmus, M.A. (1999). Nigeria Business and Cooperative Law. Lagos: Privlarts Limited.

Sofowora, M.O. (1999). General Principles of Business and Cooperative Laws.
Cooperative Development Act, 1974, Cap. 67, LFN 1990.

Companies and Allied Matters Act, Cap. 59, LFN 1990.

Kachukwu, E.I. and Ozekhome, M.A.A. (1988). Nigeria Law of Contract. Mikzek Law Publications Limited.

UNIT 2 COOPERATIVE LEGISLATIONS IN NIGERIA AND THE POWERS OF LEGISLATURE

CONTENTS

1.0 INTRODUCTION

In countries like America, Canada and Australia, the extension of nationwide commercial enterprises, development of an interdependent economy, and the growth of national sentiments have resulted in extensive inter-governmental administrative co-operations and at least partial dependence of the regional governments upon the national government.

In Nigeria, especially in times of disasters or calamities in the states, for example, caused by environmental degradations or riots which are often religious or ethnic in nature, it is not uncommon for the Federal Government to give financial aid. Also, in the relationship between the State Government and the Local Governments, the state governments are often called upon for assistance even in areas that are constitutionally the business of the local governments.

It is in the light of the above and the provisions of the 1999 Constitution that we will examine cooperative legislation in Nigeria.

2.0 OBJECTIVES

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

- highlight the division of powers;
- state and discuss the legislative powers;
- explain the powers of the national assembly;
- describe the state legislature;
- discuss the qualification, disqualification and mode of business.

3.0 MAIN CONTENT

3.1 Division of Powers

The concept of federalism was firmly entrenched in the 1999 Constitution is similar in this respect dividing the sovereignty of the nation between the Federal, States and Local Governments. Prior to that, under the 1963 Constitution, division of power was between the central and regional or state governments. The manner of division of power however has been basically similar under our various constitutions, but the concentration here will be on the 1979 Constitution and its successors.

Generally, one of the basic purposes of federalism can be said to be allocation of political power between the various levels of government in society, in such a way that constitutional limitations are placed on the exercise of such powers. The issue of whether or not such power must be divided by a supreme law or document as proposed by Wheare and Nwabueze will be discussed later. Suffice it to say that in Nigeria and other federations like United States of America, India and Switzerland, the powers of government are divided under a supreme Constitution. According to the Constitution Drafting Committee of the 1979 Constitution:

> *… W have to deal with a very complex society embracing a multiplicity of social and cultural backgrounds, the diversity of which it would be dangerous to ignore. Nonetheless, no one can deny that there is need for promoting unity among the various ethnic and linguistic groups in the Nigerian Nation. In the circumstances, whilst it seems logical and realistic to ensure that the Constitution empowers the federal government to have adequate powers to enable it to take necessary measure for maintaining uniformity when this is absolutely essential, the Constitution ought at the same time to cater for our cultural and social diversities. This latter need means that the federal government must not have the powers to insist on uniformity wherever diversity in no way conflicts with national unity, fundamental objectives or the continuance of the federation.*

Deciding on areas where such diversity is permissible has however been the problem of determining the extent of the powers of the central government vis-à-vis that of the federating units in our short constitutional history. It would appear that the experiences of the civil war and years of military rule, during which the centre was extremely strong, has ingrained in the subconscious of the members of the various constitution drafting committees and Constituent Assembly members the need to have a centre that is so strong as to discourage any secessionist or other tendencies that could lead to the disintegration of a federal state. This tendency ignores the fact that voluntary coexistence together is necessary for the continuance in perpetuity of a federal state. Making the component states more autonomous and independent and the centre not too strong and exercising only powers essential to keep the federation together can deal with the absence of such voluntary association. Under our Constitutions, the Legislative, Executive and Judicial powers of government are shared variously among three levels of government.

There is no doubt that the manner of dividing legislative powers among the various component units in a federation is the greatest mirror of the extent to which they are autonomous and independent. According to Nwabueze:

> *…the power of each government, within its own sphere, is plenary in nature, and is expressed in terms of power to make laws "with respect to" the matters assigned to it, which is the most general form in which power can be given in relation to any subject matter…Under a plenary power "with respect to a subject matter" … the legislature can prima facie allow the subject to be uncontrolled or control it to such extent as it thinks proper…it may establish as well as prohibit. It may create as well as destroy, subject of course to limitations of the fundamental objectives enshrined in the Constitution and to the constitutional guarantee of fundamental rights.*

Self Assessment Exercise I:

Identify the purpose of federalism in Nigeria.

Section 4 (1) of the 1999 Constitution vests the legislative powers of the Federal or Central government on the National Assembly, made up of the Senate as upper house, and the House of Representatives. It has the "power to make laws for the peace, order and good government of the Federation or any part thereof", with respect to matters included in the Exclusive Legislative List, and the exercise of this power is to the exclusion of the State legislatures. In *Akwale v. Queen*, the court stated, *inter alia*:

> *The provision of this subsection that the National Assembly shall have powers to legislate on matters included in the Exclusive Legislative List to the exclusion of the Houses of Assembly of states does not mean that a state legislature cannot touch on those matters no matter how slightly. The test is that you are to look at the true nature and character of the legislation. If on the view of the statute as a whole you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters outside the authorised field.*

In *Oil Palm Company Limited v. Attorney General, Bendel State*, the court held that the Bendel State House of Assembly could not investigate the affairs of a limited liability company under the investigative powers granted to it by virtue of section 120 of the 1979 Constitution. This was because matters relating to such companies were on the Exclusive Legislative List and could only be dealt with by the National Assembly. As per Ikomi J. in that case:

> *The point must be emphasised that the fact that the chairman and members of the plaintiff/company are appointees of the Bendel State Government (as claimed in paragraph 6 f the Statement of Defence) does not in any way change the character of the plaintiff company which still remains a limited liability company subject to Federal as opposed to State Law.*

The question of the extent to which the National Assembly can legislative for the 'peace, order and good government' of the federation under section 4 (2) came up for discussion in the case of *Attorney General of Ondo State v. Attorney General of the Federation and Others*. The main contention was whether the National Assembly had the power to validly enact the Corrupt Practices & Other Related Offices Act, 2000 by virtue of its general powers under section 4 (2), bearing in mind the fact that corruption is not an item under the Exclusive or Concurrent Legislative Lists and was only mentioned under section 15 (5) of chapter 2 of the Constitution, which under section 6 (6)(c) can be said to be effective in the light of item 60 (a) of the Exclusive Legislative List was also contended. As a result, the question was whether the Attorney General of the Federation could enforce such a law in Ondo State. Several Senior Advocates were invited by the court as *amicus curiae* and gave their submissions on the various issues raised before the court. On the contention by Professor Ben Nwabueze that the issue of corruption is residual not being expressly provided for by the Constitution except under section 15 (5) which was not justiciable, the court held that the National Assembly had the authority to enact the law under section 4 (2) of the Constitution and item 60 (a) gives it the power to make laws for:

> *The establishment and regulation of authorities for the Federation or any part thereof*
>
> *(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.*

The court thus concluded that the creation of offences under the Act could be seen as matters incidental to the authority under Item 60. The court cited the Indian case of *Mangru v. Commissioners of Budge Municipality* where it was held, *inter alia*, that the Directive Principles can be made justiciable through legislation. This however would appear to be a wrong interpretation of section 6 (6)(c) of the Constitution. The question is, can item 60 of the Exclusive Legislative List annul the effect of section 6 (6((c)? The answer to this should be in the negative even though the court did not address this point. The court however concluded that the authority of the National Assembly is concurrent here and not residual or exclusive. Where, as in this case, the National Assembly has legislated to cover the whole field, the Houses of Assembly cannot again make laws on the matter. In other words, the National Assembly can wield its powers under section 4 (2) through item 60 in such a way as to widen the subject matters on which it can make laws through the provisions of chapter 2 which would make nonsense of the provisions of section 6 (6)(c) and gravely affect the principles of Federalism and the autonomy of federating States.

In his submission before the court, Professor Ben Nwabueze (SAN) rightly contended that the issue of corruption, not being expressly provided for in any of the legislative lists is a residual matter falling within the authority of the States. There is no doubt as he further submitted, that the power of the National Assembly under item 60 must be limited to the establishment and regulation of authorities for the purposes stated and not to creation of offences which cannot be seen as incidental to the authority under item 60; that is, it is limited to establishing and regulating such as prescription of membership, quorum, procedure, finances and so on. It cannot be the intention of the drafters of the Constitution that the list be used to usurp powers of the states. The authority granted under item 60 of the Exclusive Legislative list must be seen as limited to the establishment of such authorities for both the Federation and the States with the general object of enforcing and regulating the observance of the provision of chapter 2 and not just an aspect of it, in the same way as the constitution established authorities such as the Judicial Service Commission, Civil Service Commission, Independent Electoral Commission for both tiers of government without creating offences.

It further held variously, that the power to determine issues such as division of Local Government areas into wards; qualification or disqualification of candidates of Local Government elections, dissolution of Local Government Councils or vacation of office by its members, cooperative legislation belonged to the State Houses of Assembly under its substantive powers by virtue of the provisions of section 7 of the Constitution and item 12 of the Concurrent Legislative List.

The Solicitor General made a curious argument that since the issue of determination of tenure is not provided for in the constitution, it could be said to be incidental to the powers granted to the National Assembly under item 11 of the Concurrent legislative list. The court however rightly rejected this and held that the silence of the Constitution on the matter made it either residual and under the authority of the State Houses of Assembly under the provisions of section 4 (7)(a) of the Constitution which extends the legislative authority of the State's to "any matter not included in the exclusive legislative list…" or it could be seen as incidental to the general powers granted to the Houses of Assembly under section 7 of the Constitution. Whilst one may agree with the argument of the court that the matter should be treated as residual, or incidental or supplementary to the provisions of section 7, it is difficult to see how such authority could be properly read into the provisions of sections 4 (7)(a).

In Canada, the problem does not seem to have been easily resolved. For sometime, there has been a conflict between the classical doctrine of Federal paramountcy or exclusivity and the modern paradigm. "The classical interpretation was that whenever there is overlap or duplication of Federal and Provincial laws, or the Federal law has covered the field, the Federal law will render the Provincial law inoperative". Using the negative implication test, the courts would read into the Federal legislation an unspoken implication that any overlapping Provincial legislation is to be suspended. Thus there is a prohibition of delegation of power from one level to the other.

The modern approach in Canada recognises the fact that both levels of government can sometimes legislate on the same matter. Provided the law made by the authorised level of government has dealt substantially with the matter, a spill over on incidental matters outside its authority will be overlooked. Thus, Dickson, J. in *Multiple Access Ltd. V. McCutcheon* stated that:

> *….duplication is…the ultimate in harmony. The resulting "untidiness" or diseconomy of duplication is the price we pay for a federal system in which economy often has to be subordinated to provincial autonomy … Mere duplication without actual conflict or contradiction is not sufficient to invoke the doctrine of paramountcy and render otherwise valid*

provincial legislation inoperative.

Thus, the doctrine of exclusivity or paramountcy is only invoked when there is conflict or inconsistency. This approach has however been subjected to criticisms because the classical approach is often seen as promoting provincial autonomy. As a result, both approaches have been applied at various times by the courts often depending on the subject matter being dealt with.

In interpreting the provisions of section 4 (7)(a) the Supreme Court in *Attorney General of Abia State v. Attorney General of the Federation*, held that the import of the section is that:

> *….A State House of Assembly can legislate on matters on the concurrent list as well as on all other which are not on either of those two lists except where the matter is 'incidental' or 'supplementary' to matters on the exclusive legislative list.*

Self Assessment Exercise II:

Discuss the powers of a state house of Assembly to make laws for cooperative societies under the 1999 Constitution.

3.2 Powers of the National Assembly to Make Legislation for Cooperative Society

Section 4 of the Constitution provides variously as follows:

> *(2) The National Assembly shall have power to make law for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.*
>
> *(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.*
>
> *(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say;*
>
> > *(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and*
> >
> > *(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*

Thus, by virtue of the operation of these provisions, the National Assembly has the powers under the constitution to make laws for peace, order and good government. This general power or authority is given to the National Assembly under section 4 (2) stated above, and implies the fact that in exercise of its powers to make laws in relation to the sixty-eight matters specified under the Exclusive Legislative List, the National Assembly must be motivated by the desire for peace, order and good government of Nigeria. The question that arises here is whether in the exercise of these powers, the National Assembly can sometimes go outside its sphere of authority? The answer would appear to be in the affirmative provided it is in consequence of the exercise of its authority to make laws for peace, order and good government in relation to matters in the Exclusive List.

In Canada, the Court has been faced at various times with the issue of the nature and scope of this power. In *Re The Regulation and Control of Aeronautics in Canada*, the Court held that if a statute made by the Central Dominion Power is substantially covered by powers it is specifically given by the Constitution, any portion not so covered is not necessarily vested in the states, but is covered under the authority of the Central Government to make laws for the peace, order and good government of Canada. That is, the portion not so covered will not be treated as residual powers.

In *Attorney General for the Dominion v. Attorney General for British Columbia*, prohibition of insurance in Canada unless on licence from the Minister was held, *ultra vires*, the Dominion Parliament because it did not fall under 'the Registration of Trade and Commerce' and could not come under its general powers for peace, order and good government, but encroached on the powers of the provinces. In *Sunders case* it was held that the Dominion Parliament could exercise its powers only in emergency.

Note that the major problem in Canada seems to be with the fact that the exercise of the general powers often conflicted with the authority of the provinces on concurrent matters. Under our Constitution however, the phrase is not used in relation to the exercise of powers of the National Assembly with respect to matters on the Concurrent List. It can then perhaps be presumed that there will be little or no conflict in relation to its exercise with respect to matters in the Exclusive Legislative List. As will be seen later, however, similar powers are given to the Houses of Assembly in relation to matters in the Concurrent List, the exercise of which can lead to conflict. Note also that items included in the Exclusive Legislative List such as Bankruptcy and Banking; Commercial and Industrial monopolies; Combines and Trust; Capital issues; Labour issues; Maritime, Shipping and Navigation; Mines and Minerals; Nuclear energy; Police; Railways; Taxation of Incomes; Profits and Capital gains; Trade and Commerce; Wireless, Broadcasting and Television, apart from other authorities traditionally belonging to a national government under a federal system, makes the central government unnecessarily too strong in relation to the states. Apart from these, the Constitution confers various other powers on the National Assembly.

Self Assessment Exercise III:

Itemise the powers of the National Assembly to make Laws governing cooperative society in Nigeria.

3.3 Powers of State Legislature to Make Laws for Cooperative Societies

Composition, election

It is noteworthy that the state legislatures are unicameral, unlike the National Assembly that is bicameral. Subject to the provisions of the Constitution, a State Assembly is composed of three to four times the number of seats it has in the House of Representatives, divided among the various constituencies, in such a way as to reflect nearly equal population. They, cannot, however be less than 24 or more than 40 members in all. The House of Assembly is headed by a Speaker and Deputy Speaker, and a Clerk, and other staff are appointed for the House in accordance with the provisions of a law to be made by the House or Assembly.

3.4 Qualification, Disqualification, Mode of Business

It would amount to tautology to state the powers, qualifications, mode of exercise of business, and so on, of the state legislatures. This is because they are subject to the same qualifications, disqualifications and bound by same rules for sitting, voting, forming of a quorum, regulation of procedure, declaration of assets, mode of exercise of legislative powers, tenure, control over public funds, recall and powers of investigation as the members of the Federal House of Representatives.

4.0 CONCLUSION

You have learnt about division of powers, legislative powers and the powers of the national assembly in the enactment of laws in the federation. You have also learnt about state legislatures and the qualification, disqualification and mode of business in state legislature.

5.0 SUMMARY

In this unit, we have examined the sources of cooperative legislation, the powers of the National Assembly vis-à-vis the state houses of Assembly in respect of cooperative Enactment. In Nigeria, we have the Cooperative Act Cap 90 of 1990 Laws of the Federation and the various laws enacted by various houses of Assembly.

6.0 TUTOR-MARKED ASSIGNMENT

Cooperative legislation is an exclusive preserve of the federal comment. Comment.

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UNIT 3 COOPERATIVE LEGISLATION, PRACTICE AND PROCEDURE

CONTENTS

1.0 INTRODUCTION

Of the several branches into which the problem of administration is divided, that having to do with general administration i.e. the Legislature, is the most important one. In modern times, the legislature as the representative body of the people has become the source of all authority regarding administration. It means that the prime responsibility and authority of making fundamental decisions in respect to location and exercise of the general functions of direction, supervision and control of administration rests with the legislature. The direction, supervision and control are the functions of the legislature. It need hardly be said that the efficient exercise of these functions is the problem of general administration. It consists of determining where the responsibility for the exercise of these functions shall be vested and the means that shall be employed by the agency or agencies to which it is entrusted.

2.0 OBJECTIVES

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

(i) identify the differences between direction, supervision & control and execution;
(ii) list and explain the functions of legislature.

3.0 MAIN CONTENT

3.1 Differences between Direction, Supervision & Control and Execution

The function of direction, supervision and control differs from the functions of execution. The word execution means the actual carrying out of the orders. It simply consists of putting into execution what has been ordered. This distinction between direction, supervision and control on the one hand and execution on the other, is of vital importance because as said above the former is the function of legislature while the latter is the function of executive. A distinction here should also be made between executive power and administrative power. Generally, the two words 'executive' and 'administrative' are interchangeably used but this is wrong. To put it in the words of Willoughby, "*The executive power, or rather function is that of representing the government as a whole and of seeing that all of its laws are properly complied with by its several parts. The administrative function is that of actually administering the law as declared by the legislative, and interpreted by the judicial branch of the government. This distinction is usually made by declaring the executive function to be essentially political in character, that is one involving the exercise of judgement in its use; and the administrative function to be as concerned with the putting into effect of policies and carrying out of orders as determined or given by other organs*".

In small undertakings, these distinctions are not of much importance because here it is quite possible for the same person to exercise both the functions of direction, supervision and control and also execution. In all large undertakings, however, the distinction is of great importance because here the two functions are not only to be clearly distinguished but their performance also must be vested in different bodies. In business concerns, the Board of Directors elected by shareholders performs the first function. It frames rules and regulations, plans the project and organises its functions. The Board of Directors have an important place in business establishments. Its instructions are followed by its officials and every major step is taken on the direction. Their order is the law for the officials of the establishments. Since the legislature in public administration performs the same functions as are performed by the Board of Directors in a business establishment, therefore, the Legislature is called the Board of Directors. The Chief Executive is called General Manager because his functions are similar to the functions performed by a General Manager of a private undertaking.

3.2 Functions of Legislature

The Legislature sitting as a board of directors performs numerous functions. *Firstly*, it determines the activities to be undertaken. *Secondly*, it has to decide the nature of organisation necessary for carrying out the activities. *Thirdly*, it has to determine the personnel that would be required for the organisation. *Fourthly*, it determines the rules of procedure to be employed by the organisation. *Fifthly*, it provides for funds, which it shall make available to the organisation for carrying out the activities. *Sixthly*, it has to design a system for supervising and controlling the organisation so that the work may be done efficiently. A brief description of each of these functions is given below.

3.2.1 Determination of the Activities to be Undertaken

As regards the first function, there can be little doubt that the determination of what the government shall do is a responsibility that rests upon the legislature. The policy to be adopted by the government both in the internal and external field is set out by the legislature. But it does not mean that it should lay down all the details of a policy, the specific acts which shall be performed in carrying out the policy. Better it would be if it prescribes the policy in general terms and leaves the details to the executive. To illustrate, it may lay down that compulsory primary education should be enforced in the country, but it should not go to the length of prescribing the places where schools will be established. It should leave that judgement to the executive. The legislature is a body of politicians representing particular territories or interests. They are interested primarily in their particular territories. The executive represents and is interested in the entire territory and government of the State. Its judgement is bound to be better in regard to details than that of the legislature because the former being in close touch with administration is in a better position to understand its needs. Moreover, the legislature will nto be unnecessarily burdened with the task of specifying the details. If the legislature goes into details, it denies the initiative to the executive and thereby may impair the efficiency of administration. Too great legislature itemization renders it impossible for the chief executive to make the most effective utilization of the organisation and personnel and to meet exigencies that are only fully developed during the progress of the work. The legislature should feel contented with the determination of the general programme and should be interested in its efficient execution. Beyond this, it should proceed conservatively, and its further specification should be directory rather than mandatory upon the chief executive.

3.2.2 Determination of Organisation

"Organisation is the medium through which individuals work as a group as effectively as each would work alone. It consists of the relationships of individuals and of groups to groups, which are so related as to bring about an orderly division of labour". Generally speaking, organisation is divided into departments, business units, divisions and sections. In addition to these units there are certain units called field stations. These field stations are created in the services where the work of the service is done not only at the headquarters of the government but also in field stations all over the country, e.g. post offices, railway stations, law courts, etc. Now the question here at issue is the point at which it is advisable that the legislature should stop in determining not only the departments but shall be created for the performance of administrative duties, but also the internal organisations of these departments. Concretely, in the words of Willoughby the problem is, "*Shall the legislature leave the whole matter of organisation to the chief executive as general manager? Shall it determine organisation, in so far as the primary units of organisation, the departments, independent boards or commissions, etc., are concerned, leaving it to such bodies acting under the general control of the chief executive to provide for the character of internal organisation of those services? Or shall it push its determination still further so as definitely to prescribe by law, not only the departmental and bureau organisation, but also the sub-division of these divisions, and the final working units, the sections and field stations?*"

In practice, there is no uniformity among the various States on this point. In U.S.A., the number of character of the administrative departments that shall be set up for the handling of departments are created by the Executive decree. In India, the power of establishing new departments rests with the President acting through the Prime Minister. In so far as the units of the lower order, i.e., divisions, sections and field stations are concerned, the discretion in India is left in the hands of the ministers acting through their heads of departments. But in all these countries, the legislature has from time to time created new agencies in the form of departments, corporations, boards or commissions to carry on a particular activity. Thus in India, the Life Insurance Corporation, Railway Board, the State Electricity Board, Public Service Commission have been created by the legislature. That in doing so it has been guided largely by the advice of its general manager, the chief executive, is quite true, but the act of determination has been the act of the legislature and these agencies have a legislative status in the sense that their existence has been determined by statutory law. In Nigeria, the power for establishing new department is vested in the legislature. Also, in Nigeria, cooperative societies have been brought into existence by Act of Parliament.

As to what should be the true principle, it may be said that it is desirable that the legislature should content itself with making only the most general provision regarding the organisation of an agency and leave the details of internal organisation to be determined by the chief executive because he is the person who is responsible for running the administration. The legislature cannot handle this matter in as intelligent a manner as those directly responsible for the conduct of the affairs. Secondly, if legislature determines the organisation it gives rigidity to it. Thirdly, it imposes upon an already overburdened legislature the responsibilities of which it should be relieved. Therefore, the chief executive should be given the necessary powers to shape the administrative units according to the requirements of administration.

3.2.3 Determination of Personnel

Personnel is the body of persons who actually run the administration. It may be of two types – directing personnel, that is, those who are responsible for direction of services and are commonly called officers, and employees proper, that is, those occupying subordinate positions and having as their general duties the carrying out of orders given to them. It is generally accepted with regard to the former class that the legislature should itself determine their "number, character, compensation, powers and duties". In respect of this class the only question is how deep into the organisation of the several services this determination shall go. Now all the arguments that have been given against the legislature seeking to control organisation under the preceding subheading also equally apply to the creation by law of officers to have charge of subordinate units of organisation.

As regards the second class of employees, the legislature may determine their conditions of service either by a general statute or by an act of appropriation. Willoughby is of the opinion that it is not wise to control personnel other than directing personnel, by the first method. Any attempt to prescribe limitations upon subordinate personnel in this manner gives rise to a rigidity that is sure in many cases to work injury. The Act which provides for the setting up of a service, after providing for the directing personnel may provide "for such other officers and employees as may be from time to time provided by law". This will leave sufficient discretion to the legislature to determine each year the provision that shall be made for the subordinate personnel of a service at the time of granting appropriations for that service.

3.2.4 Determination of Rules of Procedure

Rules of procedure may be of two types: (1) Those which affect the interests or rights outside of service; and (2) those which have to do with purely administrative operations within the service. The example of the former is the rules setting forth the procedure to be followed in assessing and collecting income-tax or land revenue, in the grant of copyrights, trademarks, etc. These are matters affecting personal and property rights of the people in a most direct manner. The example of the latter are the rules for the disbursement of pay to the members of the service. Now as regards the former it is desirable that the legislature should pass a statute to give them legal sanction. The question as to whether these rules should be embodied in the Acts of the legislature or promulgated by cabinet or the head of the department involves a consideration of the question of the delegation of legislative powers which lies outside the scope of our study. The advantage of having these rules embodied in the statutes lies in the fact that they are drafted by the persons directly familiar with the conditions and problems of the department.

As regards the second category of rules of procedure, it is better to leave wide discretion to the services concerned. The legislature should exercise control over them through a proper system of accounts, reports, audit and the like.

3.2.5 Determination of Grant of Funds

In all the countries the legislature determines the amount of money which is to be made available for expenditure to the executive. All the public services are to be paid from public funds for their work. If no money is made available, the entire administration would come to a standstill. Therefore, it is the duty of the legislature to find out the needs of every department and make provision of money accordingly.

3.2.6 Legislative Supervision

Since the legislature is the source of all administrative authority and makes money available for carrying out the administration it is desirable that all grants of authority should be accompanied by means for ensuring that such grants are properly exercised. In other words, it may be said that the legislature should provide the means by which it shall be able to exercise due supervision and control over its agents. To see that these agents perform their duties properly is an imperative duty of the legislature.

Willoughby mentions the following means through which supervision and control may be exercised and accountability enforced:

(i) the requirement that all administrative officers shall keep proper records of their official acts;

(ii) the requirement that these officers shall submit reports at least once a year giving an account of their act;

(iii) the requirement that accurate accounts shall be kept of all financial transactions and reports of such transactions shall be made in such form that full information regarding their character is furnished;

(iv) provision for a system of examination and audit of these accounts;

(v) provision for the consideration by the legislative bodies, acting directly or indirectly, the administrative and financial reports with a view to determining not merely the legality of the action taken, but also the efficiency and economy with which official duties have been informed;

(vi) the requirement that administrative officers shall furnish information regarding acts done by them when called upon to do so by the legislature;

(vii) provision for special investigations or inquiries of a comprehensive character of the manner in which affairs have been conducted by a particular service or services.

Thus, from the above description, it is clear that the legislature instead of directly running the administration or determining in too detailed a manner the activities, agencies, organisation, plant and personnel should give its directions in general terms and provide that the officers charged with their execution shall furnish it with detailed data regarding their action. It is of greatest importance that the system of accounting, reporting and audit that will correctly and fully furnish the legislature with precise information regarding the acts of all administrative officers should be made perfect. In the words of John Stuart Mill, "*Instead of the function of governing which it is radically unfit for, the proper of office of a representative assembly is to watch and control the governance; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which anyone considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors*".

4.0 CONCLUSION

In concluding, it should be noted that the prime responsibility and authority of making fundamental decisions in respect to location and exercise of the general functions of direction, supervision and control of administration rests with the legislature.

5.0 SUMMARY

In this unit, we have identified and discussed the differences between direction, supervision & control and execution. We have also listed and explained the functions of legislature.

6.0 TUTOR-MARKED ASSIGNMENT

Itemise and discuss the functions of legislature in the direction, supervision and control of establishments.

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UNIT 4 SOURCES OF COOPERATIVE LAWS IN NIGERIA

Table of Contents

1.0 INTRODUCTION

We are beginning to look into the Sources of Law. It is perhaps important to distinguish Sources of Laws from Sources of Law.

When we look at law as a series rather than as a system, we may refer to Source of Law, which may include sources within and outside the law properly so called.

In this unit, we are concerned with a legal system and our focus is on legal Sources of Law. We shall look into some theories, some of which appear to ally with Social Contract Theory or Marxism as the case may be.

Autochthonism will receive some attention so as to evaluate how home grown or alien our Sources are and the essence, if any, of change.

2.0 OBJECTIVES

The objective of this unit is that at the end, you should be able to:

(a) understand the meaning of terms used,
(b) enumerate the classes, and the theories of sources as well as
(c) explain the autochthony of law.

3.0 MAIN CONTENT

3.1 Meaning of the term 'Source'

The term "Source(s)" (also termed *fons juris*) may mean the origin and authoritative statement from which the substance of the law is derived. It may also be described as: "something (such as a Constitution, Treaty, Statute, or Custom) that provides authority for legislation and for judicial decisions. A source of law is the point of origin for law or legal analysis.

You may have observed lawyers in Court, when they make statements and refer the Court to particular decided cases, the Law Reports where such cases can be found, to some Act or Statute and pointing to a particular chapter, part or section. We say that the Law Reports and the Statute or Act so cited are sources of his authoritative statements or law.

In literature of jurisprudence, the problem of "Source(s)" relates to the question: Where does the Judge obtain the rules by which to decide cases? In our present context: Where do we obtain the law we have been talking about – the law constituted in the Nigerian Legal System?

In this sense of the sources of law, Fullers (cited in Elias (1963) listed the following: statutes, judicial precedents, custom, the opinion of experts, morality and equity. Fuller probably was concerned with "Sources of Laws" rather than Sources of Law – where the law generally draws not only its content, but also its force.

In the context of legal research, the term "Sources" connotes:

(i) the origin of legal concepts and ideas;
(ii) governmental institutions that formulate legal rules;
(iii) published manifestation of the law.

3.1.1 Classes of Sources of Law

Sources of Law may be classified into formal or material, and the latter further subdivided into historical, legal, authoritative and binding, or other sources.

3.1.2 Formal Source

A formal source is what gives validity to the law.
Upon what authority is the National Open University of Nigeria established?
Upon an Act of the National Assembly,
Who gave the National Assembly authority to legislate?
The Constitution,
Where does the Constitution derive its power?
The general will and power of the people of Nigeria.

This is the Ultimate Source. Thus, the formal source of law may be traced to the "common consciousness" of the people, or the "Divine Will".

3.1.3 Material Source

Here, we are not concerned with the basis of validity as we did in our discussion of "formal source" of law. We are concerned here with the origin of the substance of the law – Where the law derives from or the authoritative source from which the substance of the law has been drawn. This may be:

(i) Historical

This may comprise the writings of lawyers, e.g. the rules and principles of foreign law. The writings do not form part of the local law until they are formally received or enacted into law. Prior thereto, they serve as persuasive authority.

(ii) Legal

These are sources that are recognized as such by law itself. Examples are Statutes, Judicial Precedents and Customary Law.

3.1.4 Authoritative and Binding Source

This refers to the origin of the legal rules and principles, which are being enacted or formulated and regarded as authoritative and binding.

Examples are legislations (Received law and Local statutes), judicial precedents (Common law and Equity; and local precedents) and Customs (Customary law).

3.1.5 Other Source

These are non-formal sources or origin of legal rules that lack authority, but are persuasive merely.

Professor Elias considered the "Source of Law" in terms of the mainspring of its authority and classified this into six categories, namely:

(i) Local Laws and custom;

(ii) English Common law, the doctrines of English Equity and Statutes of general applications in force in England on 1st January, 1900;

(iii) Local legislation, and the interpretations based thereupon;

(iv) Law Reports;

(v) Textbooks and Monographs on Nigerian Law;

(vi) Judicial Precedents.

There is no hard and fast rule on classification of Source. What is of essence is knowing or identifying the sources themselves and the theories that have been proffered.

3.2 Theories of Sources of Law

Legal writers have proffered sources of law, which may neatly be discussed under three headings, namely:

(i) Consensus Theory
(ii) Conflict Theory
(iii) Other Theory (Middle Course)

3.2.1 Consensus Theory

This theory conceives of a legal system as a product of consensus idea of society, functioning as an integrated structure, whose members agree on the norms, rules, and values, which they have mutually and voluntarily agreed should be uniformly respected.

In Nigeria, sovereignty and supremacy reside on people, not their ruler and these people are represented by ht members of the House of Assembly, House of Representatives and the Senate, who make laws on their behalf.

In the traditional chiefly and chiefless societies, the monarch and chiefs declare what the law has always been from time immemorial, and where they are in doubt, they consult The Holy Bible, the Qur'an, or the Oracle.

3.2.2 Conflict Theory

The conflict theory is to the effect that the society is made up of series of conflicting and competing groups, and law and legal system is a dictate of the wealthy and powerful in the society to perpetuate their positions and class interests.

Whether the lawmakers are wealthy or go into lawmaking in order to acquire wealth or get wealthier is arguable.

However, there is freedom of expression at the floor of the Houses and immunity from liability from what goes on there. Dictates of wealth or power, does not therefore appear real or apparent in passing of bills into law.

3.2.3 Other Theory (Middle Course)

There is a middle course between Consensus theory and Conflict theory. This middle of the road approach argues that Legal system is the handiwork of those exercising political and legal powers of state, not necessarily to protect their own class interests, but expressing the definition of the privileged group, their values, notions and morals.

3.3 Autochthonism

Legal Theorists have raised further argument of how much of our laws and their sources are autochthonous. Autochthonism or autochthony pertains to the nativity of the law. That is to say, the extent to which the law is or is not indigenous or native to the land in which it operates. Are the sources of Nigerian law indigenous (autochthony) or foreign (alien)?

An autochthonous legislation, for example, may be one which does not trace its validity to any foreign legislature; rather, it is home-grown and rooted in the country itself. Autochthony has two aspects:

(i) Formal Autochthony:

This relates to the "Source(s)" from which the law or the Court, derives its authority as law.

(ii) Substantive Autochthony:

This refers to the contents of the legislation or law e.g. the frame of government which the Constitution has established.

Autochthony envisages

(i) a new birth, some kind of break in legal continuity;
(ii) enactment by virtue of an authority, native to it or inherent in the local enacting body.

Exponents of Africanism have extended these requisites to include attempts to refashion their Constitution and to reflect authentically the African traditional ideas of government and powers.

Professor Wheare thinks that a break in legal continuity is a perquisite to making a Constitution (or any law) if it is to be credited with fully autochthonous source. The essence of the break is to remove the semblance of having been made in any way under authority of the Metropolitan power.

Professor Robsin has expressed a contrary view, emphasizing that what is of much more importance is the continuous acceptance of the Constitution (or law) by the people subject to it.

Let us examine the autochthony of our Constitution for an illustration:

The Preamble to the Independence Constitution, 1960 states:

"The Queen's Most Excellent Majesty-in-Council, Her Majesty, by virtue and in exercise of powers in that behalf by the Foreign Jurisdiction Act, 1890 (a) or otherwise in Her Majesty vested, is pleased by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:

(i) “This order may be cited as the Nigeria (Constitution) Order in Council, 1960”.

Upon Attainment of Independence, both Nigeria and the United Kingdom renounced the metropolitan power to make laws for the new Independent State of Nigeria which thereafter became vested with powers, however limited to amend, replace, the Imposed Constitution and other laws.

The Preamble for 1963 Constitution provides:

“Having firmly resolved to establish the federal Republic of Nigeria …..

We, the people of Nigeria, by our representatives here in Parliament assembled, do hereby declare, enact and give to ourselves the following Constitution ......

This Constitution, 1960 metamorphosed into the Federal Republic of Nigeria (FRN) Constitutions 1963, 1979 and 1999 with some amendments.

Self Assessment Exercise

1. Account for the autochthony of the Nigerian Constitution.

2. Compare the enactment of the Constitution of Nigeria and of Eire: What difference do you observe?

Let us consider some examples from other jurisdictions.

Dr. de Valera’s government of Eire, 1937 prepared a draft Constitution, and presented to the Parliament for approval, he submitted the draft Constitution to the people in a plebiscite, which adopted it.

Further example can be found in *Papua New Guinea*.

4.0 CONCLUSION

You learnt the sources of law in Nigeria. You also learnt the meaning of the term ‘Source’, then its classification as well as the theories behind it and the extent to which the classes are home-grown or alien.

5.0 SUMMARY

In this unit, we have tried to examine the term:

“the sources of law” rather than “sources of laws”. The theories relating to sources range from consensus to conflict and middle of the road approach. These have been discussed. It is an open question whether the sources of our Constitution and laws are autochthonous (home-grown) or alien.

Contemporary writers including Professor Nwabueze have contended that the importance of legal autochthony relates more to the contents of the law rather than the origin of the Constitution (or any law) or substantive autochthony.

The argument for legal autochthony tends to excite nationalistic sentiments and perhaps pride. Legal autochthony is not to be desired for its own sake. Rather it is to be seen as a means of effecting changes in the Constitution (or any law).

6.0 TUTOR MARKED ASSIGNMENT

Give an account of the difficulties met with in attempting to formulate a satisfactory classification of laws.

7.0 REFERENCES AND FURTHER READINGS

Elias, T.O. (1969). *Law in a Developing Society*. Being Inaugural Lecture delivered at the University of Lagos on 17 January on the topic "Nigerian Land Law and Custom".

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UNIT 5 SOURCES OF LAW II (RECEIVED ENGLISH LAW – COMMON LAW)

Table of Contents

1.0 INTRODUCTION

After the cession of Lagos in 1861, English law was introduced into the Lagos Colony and later into Nigeria as a whole. The part of English law that operated then (and still operates) in Nigeria is what is referred to as the Received English Law. The Common Law is an integral part of htat received English law and is the subject of this unit.

2.0 OBJECTIVES

When two objects come into contact with each other, one must leave an impact on the other. At the end of this unit, you should be able to:

(i) Evaluate the impact of metropolitan power in the Nigerian Legal System beginning with the law in operation;
(ii) Discuss the content of Received Law;
(iii) Explain what is meant by Common Law;
(iv) List the criteria for incorporation into Common Law;
(v) Enumerate and discuss the problems of the Common Law.

3.0 MAIN CONTENT

3.1 Received Law

The Received English law, as a source of law, includes:

(a) The Common Law;
(b) The Doctrines of Equity;
(c) Statutes of General Application in force in England;

(d) Statutes and Subsidiary Legislation on specified matters;
(e) English law enacted before 1st October, 1960 and extending to Nigeria.

Self Assessment Exercise 1:

Explain the term "Received English Law".

By the middle of 19th century, British and other merchants had come to West Africa to trade under Royal Charters, bringing along with them, their own laws. Following the occupation and Cession of Lagos (1861) and its declaration as a Colony, there was a succession of Ordinances.

One of them – Ordinance No. 3 of 1863. This ordinance decreed that, "All laws and Statutes which were in force within the realm of England, on 1 January 1863, not being inconsistent with any Ordinance in force in Lagos Colony or with any Rule made in pursuance of any such ordinance, were deemed and taken to be in force".

Ordinance No. 4 of 1876 also expressly provided that the Common Law, the doctrines of Equity and Statute of general application which were in force in England on 24 July 1874 shall be in force. This provision was extended to the Southern Protectorate by Ordinance No. 17 of 1906 and to the Northern Protectorates by Proclamation No. 4 of 1900. The Supreme Court Ordinance 1914 was passed following the amalgamation of Northern and Southern Protectorates on 1st January 1900 and emergence of present day Nigeria. This Ordinance repealed and re-enacted Ordinance No. 4 of 1876, putting into operation in the whole of Nigeria, the English Common law, the doctrines of Equity and statute of general application, which were in force in England on 4 March,1863 (as regards Lagos Settlement) and 1st January 1900 (as regards Nigeria as a whole).

Modern Nigerian legislations have similarly incorporated the Received English Law into the Nigerian Legal System. Examples are:

1. The Law (Miscellaneous Provision) Act and The Interpretation Act (both in force throughout Nigeria);

2. The Law (Miscellaneous Provision) and High Court Law of Lagos State, Law of England Application Law, applicable in the former Western Region (i.e. the present Edo, Delta, Osun, Ekiti, Ondo, Ogun, Oyo States);

3. The High Court Law of former Northern Nigeria, in force in all the 19 Northern States;

4. The High Court law of former Eastern Nigeria in force in the Eastern States.

3.2 The Content of Reception Enactments

The provisions generally are identical in all the reception enactments. See an illustration of reception enactment contained in the law of Lagos State:

> "*...Subject to the provisions of this section and except in so far as other provision is made by any Federal or State enactment, the Common Law of England and the doctrines of equity together with the Statute of General Application that were in force in England on the 1st day of January 1900 shall be in force in Lagos State*".

"(2) The State of general application referred to in Subsection (1) together with any other Act of Parliament with respect to a matter within the legislative competence of Lagos State which has been extended or applied to the Lagos State shall be in force *so far only as the limits of local jurisdiction and local circumstances* shall permit and subject to any Federal or State Law.

"(3) For the purpose of facilitating the application of the said Imperial Laws, they shall be read with such formal verbal alteration not affecting the substance as to names, localities, courts, officers, persons, monies, penalties, and otherwise as may be necessary to render the same applicable to the circumstances."

The provision of the *Law of England Application Law* incorporating the Received law was re-enacted as Western Nigeria Law 1959 and in subsequent editions.

The reception enactments in other parts of the federation are similar in content, but there are some few discrepancies:

(a) The *High Court of the Northern States*, received into the 19 Northern States:

- (i) Common law;
- (ii) Doctrines of Equity;
- (iii) Statutes of general application in England on 1st January 1900. There was no reference to the Common Law of "England".

(b) High Court Laws of Eastern Nigeria received:

- (i) the Common Law of *England*;
- (ii) Doctrines of Equity, and
- (iii) Statutes of general application on 1st January 1900.

(c) All the Reception enactments adopted "the doctrines of Equity" except the West and the expressly mentioned "the doctrines of Equity in England".

Self Assessment Exercise 2:

1. Comment on the implications of the discrepancies observed in the English law reception clauses for a unified legal system.

2. To what extent is English Law part of Nigerian Law?

3.3 Common Law

In Anglo-Saxo England, there were seven kingdoms each with its own different Laws and Customs and Court systems. Custom formed the basis of the law of each of the kingdoms, hence the aphorism: *lex et consuetude angliae* (Law and Custom of England). But the customary law in say Webtex differed widely from that in Mercia or East Angliae. After the Norman Conquest in 1066, a system of Common Law Courts developed out of the Kings Council (the *Curia Regis*), and Common law began to grow from decision of these judges of the Curia Regis and the Royal Courts especially in 12th and 13th centuries.

Once a local custom became part of the Common law, it ceased to be a mere custom and became case law or judge-made law applicable to the whole of the realm. By the Middle Ages, the local systems had disappeared, giving way to a body of rules common to the whole of England.

Common law therefore refers to the body of law derived from judicial decisions rather than Statutes or the Constitution. It is that part of the law which is contained in decisions of the English Superior Courts. It is neither written nor set out in Acts of Parliament nor in the various forms of subordinate legislations. Thus, Common law originated from the unwritten immemorial practices, usages and ancient customs of the early English communities as developed and unified by the Royal Courts during the three centuries following the Norman Conquest to become the basic law of England.

As the "Common customs of the Realm" and the principles that were built around it by the Royal Judges of old, Common law is much older than Parliament itself as well as the law Courts both of which in turn are older than Parliament. It is a complex system of law – both civil and criminal, neither codified, collated nor arranged in a simple and logical order. It remained an authoritative record of judgement of judges found in authoritative records, law reports, and textbooks.

Remedies available at common law were restricted and included:

- Possession of land or items of value;
- Compensation;
- Severe punishment for crimes.

It is important to note that Common law had its roots deeply ingrained in the national ideas, and ways of life and institutions of the British people. Justice Coke tells us that in his time, kings judges were sworn to execute Justice according to the law and custom of England.

In *Blundell v. Catterall*, 1821, Best J. said: "The practice of a particular place is called a custom. A general immemorial practice throughout the realm is the Common Law".

Self Assessment Exercise 3:

Account for the development of Common law.

3.4 Criteria for Incorporation into Common Law

A local custom must satisfy the following conditions before it could be incorporated into Common Law:

(i) It must be reasonable;
(ii) It must be of immemorial antiquity;
(iii) It must not be in conflict with the Statute law;
(iv) It must be observed as of right;
(v) It must have been known to the parties concerned;
(vi) It may be inconsistent with Common law.

Similarly, a general custom must meet the following criteria:

(i) It must be reasonable;
(ii) It must be generally followed and accepted throughout the land;
(iii) It must have existed from time immemorial;
(iv) It must not be in conflict with Statute law;
(v) It must not be in conflict with the Common law.

It is evident that general customs were fundamental in the development of Common law in the early times.

Self Assessment Exercise 4:

Explain how a custom may develop into Common Law.

3.5 Problems Associated with the Common Law

The Common law over the centuries had turned out to be: rigid, inadequate, harsh, unjust, corrupt, declaratory, dependent on chance, delay, procedure and restricted jurisdiction. This will be explained below.

(a) Rigid

Rules become archaic, antiquated; inflexible, partly because of the effect of Precedents and partly because of the Provisions of Oxford 1258 which prevented the issue of writs except where there was a recognized form of action.

(b) Inadequate

Available writs covered narrow grounds. A person aggrieved in tort or contract might not succeed in bringing action for redress unless it fitted existing form of action and these were severely limited. In other words, where there was no form of action, there was no remedy for injuries.

A great number of causes of action could not be redressed and these were increasing. For example, Common law failed to recognize the tort of Nuisance, the Institution of Trust, Mortgagor's Equity of redemption etc.

(c) Harsh

Judges applied the law – just or unjust. Its concern was procedure and form, and these were technical.

(d) Unjust

Common law remedies could not meet the ends of justice in many cases. The only remedy available was damages and in many cases it was inappropriate relief; particularly where restitution was possible and desired. Common law would not order specific performance, injunction, rescission, where damage was inappropriate. Furthermore, the cost of action sometimes was prohibitive, sometimes exceeding claims.

(e) Corrupt

The Regime was characterised by bribery and corruption, oppression and bias. Very powerful and influential barons could overawe or intimidate the Court to give judgement in their favour. Judges were poorly paid.

(f) Declaratory

Common law can only be authoritatively declared by superior courts and only to the extent that it was necessary to do so for the purpose of deciding a particular case.

(g) Dependent on Chance

No authoritative text on Common law. It is not made in vacuum, but derived from the principle of law as declared by judges in the course of deciding particular cases. Its development has always depended upon the incidence of cases and availability of appropriate writ.

(h) Delay

Unless appropriate write is taken, the whole process is repeated; and at high costs. Adjournments were too easily granted, and justice delayed is justice denied.

(i) Procedure

Proceedings were unsatisfactory and expensive. Take for example, a case of divorce on the ground of a wife's adultery. Common law procedure demanded the following steps:

(i) Action in a church Court for judicial separation;

(ii) Action of "criminal conversation" by the aggrieved party to recover damages from the adulterer in the Common Law Court;

(iv) A private Act of Parliament to dissolve the marriage, which alone cost at least ₤500 by the 18th century.

If there was error in procedure, the whole process is repeated.

(j) Restricted Jurisdiction

English Common law applied only if the case does not fall within certain reserved matters of local customary law such as: land tenure, succession and inheritance, marriage and the family and local chieftaincy cases.

4.0 CONCLUSION

This unit is a continuation of the preceding unit. Both are centred on the "Received English law". You addressed the "common law" in greater detail in this unit. You also learnt how law grew in England, the Reception enactments and the criteria for incorporation into the Nigerian legal system as well as the problem associated with this. You are making tremendous progress, having studied both local and foreign sources of Nigerian law. A little step more.

5.0 SUMMARY

The actual life of the law has not been logic; it has been experience. Common law is derived from the common customs of the Realm and from the principles, which the Judges of the *Curia Regis* have built around it in the Royal Courts of old. It has been introduced into Nigeria since 1863 and it remains a source of Nigerian law.

6.0 TUTOR MARKED ASSIGNMENT

Trace the history of Common Law and its reception into the Nigerian Legal System.

7.0 REFERENCES AND FURTHER READINGS

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MODULE TWO

UNIT 1 REGISTRATION OF COOPERATIVE

Table of Contents

1.0 INTRODUCTION

In this unit, you will learn about the criteria for the appointment of a Federal or State Director of Cooperatives and the qualification of the Director. We shall also discuss the types of societies which may register and the conditions for their registration with the cooperative society.

2.0 OBJECTIVES

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

(a) Know the criteria for the appointment of a Federal or State Director of Cooperatives;
(b) Highlight or state the qualifications required for a Director to be appointed;
(c) List the discuss the types of societies that may register as cooperatives;
(d) Enumerate the conditions for non-registration as cooperative societies;

(e) Understand the effect of registration as a cooperative society.

3.0 MAIN CONTENT

3.1 Appointment of Federal Director of Cooperative or State Director of Cooperative

Section (1) of the Cooperative Societies Act of 1993 provides that: “The President, Commander-in-Chief of the Armed Forces may:

(a) appoint a person to be a Federal Director of Cooperatives;

(b) appoint persons to assist him;

(c) by notice in the Gazette confer all or any of the powers of a Director under this Decree on any such person.

Subsection 2 of the Decree also stipulates that the Governor of a State may appoint a person to be the Director of Cooperatives in the State and may appoint persons to assist him and shall by or notice in the State Gazette, confer on any such person all or any of the powers of a Director under the Act.

3.2 Qualification of Director

To be qualified as a Director of Cooperatives, a person must possess the following qualifications:

1. must be of sound mind;
2. must not be a bankrupt;
3. should not be an ex-convict.

3.3 Functions of a Director

The following are the functions of a Director Cooperative:

(a) Regulation and Supervision of the registration and management, supervision and widening up of cooperative societies;

(b) The establishment and maintenance of cooperative societies;

(c) He arranges and conducts investigation into the affairs of any cooperative society registered by it;

(d) He performs other functions as may be specified by the Cooperative Societies Act of 1993;

(e) He undertakes any other activities as may be relevant to the execution of the provisions of the Act.

3.4 Cooperative Society: Definition

Cooperative society is an association of person who have voluntarily joined together to achieve a common end and through the formation of democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate. Once registered, a cooperative society becomes a legal person. A legal person is an entity which the law regards as having rights and duties. Generally, law recognizes two distinct categories of persons, namely:

(i) Natural person;
(ii) Artificial person.

Cooperative societies are artificial entities which the law regards as existing once the procedure for their establishment has been complied.

3.4.1 Types of Cooperative Society

There are two types of corporation:

(a) Corporation Sole
(b) Corporation Aggregate

(a) **Corporation Sole:**

This is a legal person representing an official position. The post which is usually occupied by series of successive human beings has the General Overseer of a Church, the Vice Chancellor of a University, the Oba, the Obi, Emir or Eze of a Town.

(b) **Corporation Aggregate:**

This is also a legal person formed by a group of people for the purpose of carrying on certain activities, especially trading for profit. They are simply known as companies. They usually have more members i.e. limited liability companies.

The cooperative law equally divides cooperative societies into the following:

(i) Primary Cooperative Society;
(ii) Secondary Cooperative Organisation;
(iii) Central Financing Society;
(iv) Central Society; and
(v) Apex Cooperative Society

1. Primary Cooperative Society:

This is a cooperative organisation whose membership is made up of at least ten persons. It is the commonest type of cooperative society as it can be found all over the state including the urban and rural areas.

It is formed by people with common interest either as residents of a particular area, or trader in a particular commodity etc. It must have at least ten (10) persons and such persons must have individually satisfied the provision of Section 24, which state expressly that "*no person must be a member of more than one registered society whose primary objective is to grant loans to its members, except such a person has been given prior consent to do so by the registered society concerned*".

2. Secondary Cooperative Organisation:

This refers to a cooperative organisation whose membership is made up of primary cooperative societies.

Each of the above type of cooperative societies can either have its liability limited or unlimited, but in practice, one will find out that most cooperative societies are limited liability.

3. Central Financing Society:

This is a registered society of which the principal object is to make loans available to other registered societies.

4. Central Society:

This is a registered society established to facilitate the operations of registered societies in accordance with cooperative principles and includes a central financing society. However, this type of society can only be registered under the Cooperative Law if it has at least two registered societies as its members.

5. Apex Cooperative Society:

This is a cooperative organisation whose membership is made up of secondary cooperative societies.

Cooperative societies may either be limited or unlimited.

(a) Limited Company or Cooperative Society
(b) Unlimited Liability Company

(a) **Limited Company or Cooperative Society**

A limited company or cooperative societies may be limited by shares or limited by guarantee.

(i) ***Limited by Shares*** – this means that the liability of members is limited by the Memorandum to the amount of unpaid shares.

(ii) ***Company or Cooperative Society Limited by Guarantee*** – this means that the members' liability is limited by the Memorandum to the amount which the members may respectively undertake to contribute to the assets of the company or society in the event of winding up or liquidation.

Generally, a company limited by guarantee shall not be incorporated for the object of carrying on business of profit to be distributed to members. All charitable companies or associations are registered as companies limited by guarantee and cannot have share capital.

(b) **Unlimited Liability Company**

There is no limit to the amount of liability which members can incur in the event of liquidation. Members have to contribute, if possible from various other sources to pay for the debt of the company or cooperative society.

3.4.2 Features of the Cooperative Society under the Cooperative Law Decree 90 of 1993

The features are as follows:

(a) It established a Cooperative Societies Decree herein after referred to as Nigeria Cooperative Society Decree of 1993 Section 1;

(b) As for the formation of the Cooperative Society under the Decree, any ten (10) persons or more may form a primary society, Section 22;

(c) Under the Decree, a society may be registered as an industrial society or as a primary or secondary society;

(d) A society may be registered as a cooperative society under the Decree if:

   (i) It is a limited liability society, and

   (ii) It has as its objects the promotion of the socio-economic interests of its members in accordance with the cooperative principles or established for the purpose of facilitating the operations of those societies.

(e) The Cooperative Society Decree also seemed to have abolished the age long rule in Foss v. Harbottle (1843) 2 K.B461 which states that where a wrong had been done to the cooperative society or in a case of irregularity in its operations, the proper plaintiff should be the company.

3.5 Formation of a Cooperative Society

Promotion of a cooperative society is like the promotion of a company which is usually undertaken by a person who takes necessary steps and makes necessary arrangement towards incorporation or registration.

Such steps may also involve engaging the services of professionals such as Accountant and Lawyers who are one of the promoters in the real sense of it.

3.5.1 Duties of Promoters of Cooperative Societies

The duties of promoters of cooperative societies are as follows:

(a) He decides on the name, the object, address and liabilities of members;

(b) He prepares the cooperative society bye-laws;

(c) He forward the cooperative society name, bye-laws for registration;

(d) He registers the cooperative society with its bye-laws.

3.6 Registration of a Cooperative Society

To be qualified for registration as a cooperative society, the association must be limited liability society and has at its objects the promotion of the socio-economic interest of its members which must be in accordance with the cooperative principles. The purpose of its establishment must also be to facilitate the operation of these principles.

A cooperative society is registered where all necessary forms have been filled and lodged with the Director of Cooperative Society. It is also accompanied by the document such as the proposed bye-laws of the society as prescribed by the Director. Registered office (not post office box) and the declaration of compliance with the provision of the Nigerian Cooperative Societies Decree 90 of 1993.

The Director of Cooperative Societies, upon being satisfied, issues a Certificate. The duties of the Director of Cooperative Societies are merely administrative. The Cooperative Societies commence business immediately the society is registered.

Section 5 (1) of the Cooperative Societies Laws of Nigeria states that: "If the Director is satisfied that a society has complied with the provision of Sections 3 and 4 of the Decree and that its proposed bye-laws are not contrary to the provisions of the Law, he shall register the society and the bye-laws".

Section 5 (2) states that "If the Director refuses to register a society, the society may, within 60 days from the date of the notification to it by the Director of his refusal to register the society, appeal against the refusal to the Minister or Commissioner as the case may be".

Section 5 (3) states that "The Director shall within 60 days dispose of an application for registration by a society".

3.7 Conditions for Non-Registration of a Cooperative Society

According to Sections 3 and 4 of the Cooperative Society Laws of the Federation, the Director of Cooperative shall register the society except and unless in his opinion:

(a) It does not comply with the provisions of the Decree;

(b) The business which the cooperative society is to carry on or the objects for which it is formed or any of them are illegal;

(c) There is non-compliance with the requirements of any other law as to registration of cooperative societies;

(d) The proposed name conflicts with or is likely to conflict with the provisions of the Cooperative Society Decree, 1993.

3.8 Consequence of Registration

According to Section 6 (1), upon Registration of a Cooperative Society and its bye-laws, the Director of Cooperative shall certify under its seal as follows:

(a) As a body corporate by the name under which it is registered;

(b) Has perpetual succession and a common seal;

(c) Have powers to hold movable and immovable property;

(d) Enter into contract;

(e) Have power to institute and defend suits and other legal proceedings, and

(f) Do all things necessary for the purpose of its constitution.

3.9 The Certificate of Registration

According to Section 7 of the Cooperative Society Laws of 1993, the Certificate of Registration signed, sealed and delivered by the Director of Cooperative shall be conclusive evidence that the society mentioned in the Certificate is duly registered. This means that all requirements of this Decree in respect of registration and of matters precedent and incidental to it have been complied with. As from the date of registration mentioned on the Certificate of Registration of the Cooperative Society, the society becomes a body corporate.

3.10 Effects of Registration

Upon registration, the cooperative society becomes a corporate body and legal personality with the following characteristics:

(a) It assumes a separate existence distinct from that of its founder. It becomes a legal personality according to the doctrine in Salomon v. Salomon (1897) AC 22 (HC). Also in Lee v. Lee (1961) 6 AC 12. Lee established and incorporated a flying school for trainee pilots. The company had a share capital of 300 out of which Lee had 299. Lee later died in a crash. His widow claimed compensation from the company. It was held that she was entitled to the claim because late Lee and Lee's air Farming Limited were separate and distinct legal person.

(b) The society assumes perpetual succession. It can never die except liquidated through the statutorily laid down procedure of winding up.

(c) There is transfer and transmission of shares or interest.

(d) It can hold, own or dispose of properties.

(e) It can borrow or lend out money in its own name.

(f) As a jursitic personality, it can sue and be sued in its own name.

4.0 CONCLUSION

Although the cooperative society is a legal entity and separate from its founders as enunciated in Salomon v. Salomon and Lee v. Lee's Air Farming Limited, it invariably conducts its affairs through the instrumentality of the agency of a natural person. These natural persons are elected from members of the society and their actions bind the society.

5.0 SUMMARY

In this unit, you learnt:

- the appointment of Directors by the Federal or State Government;
- the functions and powers of the Directors;
- Registration of cooperative societies;
- the conditions to be fulfilled before registration of cooperative societies and the effect of registration on cooperative societies.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss the conditions for registration of cooperative societies.

2. Mention and explain two types of cooperative societies.

7.0 REFERENCES AND FURTHER READINGS

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UNIT 2 GENERAL PRINCIPLES OF CONTRACT AND APPLICATION TO COOPERATIVE OCIETITES

Table of Contents

1.0 INTRODUCTION

A registered cooperative society, being a corporation aggregate, is a legal person, which can sue and be sued {Salomon v. Salomon (Supra)}. In this wise, the cooperative society have contract with its members vide Section 14 (1) of the Cooperative Act of 1993 which states:

"14(1) A registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of its members whether it is produce of agriculture, animal husbandry, forestry, fisheries, handicraft or otherwise may provide in its bye-laws or may otherwise contract with its members the following, that is:

1. That every member who produces an article shall dispose of the whole or any specified amount through the society;

2. That a member who is proved or adjudged in such manner as may be prescribed by regulation to have committed a breach of bye-laws or contract shall pay to the society liquidated damages, a sum ascertained by regulation.

Capacity and Legal Contract in Cooperative Societies

Provisions of Section 14 (4) (a) and (b) dealt with the issue of capacity of an infant as it relates to contract entered into by him/her. The section states thus:

"Though in law, a valid contract may be defeated by the legal incapacity of one or more of the contracting parties, the reason is simple. One cannot claim rights nor inherit responsibilities under a relationship he has no legal capacity to enter into. However, the Cooperative Society Law or Act has abridged this provision of the General Rule in respect of Infants and the capacity to contract.

2.0 OBJECTIVES

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

- define contract;
- discuss the nature of contract;
- list and explain the essential elements of a valid contract
- list the vitiating elements of a valid contract;
- state the classification of contracts;
- describe what determines the validity of a valid contract;
- discuss the contract of cooperative societies with its members.

3.0 MAIN CONTENT

3.1 Definition of Contract

A contract is a promise or set of promises which is legally binding on both the promisor and the promise and is therefore enforceable in law (Kachikwu and Ozekhome, 1988).

3.2 Nature of Contract

A contract comes into being when parties have conclusively reached an agreement, or where they are deemed to have reached an agreement, and the rights and obligations arising from the agreement are recognised by law.

A promise for promise is a contract. The fundamental justification for the law's intervention to enforce promises is an economic one. If a promisor is allowed to break his promises at will without being placed under a legal obligation to compensate the promise, then trade, commerce and business would be seriously impeded.

A contract differs from other branches of law or obligations in that contracts are presumed to have been voluntarily entered into by the parties concerned, who in any case, are free to set up what rules and regulations should bind them. And the law will enforce these. Consequently, the fundamental difference between a contract and a tort, for example, is that the obligation and liability created by contract are usually imposed by both parties on themselves, while in the case of tort, they are usually externally imposed by law.

In *Alhaji Shuaibu Abdulkareem v. Incar Nigeria Ltd.* (1966), it was held inter alia, as follows:

> "Parties sue *juris* could contract as they wish. The

> terms could be to their advantage or disadvantage. There is nothing stopping a party from committing a contractual suicide. Suicide in the sense that the agreement is entirely to his utter detriment. Such is the right of parties who freely enter into agreement so far all the legal pre-requisites are fulfilled".

Significantly, almost all contracts are *simple contracts* as distinguished from specialty contracts, i.e. contracts made under seal.

3.3 Essential Elements of a Valid Contract

There are three fundamental elements of any valid simple contract. They are as follows:

(i) **Offer and Acceptance:**

The parties to the contract must have reached or be deemed to have reached an agreement. By this we mean that one party (the offeror) must have made an offer which the other party (the offeree) has duly accepted. A mere invitation to treat is not an offer.

(ii) **Intention to Create Legal Relations:**
The parties must have intended or be deemed to "mean business", i.e. to enter into binding legal relations. Thus, a mere social acceptance of an invitation to lunch imposes no legal obligation which the law will enforce.

(iii) **Consideration:**

A contract must be supported by consideration. By this, it is meant that advantage or benefit must move from one party to the other.

3.4 Vitiating Elements of a Valid Contract

This section will be discussed under the following sub-sections:

(a) Vitiating Factors:

It is significant to note that the three elements stated above may be present and yet the contract is liable to defeat in law by the presence of other vitiating factors.

Such factors include:

(1) mistake
(2) illegality of the contract itself
(3) misrepresentation
(4) incapacity
(5) undue influence
(6) duress

(7) absence of particular form
(8) non-conformity with public policy, etc.

(b) Effect of Vitiating Elements:

The effects of the above factors are varied.

(i) Some will completely *void* the contract;

(ii) Others render it *unenforceable* by one party against the other;

(iii) And yet some others will render the contract *voidable*.

Self Assessment Exercise 1:

Mention the essential element of a valid contract as it relates to cooperative society.

3.5 Classification of Contracts

This section will be discussed under the following sub-sections:

3.5.1 Express and Implied Contracts:

A contract may be express or implied.

(i) **Express Contract:**

If express, it means the terms are clearly stipulated by the parties.

(ii) **Implied Contract:**

If that contract is implied, it means that the terms are presumed by both parties in their conduct. Thus, if one enters a bus, there is the tacit agreement which the law will imply, that the passenger contracts to pay the normal fare, while the bus operator also undertakes to convey the passenger safely to his desired destination.

Note:

The important point to note about these forms of contracts is that the difference between them borders on the form which the consent of the parties assumes, not on the legal consequences.

3.5.2 Formal and Informal Contracts:

A contract may be either formal or informal.

(i) Formal Contracts:

A formal contract is a contract under seal. It is also called specialty contract or contract made by deed. This form of contract must be in writing. It may be typed on paper or on parchment. It must be signed, sealed and delivered by the party executing the contract to the other party. Once it is so executed, it becomes enforceable in law, even if no consideration has moved from the beneficiary. Thus, it is the form and not the substance that is significant here.

(ii) Informal Contracts:

An informal contract, on the other hand, is also known as a simple contract or parol contract. This form of contract is not required to be under seal. Unlike a contract under seal discussed above, a simple or informal contract is only enforceable at the instance of a party who has furnished consideration.

Self Assessment Exercise 2:

What are the vitiating elements of a contract as it relates to a member of a cooperative society.

3.5.3 Bilateral and Unilateral Contracts:

Contract could be bilateral or unilateral.

(i) Unilateral Contracts:

By a unilateral contract is meant a contract in which only one party – the promissory or offeror – is bound. It does not mean a contract made by one party solely since it is trite law that a contract must involve at least two parties.

Unilateral contracts occur in cases such as:

(a) The making of a promissory note, or

(b) Where a promisor or an offeror offers a reward for information that may lead to the location of a lost loved one or recovery of a lost invaluable object of the offeror such as money, credentials, vehicles or jewellery. This offer is deemed acceptable by the promise or offeree if he performs the duty by locating the lost person or providing the necessary information. A good illustration of this form of contract is the very famous case of *Carlill v. Carbolic Smoke Ball Co.* (1893): where the defendant company who had advertised in newspapers that it would pay 100 pounds to any person who caught influenza after using its smoke ball for a minimum period of two weeks, was held liable to the plaintiff who caught influenza after accepting the offer and performing by using the smoke ball.

(ii) Bilateral Contracts:

Bilateral contracts comprise of the exchange of a promise for a promise. In this case, the offeror promises to do something, and in return, the offeree promises to do something.

No actual performance has been effected by any of the parties.

3.5.4 Void, Voidable and Unenforceable Contracts:

That a contract is void, voidable or unenforceable signifies a form of imperfection.

(i) Voidable Contracts:

A voidable contract is a contract in which one or more of the parties has power, if he desires so to do, to avoid the legal relations imposed by the contract.

A contract may be voidable for:

(1) misrepresentation
(2) fraud
(3) duress
(4) undue influence
(5) insanity
(6) lack of capacity
(7) drunkenness; or
(8) under an existing statute.

Until the party in whose favour the right of avoidance subsists exercises it, the contract remains valid and binding for all purposes.

(ii) Void Contracts:

A void contract imposes no legal sanctions and produces no legal effects whatsoever. None of the parties thereto can sue the other party on it. No property passes under a void contract, nor is money paid under it recoverable. A contract may be void for illegality;

- as where two robbers disagree on the mode of sharing the proceeds of their joint loot. They can not invoke the court's power to compel one of the parties to deliver money or property to the other. This is because the contract to commit robbery is void 'ab initio';

- as a contract to supply non-necessaries to an infant which is absolutely void by virtue of Section 1 of the Infants Relief Act of 1874, a statute of general application in Nigeria.

(iii) Unenforceable Contracts:

An unenforceable contract is valid in all respects save that neither of the parties to the contract can be sued to enforce same.

Examples of this are:

(1) Contracts where the right of action has become statute-barred by virtue of the Limitation Decree of 1966; or

(2) Contracts not evidenced in writing as demanded by existing statutes.

Self Assessment Exercise 3:

Distinguish between void and voidable contract as it relates to cooperative society.

3.6 Determining the Existence of a Valid Contract

The courts, in trying to decide whether or not a valid contract does exist, will examine all evidence, documentary and oral, tendered according to the pleadings of the parties: *Shell B.P. v. Jammal Engineering* (1974).

3.7 Nature of Contract of Cooperative Societies

Registered society whose object includes disposal of any article produced or obtained by work or industry of its members whether it is product of agriculture, animal husbandry, forestry, fisheries, handicraft or otherwise may by its by-laws or by contract with its members require, that every member who produces article shall dispose of whole or any specified amount or quantity to or through the society; and that member who is proved or adjudged in such manner as may be prescribed by regulations to have committed breach of bye-laws or contract shall pay to society as liquidated damages sum ascertained or assessed in such manner as may be prescribed by regulation section 14 (1). No contract entered into under this provision shall be ousted in any law court on ground only that it constitutes contract in restrain of trade section 14 (2).

3.8 Contract with Minors

A contract entered into whether as a principal or a surety by a minor duly admitted as a member of any registered society shall not be invalidated or avoided for the fact that he is a minor and such contract shall be enforceable by or against such person.

Notwithstanding his minority or non-age, the fact of minority shall also not prevent the minor from executing any instrument or giving any acquaintance necessary to be executed or given under the Decree or the regulation made under it. The purport of this provision is that while a minor may suffer contractual disability under the general law of contract, he can benefit from or be made liable for contract he entered into with a registered society if he is duly admitted as a member of the society either through inadvertence or otherwise.

4.0 CONCLUSION

As the unit has shown, a cooperative society can enter into contract with its members, minors and other registered society as a legal entity.

5.0 SUMMARY

In this unit, we learn about the meaning of contract, vitiating elements of valid contract and the general principle of contract etc.

6.0 TUTOR MARKED ASSIGNMENT

1. What do you understand by a contract? What are the essential elements of a valid contract?

2. Discus the various types of contracts which you know.

3. With the aid of examples, distinguish between void and voidable contracts. How can a void contract be made voidable?

7.0 REFERENCES AND FURTHER READINGS

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UNIT 3 DUTY AND PRIVILEGES OF REGISTERED COOPERATIVE SOCIETY

UNIT 4 TRANSFER OF A DEAD MEMBER'S INTEREST

MODULE THREE

UNIT 1 CORPORATE SOCIAL RESPONSIBILITY OF COOPERATIVE SOCIETY AND CORPORATE SOCIAL RESPONSIBILITIES TO SHAREHOLDERS: I.E. MEMBERS

Table of Contents

1.0 INTRODUCTION

However, it has been discovered that although a duly incorporated business organisation is a legal person, it does exist in a society. Those in media practice refer to the society as publics. This point is made clearer by Adegboyega Ogunsanya in his book "*Strategy and Public Relations Techniques for the Chief Executive Officer*"4.

An organisation has many publics otherwise called stakeholders which directly and indirectly demand rewards from it while simultaneously the organisation demands assistance and contributions from such publics. These publics include:

- Customers
- Financial institutions (e.g. bankers)
- Suppliers
- Government/Regulatory bodies
- Community
- Shareholders
- Labour organisations
- Employees/Unions
- Media.

Thus, for a business organisation to be said to be acting responsibly within the framework of the legal system of its operating environments, it must be a good corporate citizen. It must be sensitive to social issues facing business.

In essence, every responsible business is expected to strategically plan its survival and profitability within the framework of threats and opportunities created by its environments. These include: economics, legal, political, technological, social, cultural, competitive, global and religious. The global positive responses to these factors are referred to as corporate social responsibilities5.

2.0 OBJECTIVES

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

- Define Corporate Social Responsibility;
- Discuss Corporate Responsibilities to Shareholders;
- State the responsibility of business;
- Describe Corporate Social Responsibilities and Mission Statements;
- List the examples of Mission Statements;
- State the rationale for Corporate Social Responsibility;
- Describe the scope of Corporate Social Responsibility and Corporate Responsibilities to Shareholders;
- Trace the origin of Corporate Social Responsibility;
- Discuss Corporate Social Responsibility in Nigeria; and
- Discuss the laws relating to Corporate Social Responsibility.

3.0 MAIN CONTENT

3.1 Meaning of Corporate Social Responsibility

Megginson, Trublood & Ross, 1985 stated: "*essentially (corporate) social responsibility means a firm's obligation to set policies, make decisions, and follow courses of action that are desirable in terms of the values and objectives of society*".

Neral meeeas well as economic effects of its decisions. It applies to all businesses regardless of size, location, or industry. Corporation social responsibility is a popular term in today's business vocabulary. In recent decades, society has increasingly called on private enterprise to be more socially conscious and to adopt a higher level of management ethics. Production managers are asked to make assembly-line jobs more meaningful. Personnel managers have been called upon to revise many of their procedures. Retail executives are questioned about their store policies in low-income areas, and credit departments must answer charges concerning the invasion of personal privacy.

A business organisation is essentially a profit making entity. Legally, the modern corporations became firmly rooted into the capitalist system over 100 years ago or so, immediately after the landmark (glamorous) decision of the English House of Lords in *Salomon vs. Salomon Co. Ltd.* But beyond this decision ere far-reaching implications for the business world. The most important of these was the realization that an incorporated business entity is a legally recognised personality having series of rights. Such rights includes but are not limited to powers and rights to enter into contracts in the ordinary course of its business activities, to own property, to remain perpetually alive until wound up, to sue and be sued and indeed, to protect its interest.

3.2 Corporate Responsibilities to Shareholders

Aside from purely social responsibilities, every incorporated organisation, including registered society, has a contract with its members {section 34 (3)} usually contained in the contract between the society and its members and between members inter se is that members of the society are entitled to some statutory and contractual rights while the society has duties to honour such rights.

Such rights include but not limited to rights to attend general meetings, access to statutory books, dividends etc. These are the issues that come under the generic terms of corporate responsibilities to shareholders.

The amalgamation of these two fundamental sets into one central theme is the subject matter of our discussion in this unit.

3.3 What is Business Responsible For? {Section 34 (3)}

The question that readily comes to mind at this stage is this: What exactly is business responsible for? There is no absolute legal or management theory answers to this question.

The most attractive answer is that put forward by that world renowned authority on management, Peter F. Drucker. Drucker holds the view that:

> "Social responsibilities – whether of a business, a hospital, or a university – may arise in two areas. They may emerge out of the social impacts of the institution. Or they may arise as problems of the society itself. Both areas are of concern to management because the institution which managers manage

> lives in society and community. But otherwise the two areas are different. The first deals with what an institution does to society. The second is concerned with what an institution can or should do for society".

The modern organisation exists to provide a specific service to society. It therefore has to be in society. It has to be in a community, has to be a neighbour, has to employ people to do its work. Its social impacts inevitably go beyond specific contribution it exists to make.

The purpose of the hospital, according to Drucker, is not to employ nurses and cooks but to care for patients, but to accomplish this purpose, nurses and cooks are needed. And in no time at all, they form a work community with its own tasks and problems. These impacts are incidental to the purpose of the organisation. But in large measure, they are inescapable by-products. Social problems, by contrasts, are malfunctions of society rather than impacts of the organisation and its activities.

Peter Drucker strongly advises managers of business on the best approach to the issue of social responsibilities as follows:

> "A healthy business, a healthy university, a healthy hospital, cannot exist in a sick society. Management has a self-interest in a healthy society, even though the cause of society's sickness is none of the management's making".

3.4 Corporate Social Responsibilities and Mission Statements

It is fast becoming a culture for business corporation to adopt a Mission Statement as one of the strategic business tools in management of their resources and the publics. What exactly is a mission statement? There is no legal definition of this concept and authoritative business or economic definition of it is still not very common. The best writer was able to locate in the course of his research was by *Geoffrey J. Nightingale,* President SynerGenics Division Young & Rubicam Inc. New York quoted in Timothy R.V. Foster (ed) in the book *101 Great Mission Statements*: *How the world's Leading Companies run their businesses*.

According to *Nightingale*, a mission statement is

> "A statement of vision, or ambition that defines success and establishes the ground rules by which success will be achieved for a particular company or institution; the articulation of management's intent regarding the future of an organisation, expressed in inspirational terms".

Ferdinand de Bakker, the General Manager, Burson-Marsteller, The Hague, strongly advocated that every successful mission statement must have five key components.

They are:

(1) “A description of the business the organisation is in;

(2) The mission of the organisation, sometimes broadly stated, sometimes described as a short and powerful strategic intent;

(3) The organisation’s assets or key strengths;

(4) Broad strategies to be pursued in order to achieve the mission;

(5) The values the organisation adheres to in pursuit of its mission.

3.5 Examples of Mission Statements

The following four mission statements are taken simply to illustrate the fact that corporate social responsibilities and corporate responsibility to shareholders may be incorporated into corporate mission statements.

1. **Insurance Sector: Cornerstone Insurance Plc.**

   “To pursue excellence in the provision of insurance services of a global standard, within an emphasis on our people to ensure added value to our customers and shareholders”.

2. **Cement Industry: WAPCO**

   “To maintain our position as a leading company which operates is business with such efficiency and integrity, that all stakeholders (customers, staff, neighbours, shareholders) are justifiably proud to be associated with WAPCO”.

3. **Banking: Trade Bank Plc.**

   “Trade Bank Plc will be a medium-size bank with a strong financial base providing equal opportunity, personalized and efficient banking services to “TRADERS”, acting as catalyst to the development of commerce and industry, while maximizing the return on shareholders investment by being innovative and responsive using appropriate technology, competent and highly motivated personnel through a well coordinated network of branches based on customer-driven approach to marketing”.

4. **Conglomerates: (Customer Products) – Lever Brothers Nigeria Plc. (now Unilever Nigeria Plc.**

   “Our goal is to lead in all our core markets of fast moving consumer products and achieve strong profitable growth by being the best at identifying and meeting customer’s need through delivery of superior value products. We shall leverage our heritage of good corporate citizenship, caring for our employees and environment, sustaining positive partnership with our suppliers and customers whilst maintaining high ethical standards in corporate behaviour and will represent a secure, valuable and growing asset to our stakeholders".

3.6 Rationale for Corporate Social Responsibility

Classical economics does not totally support the idea and practice of corporate responsibility because it was viewed substantially as a moral rather than economic issue. The only expectation of business at least in the purview of classical economics is to maximize profit subject only to the most minimal constraints provided by the law.

Corporate social responsibility affirms that ethical management would need more than following sheepishly the dictates of the law and signals of the market. It is beyond doubt that a strict conformity and adherence to ethical behaviour may be quite costly for a corporate entity in the short but the market certainly would reward such behaviours in the long run.

There may be some truth in the view that being socially responsible will reduce distributable profits, but this is only in the short run. The long run effect is most likely to be greater profit and stability.

Megginson, Trueblood and Ross in their joint authored book "*BUSINESS*" identified and briefly discussed four basic reasons for assuming corporate social responsibility.

First, since corporations are separate entities, just like individuals under the law, they are assumed to have the same responsibilities as individuals. Since companies operate at the pleasure of society, the people can take away a business's right to operate if it is not responsive to society's needs. This can be done by revoking the firm's charter or the certificate of incorporation, which is the legal right to do business as a corporate entity.

Second, it is in the long-term self-interest of a firm to promote the public welfare in a positive way. If not, the firm may be boycotted by an aggrieved public.

Thirdly, by assuming social responsibilities, business people reduce the pressure for government regulation. This means that owners may avoid the high costs of regulation and retain more flexibility and freedom in making decisions.

Finally, such actions will help businesses maintain credibility with the public.

From public relations point of view, it has been said that

> "Social responsibility dovetails into nearly all, if not all aspects of public relations – employee relations, media relations, community relations, government relations, public affairs, international relations, customer relations, investor relations, etc.

3.7 Scope of Corporate Social Responsibility and Corporate Responsibilities to Shareholders

> "Our company is committed to the socio-economic development of our area of operation and this was again demonstrated in the year under review. Opportunities to acquire skills and competence continued to be made available at our Technical Training Centre at Agbara, while we supported initiatives and development projects promoted by others. In later instance, we made contributions to such diverse bodies as the Nigeria Society for the Blind, the Nigerian Conservation Foundation, the Educational Cooperation Society, the Nigerian Institute of Management, the Musical Society of Nigeria, the University of Lagos School of Clinical Sciences and the Nigerian Youth Trust".

It is interesting to note that Nestle's donations for the year (1996) amounted to N597 million. The turnover of the company for that year was N6.1 billion while profit after taxation was N1.3 billion, while the declared total dividend for shareholders as N1.3 billion.

1. **Educational Supports**
These extend to donations made to schools and to various sports development projects. For instance, in the year 2000, Cornerstone Insurance Plc's Chairman of the Board of Directors confirmed to the company's shareholders at the Company's ninth Annual General Meeting held on Tuesday July 31, 2001 at the Muson Centre, Onikan, Lagos that:

> "Our commitment to our social responsibilities is evidenced by our donations to various institutions of higher learning and numerous charities".

2. **Social Supports**
Business corporations also make donations to noble causes in society. These social supports may cover varieties of projects as demonstrated in the following donations by the Nigerian Breweries Plc during its 1999 trading year.

S/N	**Beneficiaries**	**Amount (N)**
(i)	UCH Ibadan Intensive Care Unit	2,000,000
(ii)	Association of Advertising Practitioners of Nigeria	1,000,000
(iii)	Musical Society of Nigeria	525,000
(iv)	Advertising Practitioners Council of Nigeria	500,000
(v)	Family Care Association	500,000
(vi)	Lagos Business School	500,000
(vii)	Nigerian Economic Summit Group	400,000
(viii)	Nigerian Stock Exchange	150,000
(ix)	Nigerian Red Cross Society	75,000

(x)	SOS Children School Village	50,000
(xi)	Pacelli School for the Blind	50,000
(xii)	Wesley School for the Deaf	50,000
(xiii)	Lagos Caledonia Society	25,000
(xiv)	Others: N10,000 and below	40,000
	TOTAL	**5,865,000**

The donation of N5.9 million by one business organisation in an economy like ours as at 1999 may appear staggering, this figure however, need to be taken in the context of the size, turnover, profitability of the company. Nigerian Breweries was the largest of the publicly quoted breweries in Nigeria as at 1999. Its turnover for that year was N12 billion. Profit after taxation was N3.5 billion. Dividend declared was N2.3 billion while retained profit for the year was N1.2 billion. Share capital was N762.5 million while shareholder's funds stood at N16.8 billion.

Registered societies are governed by provisions of section 34 (3) of the Cooperative Laws which limit donation of 10 per cent of their profit to educational fund.

3.8 Origin of Corporate Social Responsibility

It must be pointed out that the idea of corporate social responsibility is similar to welfare theory in economics, though not identical.

Welfare economics is concerned with the evaluation of alternative economic situations (states, configurations) from the point of view of the society's well-being. To evaluate alternative economic situations, we need some criteria of social well-being or welfare.

The measurement of social welfare requires some ethical standard and interpersonal comparisons, both of which involve subjective value judgements. Objective comparisons and judgements of the deservingness or worthiness of different individuals are virtually impossible. Various criteria of social welfare have been suggested by economists at different times.

It is however pertinent to note that the complex criteria considered by economics, though relevant, are not our focus in this unit. The pointing out of their theories is made to draw our attention to the fact that the history of corporate social responsibility is relevant to economists as it is to lawyers and business managers.

3.9 Corporate Social Responsibility in Nigeria

The theory of corporate responsibility is an aspect of company law. Company law, as it is presently known in Nigeria, is an imported idea from England. According to *Professor Ignatius A. Ayua*, in spite of the introduction of English law in Nigeria in 1863, there was no Company legislation in the country until 1912.

> "…. in 1912, 29 companies were registered in Nigeria and all the
> 29 were foreign. The same was true of companies registered in

> 1913, 1914 and 1915".

Subsequent political and economic development led to the promulgation of new Companies Ordinances in 1917, 1922 and more modern Companies Decree in 1968 which was based on the United Kingdom Companies Act of 1948.

Opportunities for doing business in Nigeria became more open with the discovery, exploration and production of petroleum resources. The perceived need to ensure participatory economy among foreigners and indigenes invariably led Nigerian government to formulate policies and enact laws on indigenization of the corporate organised private sector of the Nigerian economy in 1970's. In the words of *J. Olakunle Orojo*:

> "The deliberate efforts of the Government to encourage Nigerian private participation in economic activities have found unique expression in the Nigerian Enterprises Promotion Acts 1972 – 1977."

A new chapter in laws relating to corporate incorporation, corporate finance, corporate administration and corporate transformation was gloriously opened in Nigeria in 1990 with the signing into law of the *Companies and Allied Matters Decree (now Act) 1990*.

Professor E.O. Akanbi in an intellectually enriching preface to *Essays on Company Law* caught the spirit of this new era thus:

> "The new enactment represents the new approach to company legislation dictated by the state of our economic development intricate nature of modern company trading. For Nigeria, a leading third world nation to allow the law that regulates a most important vehicle for economic activities to develop along pre-colonial lines is regrettable. The challenges of progress in a developing political economy like ours require a break from a company legal system that is based on laissez faire philosophy. Yet, it took thirty years, after independence to give serious thought to this matter".

The implication of the foregoing exposition is that the theory of corporate social responsibility is relatively new in Nigeria, since the practice of trading through business corporations is also new. The most relevant enactment on this matter is section 38 (1) of the Company and Allied Matters Act, 1990, which provides inter alia that:

> "a company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose".

The practice of social responsibilities among corporate bodies is fast becoming a common thing. For instance, offer of Scholarships (Mobil, Shell, Chevron, etc.) support for sports (Nestles, Nigerian Breweries, etc.) educational supports (University Press Plc, Afribank, Lever Brothers, etc.) social development supports (Trade Bank Plc, Guaranty Trust Bank Plc, etc.) are now part of Nigerian corporate business culture.

3.10 Laws relating to Corporate Social Responsibility

The law on this matter is partly statutory and partly common law. The statutory law is however superior and in any case a codification of the most recent thinking on this matter in most common law jurisdiction.

Generally, every company has all the powers of a natural person of full capacity for the furtherance of its authorised business or objects after incorporation.36 The most relevant exception to this general rule on our subject of discussion is the prohibition of political donation under Section 38 (2) of the Companies and Allied Matters Act, 1990.

That subsection, in an emphatic unequivocal language, affirms that a company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose.

The consequences of violation of this prohibition are also made clear thus:

> "and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default any member who voted for the breach shall be jointly and severally liable to refund to the company the sum of value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift".

4.0 CONCLUSION

Aside from purely social responsibilities, every incorporated organisation has a contract with its membership shareholders usually contained in the memorandum of association. The practical effects of this contract between the company and its members and between members inter se are that members of the company are entitled to some statutory and contractual rights while the company has duties to honour such rights. Such rights include but are not limited to rights to attend general meetings, access to statutory books, dividends etc. These are the issues that come under the generic terms of Corporate Responsibilities to Shareholders.

The amalgamation of these two fundamental sets of responsibilities into one central theme is the subject matter of our discussion in this unit.

5.0 SUMMARY

In this unit, you have learnt about:

- Corporate Social Responsibility;
- Corporate Responsibilities to Shareholders;
- responsibility of business;
- Corporate Social Responsibilities and Mission Statements;
- Examples of Mission Statements;
- Rationale for Corporate Social Responsibility;
- Scope of Corporate Social Responsibility and Corporate Responsibilities to Shareholders;
- Origin of Corporate Social Responsibility;
- Corporate Social Responsibility in Nigeria; and
- Laws relating to Corporate Social Responsibility.

6.0 TUTOR MARKED ASSIGNMENT

1. What is the rationale for corporate social responsibility?
2. Trace the origin of corporate social responsibility.

7.0 REFERENCES AND FURTHER READINGS

See Appelbanm, S.H., Beckman, M.D., Boone, L.E. and Kurtz, D.L. *Contemporary Canadian Business*, Holt, Rinehart and Winston of Canada Ltd, Toronto, 1987, page 40.

(1897) AC. 22 H.L.

See also *Appelbanm, Beckman* etc. op. cit. at p. 40.

Richmind Books Ltd., Lagos, 1991.

Strategic planning as a tool for corporate survival is now a common practice among corporate business organisations. See for example, Davidson, W.H. and Malone, M.S. *THE VIRTUAL CORPORATION: Lessons from the World's most Advanced Companies*, Edward Burlingame Books/Harper Business, Harper Collins publishers New York, 1992.

In law, *where there is a right, there is always a remedy*.

Drucker, Peter F. *Management*, An Abridged and Revised Version of *Management Tasks, Responsibilities, Practices*, Pan Books, London, page 264.

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Drucker, Peter F. op. cit. page 265.

See Geoffrey J. Nightingale: *Successful Mission Statements*, chapter 2 in Foster, T.R.T. (ed.) *101 Great Mission Statements: How the World's Leading Companies Run Their Businesses*. Kogan Page Ltd., London, 1993, page 19.

See Ferdinand de Baker: *The Elements of a Mission Statements,* chapter 2 in Foster, T.R.V. (ed.) 101 *Great Mission Statements* etc. op. cit. at page 25.

See Ferdinand de Baker in Foster R.V.T. op. cit. at page 25.
These mission statements were randomly picked and there was no attempt to make a critique of them, since that was not our aim for picking them. They simply serve our purpose of picking examples of mission statements.

Cornerstone Insurance Plc, 2000 Annual Report and Accounts, page 1.

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See chapter 2 of this book for detailed discussion of the development of the law through cases.

See section 38 (1) *Companies and Allied Matters Act, Cap. 59, Laws of the Federation, 1990*.

Cap. 59 Laws of the Federation, 1990.

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It must be noted that a company which has among its objects the doing of something which cannot be lawfully done without obtaining official permission may be formed without first obtaining the required permission for carrying out that object. This was the principle laid down in Lasisi v. Registrar of Companies, 1974 (3) A.L.R. Comm. 85 Federal High Court.

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UNIT 2 CORPORATE DONATIONS AND THEIR LEGAL IMPLICATIONS

Table of Contents

1.0 INTRODUCTION

In this unit, we shall discuss another interesting topic "corporate donations and their legal implications". Under this topic, we shall discuss the following issues:

2.0 OBJECTIVES

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

- Describe the Profit Idea;
- Discuss Management Practices;
- State the Legal Status of a Registered Society;
- Describe general rule of Gratuitous Acts and Payments;
- Discuss the Ultra Vires Doctrine;
- Discuss some of the Cases: Donations & Gratuitors Payment
    (i) In the Beginning
    (ii) A Little Improvement
    (iii) New Thoughts
    (iv) Further Rules
    (v) The Present Common Law Position
- State the legal position of registered society in Nigeria.

3.0 MAIN CONTENT

Gratuitors payments may be made only for purposes reasonably incidental to the carrying on of company's business and their validity may be tested by three questions (Eve, J. 19320:

(1) Is the transaction reasonably incidental to the carrying on of the company's business?1
(2) Is it a bona fide transaction?
(3) Is it done for the benefit and to provide the prosperity of the company?

3.1 The Profit Idea

Generally, what differentiates a business organisation from all other existing modern institutions is the profit-making motive. The concept of profit is a very complex one. This is more so in a modern business environment where variables are diverse in respect of cost of inputs and outputs.
For our purpose, we shall regard profit as surplus over and above cost of inputs such as labour, machineries, light and other sundry expenses including taxes. The crux of the matter is that being a profit-making organisation, can a company donate money or make gratuitous payment without violating principles of law relating to Corporate Management? Before we examine the position at law, it would be sensible to examine the attitude of modern management towards gratuitous payments.1

3.2 Management Practices

Modern management practices appear to have thrown away the belief that Registered Societies cannot make gratuitous payments out of its assets for educational purposes.

For instance, it is common among business experts to talk of business environments. To them, a business cannot prosper by isolating itself from political, social, educational, economic and scientific developments in its country of operation. Thus, various donation devices had been evolved over the years in response to the call for meeting growing societal needs in their business environments. Such means of giving away companies' money include: charitable donations to health institutions like hospitals, motherless babies' homes, home for the handicapped and psychiatrics treatment centres.

3.3 Legal Status of a Registered Society

Professor Pennington, a leading Company Law expert asserts that:

> "A company is a corporation, and is therefore a person in the eyes of the law quite distinct from the individuals who are its members. As a distinct person, the company can own property, have rights and be subject to liabilities, and it does not hold its property merely as an agent or trustee for its members, and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities"2.

The implication of this is that a company is simply a legal person, separate and distinct from its members or shareholders; so is a registered cooperative society.

Who is a legal person? A legal person can be described as any person, human or otherwise, who has rights and duties at law, i.e. who can seek the aid of the court and against whom the aid of the court can be sought by others.

A Nigerian Law teacher summarised the legal consequences of incorporation of a company as follows:

> "As a result of its separate personality, a company is accorded certain rights and privileges namely:
>
> 1. A company can sue or be sued;
> 2. A company is liable for all its debts and obligations including those of its agents or servants;
> 3. A company can own property, including land;
> 4. A company has perpetual succession thus ensuring that it survives the original subscribers to the memorandum and all other subsequent shareholders"3.

This position also applies to a registered society.

From these chains of rights inherent in the recognition of societies as legal persons, it would appear that a registered society could also validly donate its profits. The logic is that since any person can give away what he owns without the raising of eyebrows by the law and its agents, it invariably follows that a company can do the same thing {Section 34 (3)}.

3.4 Gratuitous Acts and Payments: The General Rule

The basic principle has been very well expressed by Gower, quoting *Bowen L.J. in Hutton v. West Cork Railway Co*.3a that:

> **"*CHARITY CANNOT SIT AT THE BOARDROOM TABLE AND THERE ARE NO CAKES AND ALE EXCEPT FOR THE BENEFIT OF THE COMPANY*"**.

The general rule appears to be that a society has no power to make Gratuitors payment of any sorts whatsoever.

The basis of the problem in this area of Company Law is that the guiding principles have their origin in the ultra vires doctrine.

3.5 The Ultra Vires Doctrine

An exposition of this topic "Gratuitors Payment by Companies" would not be complete without a complete, comprehensive and background knowledge of "the constitution of a company and ultra vires doctrine".

The constitution of a registered society consists of by-laws documents. The by-laws contain the most important provisions setting out the sort of activities which the society can carry on and the rules governing the internal management of the company such as: the appointment of Management Committee, the rights of different classes of shareholders and the holding of meetings of the society.

The ultra vires doctrine (as it relates to Company Law) states that when an act is performed or a transaction is carried out which, though legal in itself, is not authorised by the memorandum (object clause), that act or transaction is ultra vires. Simply put, this means that, that act is beyond the powers of the company and is void i.e. without legal effect. The leading case in this respect is *Ashbury Railway Carriage & Iron Co. v. Riche*4 where the court held that an ultra vires contract is void and cannot be ratified even by the numerous consent of the shareholders.

3.6 Cases: Donations & Gratuitors Payment

Between 1883 and 1982, a period of 99 years, the English courts have made notable pronouncements on the legal effects of donations by companies. Over the period, they have moved gradually from the initial general proposition that a company cannot donate parts of its money to the position that if such donations are for the benefit of the company they are valid. They even went further to hold that once the Gratuitors payment falls within the objects or purposes for which the company was formed, it is validly legal. This is a welcome development. An outline of the major English decisions may be necessary; at least for revelation of the sequence in which the law had been developed.

3.6.1 In the Beginning

In the 1883 case of *Hutton v. West Cork Railway Co.*5, it was held that Gratuitors payment made by a company are ultra vires unless made for the purposes which are reasonably incidental to the carrying on of the company's business for the company's benefit. It was further held that where a company is in liquidation and no longer a going concern, Gratuitors payment to its directors or servants cannot be incidental to its business. In the words of *Bowen L.J:*

> "The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company". The logic is that: "A Railway Company or the Directors of the Company might send down all the porters at Railway Station to have tea in the country at the expense of the Company. Why should they not? It is for the Directors to judge, provided it is a matter, which is reasonably incidental to the carrying on of the business of the Company"6.

3.6.2 A Little Improvement

In the 1921 case of *Evans v. Brunner, Moud & Co. Ltd.*7, it was held that for an act to be intra vires, it must be incidental to or conducive to the attainment of the main object of the Company. It is not enough to prove that it is beneficial to the Company.

3.6.3 New Thoughts

In 1932, *Eve J. in the Be Lee Behrens & Co. Ltd.*8 formulated three tests applicable to the determination whether or not a Gratuitors payment may be made, without being declared ultra vires. In that case, it was held that Gratuitors payment may be made only for purposes reasonably incidental to the carrying on of the company's business. And their validity may be tested by three questions:

(1) Is the transaction reasonably incidental to the carrying on of the Company's business?
(2) Is it a bona fide transaction?
(3) Is it done for the benefit and to promote the prosperity of the Company?

3.6.4 Further Rules

In *Parke v. Daily News*9, however, a Gratuitors payment to the employees of a company who had become redundant on an amalgamation was held ultra vires, and the court decided that ex-gratia payments out of the assets are only intra vires and valid if they are:

(a) Bona fide;
(b) Reasonably incidental to the carrying on of the company's business;
(c) Made for the benefit and prosperity of the company.

3.6.5 The Present Common Law Position

Therefore, the law as at 1961 was that Gratuitors payment is prima facie ultra vires. The court will inquire into the motive behind them and will uphold them only if the test laid down by *Eve J. in Behrens & Co. Ltd.* are satisfied.

In 1969, some doubt was thrown on these rules by the decision in *Charterbridge Corporation case*, *Pennycuick J.* held that where a company is carrying out the purposes expressed in its memorandum, and does an act within the scope of an express power in the memorandum, the state of mind of the parties concerned is immaterial on the issue of ultra vires. If this is so, then for an act to be intra vires, the only one of the three conditions mentioned above which needs to be satisfied is (b). Motive becomes relevant factor in determining whether any act is bona fide exercise of the Directors' power to do it, but is irrelevant in determining whether or not they have that power.

The present position under the Common Law is that Gratuitors payments by companies are legal provided they were not made for illegal, immoral or indecent purposes or for purposes contrary to public policies.

3.7 Nigeria: The Legal Position

There appears to be no express legal provision in Nigeria prior to 1990, in respect of donations and Gratuitors payment. However, the following principles and propositions appear to be the correct legal positions as of 1989. Since there is no prohibition of charitable organisation under the Nigerian Company Law, a company may be formed solely for charitable purposes, though not for illegal purposes. Secondly, the practice of Gratuitors payment is recognised under the Nigerian Labour and Industrial Law. Thus, what is recognised by law cannot be illegal.10 We have seen earlier on that exception for political donations, donations by companies are now statutorily protected under the Companies and Allied Matters Act. This is in addition to common law and local judicial recognition of the practice.

4.0 CONCLUSION

You have learnt about the profit idea, management practices and legal status of a registered society. You have also learnt about the general rule of gratuitous acts and payments, the doctrine of ultra vires, cited cases in respect of donations and gratuitous payments and the legal position of registered societies in Nigeria.

5.0 SUMMARY

In this unit, we have discussed:

- the profit idea;
- management practices;
- legal status of a registered society;
- the general rule of gratuitous acts and payments;
- the doctrine of ultra vires;
- cited cases in respect of donations and gratuitous payment; and
- the legal position of registered society in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1. What is the difference between the legal status and legal position of a registered society in Nigeria?

2. List and discuss the general rule of gratuitous acts and payments in a registered society.

7.0 REFERENCES AND FURTHER READINGS

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(1883) 23 ch.D. 654.

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(1883) 23 ch. D. 654.

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(1921) 1 ch. D. 359.

(1933) 2 ch. 46.

(1921) ch. 927.

Charterbridge Corporation Ltd. v. Lloyds Bank Ltd. (1970) ch. 62.

UNIT 3 CORPORATE ADMINISTRATION AND CONTROL

Table of Contents

1.0 INTRODUCTION

"… the modern trends of management which have now resulted in a marriage between financial interest and managerial power, especially in registered societies, cannot be reversed. Rather it seems to be the policy of the law to check, as far as possible, some of the more serious abuses of the registered society management so as to lessen, at least, the risk that faces not only the investor but also the creditors of societies and, indeed, the public at large".

In the last unit, you learnt about the profit idea, management practices and legal status of a registered society. You also learnt about the general rule of gratuitous acts and payments, the doctrine of ultra vires, cited cases in respect of donations and gratuitous payments and the legal position of registered societies in Nigeria.

In this unit, we shall discuss the concept of control will be examined here vis-à-vis meaning, its importance and various methods of control commonly used in corporate business organisational set up.

2.0 OBJECTIVES

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

- Discuss organic control;
- Explain agency principle;
- Discuss agency principle as it affects cooperative society;
- Define control;
- List the types of control;
- State the different methods of control; and
- Discuss corporate governance and control.

3.0 MAIN CONTENT

3.1 The Organic Theory

According to Akintunde Emiola, every corporation is managed under a complex arrangement. There are three main actors which are recognised by the Law i.e. (1) the financiers or owners of the corporation, (2) its governing board, and (3) the professional managers of the enterprise or corporate institution. These are the organs of the corporation.

The organic theory was developed as an escape device from the strangulating consequences of the recognition of the legal personality of the corporation. It is based on the basic fact that "a corporation is an abstraction" which has to act through the agency of human beings – Lennards Carrying Co. V. Asiatic Petroleum. It is a principle applicable to both institutional bodies as well as registered or statutory corporations. The implication of the doctrine is that when an organ of a corporation acts, it does not act as an agent but as the corporation itself.

The organic theory, united with the doctrine of *alter ego*, constitutes the bedrock of corporate administration.

The organic theory originated in company law in the judgement of Lord Haldane in *Lennard's Carrying Co. v. Asiatic Petroleum Co. Ltd*. It was more properly articulated in the judgement of Lord Denning in *Boulton (Engineering) Co. Ltd. V. Graham & Sons* wherein the Master of the Rolls said:

> "A company may, in many ways, be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by law as such …."

This brings us back to the controversy as to whether a group or association or corporation is really a legal person since it cannot act by itself. But, as has been settled earlier, the basis of corporate legal personality is the attributing to inanimate objects the qualities of a natural person. This is a rule-based approach. Badaiki has expressed preference for this approach:

> "By this rule-based approach, it becomes advantageous to assimilate a corporation into the pre-existing framework of the law by pursuit of fiction and analogy with a natural person and overcome some of the problems which the law has sought to [solve[using either the agency or organic (alter ego) approach to organisation".

The doctrine of *alter ego* is a legal concept which ascribes to an organ or *individual* the authority vested in a corporate body. The doctrine has very far-reaching legal consequences for corporate administration. It provides the basis for holding a corporation liable for the acts of certain category of its officers. Ordinarily, crimes or any offences which require a conjunction of *mens rea* and *actus reus* cannot be committed by a fictional 'person' like a corporation, because it cannot form the criminal intent necessary to establish guilt in a crime. But by applying the doctrine of alter ego, it is now possible to attribute to the corporation the acts or omissions of its organs and hold it liable for crime or tort.

We have noticed that three main groups play prominent roles in the administration of a corporation. Each corporate organ or operator, depending on its functions and its prescribed scope of authority, is described in relation to the parts of a human body. Viewed in terms of this metaphor of personhood, each organ becomes the *alter ego* of the corporation with those prescribed limits.

3.2 Agency Principle

The agency principle is one of the tenets of corporate administration. In its famous statement in *Lennard's Carrying Co. Ltd. V. Asiatic Petroleum Co. Ltd.* The House of Lords rolled together the organic theory and the principle of agency. While "somebody who *for some purposes* may be called an agent", he may or may not also be "the directing mind and will of the corporation, the *alter ego* and centre of the personality of the corporation". Therefore, the two roles have to be separated for the "somebody" may act in one capacity and not in the other; and two different persons may act the role of *alter ego* and agent independent of each other. In the words of Nnaemeka Agu, JSC,

> "[It] is not the act of every servant [agent] of the company that binds the company. Those whose acts bind the company are the *alter ego* – those persons who because of their position are the directing minds and will of the company, the very ego and corporate personality of the company".

From the cases, it is now clear that the administrators of a corporation are either its *alter ego* or agents. The question of who may qualify as *alter ego* or agent would, therefore, depend both on the status and capacity in which he acts. As we have stated, two organs of a corporation – the owners and the governing board – are invariably recognised as *alter ego,* with the managing director as a possible third. However, a director (in his capacity) and employees expressly authorised to act or who are performing the normal duties of their office, may be constituted agents of the corporation. In *Ayodele James v. Mid-Motors Nigeria Ltd. & Anor,* Aniagolu JSC said:

> "The master can act independently of the servant. A corporation cannot; it

has always to act through its agents (or servant). Such agency arises from contractual relationship (express or implied). In the former case (i.e. simple master and servant relationship) vicarious liability of the master arises only on the primary liability of the servant; not in the latter case. For the act of its agents is in law that of the corporation".

One persistent problem in public law is whether a public corporation is an agency of its proprietor – the government. The term "government agency" has defied an acceptable interpretation. It is not defined either in our Constitution or by any Nigerian statute. It has been suggested that the law of agency might be of assistance. But the law of agency is based generally on agreement between principal and agent. It is a relationship which implies that a *general agent* has authority to act for the principal in all matters within the scope of the agreement. In every case of agency, therefore, the principal is fixed with all liabilities arising from the acts of the agent within the authority conferred upon him by the principal. Evans states the position as follows:

"There are three main characteristics of agency. First, the agent acts on *behalf* of his principal and in his name, and the acts done by the agent within the scope of his authority are attributable to the principal. Secondly, the agent can be given *detailed directions* by his principal and does not usually have a wide area of discretion. Thirdly, in agency, the principal retains concurrent powers".

In corporation law, though directors and staff do act as agents of the statutory body, the corporation itself can neither take instruction nor act as agent of government which established it; just as a company is not an agent of, nor can it take direction from, its shareholders that promoted it. So, whether a corporation can be regarded as "government agency" will have to be deciphered from the intention of the lawmaker as expressed or implied in the provisions of the statute creating it.

For where a corporation is created independent and not subject to any form of government control, the concept of agency cannot be of much aid. In view of the overwhelming available authorities, there is no way a breach of contract entered into by corporation with absolute and plenary statutory powers can be attributed to the "federal government". Having vested in the corporation the power of appointment and dismissal, it is settled that the exercise of such power is not dependent on authorization by the federal government. In terminating the appointment of a staff, the corporation will be exercising its plenary power. As stated by Evans, the power vested in a public authority is "to be exercised only by the authority upon which it has been conferred".

Directors and other principal officers of the corporate organisation or association are constituted agents, either expressly or by implication – i.e. when the acts fall within their apparent or ostensible duties. Said Madama, JCA,

"Under the principle of vicarious liability, [corporations] or [companies] ….. are in the same position as private individual in so far as their liability for the acts of their agents or servants are concerned. They are liable for the wrong-

> ful acts of their agent or servant but only if the acts are committed in the course of the business of the master, whether or not the agent or servant intended to benefit none but himself".

Accordingly, corporations and business companies have been held responsible for the acts or omissions of their servants, not only in contract, but also in tort and crime.

3.3 Cooperative Society

Among private corporations is the cooperative society. A cooperative society is a retail organisation in which the consumers are members who provide the capital and share the trading profits in the form of dividend on purchases made by each member.

The range of commercial activities of cooperative societies may be as wide as there are organisations; and so their modes of operation. It is known that some societies are in marketing of products while some operate as loans societies. In fact, section 31 of the Cooperative Societies Law 1959 of Western Nigeria stipulates that loans can be given only on the "produce or goods in which a society is authorized to deal".

As a corporate business organisation, a society is to receive deposits and loans from persons who are not its members, and can grant loans to another society secured only by the produce, subject to the approval of the registrar of cooperative societies and its regulations or bye-laws. A society may invest or deposit its funds in approved banking institutions, government securities or any other registered societies approved by the registrar.

In producers' cooperative societies, the producers join together to market their products and share the profits. It is noted that in Europe, societies do operate in agriculture as well as in viticulture.

Basically, the management of a cooperative society is regulated by the statute and more extensively by Cooperative Societies Regulations and its bye-laws.

A cooperative society possesses most of the attributes of a company. Under the cooperative societies legislation in Nigeria, it is not only a body corporate on registration but also enjoys perpetual succession and has a common seal. It can enter into contract and hold movable and immovable property, invest funds and dispose of the surplus. And like a company, a cooperative society may be registered with or without limited liability, and can hold and dispose of its property in the same way as a company can do. In particular, a society shares most of the characteristics of a company with regard to allocation of shares, right of members to dividend, and the appointment of a *liquidator* on dissolution.

The administrative structure of a cooperative society is akin to that of a company in many respects. So are the many features of the two. Both company and cooperative society are managed by their members' general meeting and an elected body of executives called respectively "board of directors" and "governing committee". The fundamental difference between the two, however, is that the 'capital' of the cooperative society may consist in the contribution of not only money but also in products or whatever items the society is doing business in.

The administration of a cooperative society is governed largely by the Cooperative Societies Regulations 1959 made under section 53 of the statute. "The supreme authority in a registered society", like that of a company, is "vested in the general meeting of members", made up of original members and such other members admitted in a "manner and on such conditions as the bye-laws shall prescribe". The annual general meeting of members, convened by the executive committee, performs almost precisely the type of functions that the annual general meeting of a company does. The meeting is to receive the reports of the committee of management and consider financial reports of the society, elect new officers and the committee, adjudicate on complaints which are duly notified to members before the meeting.

Every member of the society is entitled to notice of the annual general meeting and is entitled to attend and vote. Where it becomes desirable, a special meeting of members may be called between annual general meetings. the meeting elects the committee for one year's tenure, though a requisition may be made for such meeting or at the instance of the registrar.

Like the board of directors of a company, the committee is to administer the general affairs of the society, and is liable for any loss sustained by the society. The society can remove any of its members; but perhaps not of the committee. This is fundamentally different from the power of a company to remove any director. But a member of the management committee may be removed at the instance of the registrar if, in his opinion, such committee member is no longer fit to discharge the duties of his office, and it will be competent of the registrar, if the place of the officer is not filled by the society within thirty days of his removal, to fill the vacant office.

Dispute among members of the society or between it and its officers are required to be referred to the registrar who might settle the dispute or refer to arbitration. The registrar is empowered to "revise' the decision of an arbitrator.

The Law makes provisions for appeals to the registrar and commissioner by persons dissatisfied with the decision of the arbitrator, but the decision of the arbitrator as revised by the registrar or the commissioner was considered final and not subject to review by the court. This provision of the Law cannot now be valid in view of section 36(2) of the Nigerian Constitution 1999 which says that "a law conferring on any government or authority power to determine questions arising in the administration of a Law that affects or may affect the civil rights and obligations of any person" shall not be valid unless "such Law contains no provision making the determination of the administering authority final and conclusive".

We can understand why the Law makes no provision for the mode of approaching the court from the decision of the registrar. However, it is now settled law that where there is no provision for enforcing a right, "the usual form of an action may be adopted". But in the case of *Benjamin Olatunji v. The Registrar, Cooperative Societies*, wherein the plaintiff sought a declaration that the report of the inquiry conducted into the affairs of his cooperative society be released, the court held that "although an order of mandamus is coercive it has very little advantage over declaratory judgements". The plaintiff has to make a choice.

The cooperative societies regulations stipulate that whether at first instance or on appeal, proceedings before the registrar or commissioner shall, "as nearly as possible, be conducted in the same way as proceedings before a court of law", and the provisions regarding the right to fair hearing are to apply "*mutatis mutandis* to such proceedings". This was why the case in *Sunday Fatogun & Ors. V. Ibadan Cooperative Textile Distributive Thrift and Credit Society Ltd. & Ors*, was instituted.

In that case, there arose a rift among the members of the management committee of the Ibadan Co-operative Textile Distributive Thrift and Credit Society (hereinafter called "the society"). Pursuant to section 51(4) of the Law, an arbitrator was appointed to inquire into and settle the dispute. During the arbitration proceedings, the chairman and treasurer who were the principal "accused" were denied legal representation. At the end of the domestic proceedings, the two officers were held liable to pay the sum of N40,000 into the coffers of the society. In the appeal to the commissioner the plaintiffs' right to legal representation was also ignored.

The 'accused' challenged both the arbitration procedure and the award in the High Court of Ibadan for breach of the rules of natural justice in denying them legal representation. The counsel representing the defendant society conceded that the legal right of the plaintiffs to fair hearing had been violated. The plaintiffs consequently withdrew the matter from court and it abated.

3.4 Crisis Situation

Every human organisation is prone to crises. Accordingly, the common law (and sometimes statute) makes provisions for the resolution of crises within corporation organisations.

In such a situation, the plenary organ of the corporation, such as the council or a company's general meeting, retains the ultimate power of control and, therefore, the duty to act in place of the defaulting organ to which the duty has been assigned by statute.

One fundamental problem that had arisen at one time or the other is where the *ultimate* organ has an interest in the matter that is the cause of the crisis. The general rule of the common law is that he who has an interest in a matter cannot be a judge in the cause; that patently is a violation of the principle of natural justice. However, in extreme cases when the course of justice so demands, the courts have invoked the *doctrine of necessity* to allow such organ on person to act in spite of personal interest.

It has been observed that the doctrine enables a person or tribunal to take up a cause in which he or it has an interest by sheer force of compelling circumstances.

Nwabueze asserts that the doctrine of necessity is implied in the constitution of every nation, while Professor Glanville Williams is of the view that "the law …. includes the doctrine of necessity". Nwabueze adds:

> "… the doctrine of necessity does not operate from outside the law, but is implied in it as an integral part thereof …"

The doctrine operates both in public law as well as in private law. Lord Pearce described the doctrine of necessity as "the principle … of implied mandate". Evans states:

> "The adjudicator who is subject to disqualification at common law may be required to sit if there is no other competent tribunal or a quorum cannot be formed without him. Here, the doctrine of necessity is applied to prevent a failure of justice".

In *Olakunrim v. Ogunoye*, the plaintiff and others were traditional high chiefs of Owo, a town in Ondo State. The case arose from the deposition of a previous Olowo who was replaced by the defendant as Oba. The plaintiffs were ardent supporters of the deposed Oba and so denied the new ruler (the defendant) their loyalty and cooperation. After a number of warnings to no avail the defendant deposed the chiefs of whom Olakunrin was the arrow-head. They challenged the deposition, one of their grounds of complaints being that as the main interested in securing the obedience of the plaintiffs, the Oba was a party with an interest who could not impartially determine their guilt in the case. Bello, JSC said:

> "Because of the special circumstances of the instant case, the rule of natural justice must give way to the rule of necessity … The rule of necessity permits an adjudicator to be a judge in his cause if his participation is absolutely necessary to arrive at a decision".

Nnamani, JSC, noted that "the common law disqualification for interest may be waived and may also be removed by statute by express words or necessary intendment. He then added:

> "It seems to me that we are dealing with a disqualification removed by subsidiary legislation, at least by necessary intendment, and I see no room for contrary construction. Besides, it is also settled that a person who is *prima facie* disqualified for interest or bias may be held, on ground of necessity, competent and *obliged* to adjudicate if no other duly qualified tribunal can be constituted".

3.5 Meaning of Control

Control is an elusive concept in as much as the power of direction of a company can rarely be sharply segregated. Difficulty may therefore be encountered in an attempt at defining the concept. In this respect, *Pickering* holds the view that:

> "*Control is a very difficult concept to define as a matter of law but essentially it denotes the relationship which exists when an individual or group of individuals, who may themselves be incorporated, exercise powers of direction and domination over the affairs of a company*".

Similar view is contained in the definition propounded by an acclaimed authority on this issue:

> "*Control may be defined as the capacity to choose directors. As*

> *a corollary, it carries capacity to influence the board of directors and possibly to dominate it*".

According to *Berle*, control is a function of the ownership of voting stock. *Pickering* also observed that powers of control conferred by voting rights are perhaps primarily important because through their exercise true proprietary rights or rights income and capital may be obtained or denied.

3.6 Types of Control

There is no agreement among writers as to how and the best way of classifying control. While *Berle* adopts what he termed as absolute or outright and working control, *Pickering* prefers legal and de-facto control.

The function of control is essential and necessary in corporate systems. Checks on management inadequacies, dishonesty or lack of accountability are some of the useful functions of control. Of course, the control must be secured legally.

Absolute control exists when a majority of voting stock is held by a single owner or by a few stockholders who by agreement or tacit consent act together. The same situation in fact exists where a very large minority is so held, while ownership of the majority is dispersed among many small holders.

Working control is slightly more complex because it involves an additional element which is in fact a quasi-political process. This element is the capacity to mobilize others. Where there is no substantial minority and the stock is widely scattered among a large number of stockholders, capacity to direct the proxy machinery is all that is necessary. This is called "Management Control".

3.7 Methods of Control

This will be discussed under the following sub-topics.

3.7.1 Legal Forms of Control

Pickering identifies the following five forms of legal control, namely:

(i) Proprietary Control
(ii) Control by Constitutional Means
(iii) Inter-member Control Arrangement
(iv) Inter-company Control Arrangement
(v) Management Contract.

(i) Proprietary Control

This could be achieved through majority shareholding, cumulative share and voting arrangement or complex capital structure.

(ii) Control by Constitutional Means

The Bye-Laws of a Registered Society is drafted with necessary control mechanism intended by the cooperators:

(iii) Inter-company Control Arrangement

This is practicable through the devices of subsidiary and holding companies

(iv) Management Contract

This is device for achieving efficiency without relinquishing ownership.

3.7.2 Voting Control Methods

The author of 'Modern Corporation Law', *Howard L. Oleck* identifies the following *voting control methods*:

(i) Use of staggered directorates
(ii) Use of shareholders agreements
(iii) Voting trust
(iv) Proxies
(v) Cumulative voting.

3.7.3 Freeze Out Technique

Another method of achieving control, especially among relatively small companies is the *freeze out devices* and *squeeze out techniques*. These are used by persons in control for the purpose of depriving minority of their interest in the company. The oppressive devices are critically analysed by *O'Neal and Darwin*. According to them:

> "The squeezers may refuse to declare dividends; they may drain off the corporation's earnings in the form of exorbitant salaries and bonuses to the majority shareholders or unreasonable payments by the corporation under contracts between the corporation and majority shareholders not arrived at in arm's length dealings; they may deprive minority shareholders of corporate offices and of employment by the company; they may cause the corporation to sell its assets at an inadequate price to majority shareholders or to companies in which the majority are interested; they may organise a new company in which the minority will have no interest, transfer the corporation's assets or business to it, and perhaps then dissolve the old corporation; or undertake a plan unfair to the minority.

3.8 Corporate Governance and Control as it relates to Cooperative Society

Our examination of the issue of control will not be complete without brief comments on the relevance of corporate organs on the idea of control in a typical business corporate set up. This is of importance because of the basic fact that modern business ventures are usually carried out by the adoption of and the taking advantages of the corporate legal entity theory.

In our analysis therefore, we shall briefly look at the following:

(a) The corporate law theory in Company Law
(b) The constitutional legal entity theory
(c) The General Meeting as an organ of the cooperative society.

3.8.1 The Corporate Legal Entity Theory

Ever since the case of *Salomon v. Salomon & Company Limited*, it has consistently been held that a corporation, (once duly registered) is a legal entity distinct from its members. Hence, it is capable of enjoying rights and of being subject to duties. In other words, it has legal personality and is often described as an artificial person in contrast with a human being, a natural person.

Lord Macnaghten stated the principle thus:

> "The company is at law a different person altogether from the subscribers …. and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or transferee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act".

Logically, therefore, powers and functions of incorporated company are some of the incidence of incorporation even under our *Companies and Allied Matters Act*, 1990. The law also endows every company registered under the Act with all powers of natural persons of full capacity. The principle of separateness of registered companies is of fundamental relevance to the business world. It is more glaring if we realise that:

> "Arising from the logical consequence of the legal personality principle, a company can subscribe to the memorandum of another company as a shareholder, like an individual. It can also be a director, a secretary, or manager of other companies. Similarly, any joint stock company can be a partner in a partnership business and in fact a partnership business can be wholly run by joint-stock companies".

3.8.2 The Constitution of a Registered Society

Generally, a corporate body normally adopt a constitution to enable it fulfill its economic and social functions within its set objectives and business environments. Today, a registered society's original bye-law is very much a matter for its promoters. They have freedom to draw up the bye-laws and rules guiding the operations of the society.

3.8.3 The General Meeting as an Organ

Registered societies are generally presumed to be separate legal persons. But separate from what? They are separate from their respective cooperators who are the contributors to its stock. The original principle therefore was that registered societies are owned by cooperators and are as such subject to the overall control by the cooperators at the general meetings of the cooperative society.

3.8.4 The Management Committees

The management committee constitutes a very vital organ in the policy formulation and direction of registered societies generally. Such is the powers and statute of the committee that the general meeting cannot overturn the acts of the committee provided they are within the powers delegated to them. Further, the committee is restricted also by the rules of the society as spelt out by the bye-laws of the Company. This is because any act done or purportedly done by the committee which is outside the powers of the society is said to violate the *ultra vires* doctrine as it applies to registered societies.

4.0 CONCLUSION

You have learnt about meaning, types and methods of control relative to registered society. You also learnt about corporate governance and control especially as it affect the corporate legal entity theory, constitution of a registered society and the general meeting as an organ.

5.0 SUMMARY

In this unit, we have discussed:

- Define control;
- List the types of control;
- State the different methods of control; and
- Discuss corporate governance and control.

6.0 TUTOR MARKED ASSIGNMENT

1. Define in your own words what is meant by control as it relates to registered societies.
2. List and discuss the different methods of control.
3. What do you understand by corporate governance and control as it affects registered society?

7.0 REFERENCES AND FURTHER READINGS

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Muray A. Pickering: *Shareholders' voting rights and Company Control*. The L.Q.R. 81 (1965) at p. 248.

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See generally Akanki, E.O. *Negligent Management by Company Directors*. The Nigerian Law Journal, Vol. 9, 1975, p. 45 – 62.

Berle op. cit. at 1224.

Berle op. cit. p. 1213.

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H.L. Oleck: *Modern Corporation Law* Vol. 3 on *Shareholders and Third Parties*. The Bobbs-Merril Company Inc. 1959 Chap. 58 pp. 509 – 550 at 509 – 512.

UNIT 4 DIVIDENDS

Table of Contents

1.0 INTRODUCTION

This unit will discuss Payment of Dividends; Distributable Profits; Dividends of Registered Societies; Relevant Accounts and Infringement of Dividend Rules.

2.0 OBJECTIVES

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

3.0 MAIN CONTENT

3.1 Payment of Dividends

Dividends may only be paid by a registered society out of profits available for the purpose: there is now a detailed code of rules which determines what are distributable profits. This law which previously applied to the rules to registered societies. There are special rules for investment of registered society fund.

The power to declare a dividend is given by the bye-laws which usually follow the provisions of the Cooperative Act of 1993:

(a) The registered society in general meeting may declare dividends but no dividend may exceed the amount recommended by the directors who have an implied power in their discretion to set aside profits as reserves to be used in the business of the registered society or outside it in making investments.

(b) The directors may declare such interim dividends as they consider justified.

(c) Dividends are normally declared payable on the paid up amount of share capital. For example, a share which is fully paid will carry entitlement to twice as much dividend as a share 50 kobo paid:

(d) A dividend may be paid otherwise than in cash.

(e) Dividends may be paid by cheque or warrant sent through the post to the shareholders at his registered address. If shares are held jointly payment of dividend is made to the first-named joint holder on the register.

A shareholder is not entitled to a dividend unless it is declared in accordance with the procedure prescribed by the bye-laws and the declared date for payment has arrived. *A dividend is a debt only when it is declared and due for payment*. The directors (as they have power at their discretion to make transfers to reserves) may decide to withhold profits and cannot be compelled to recommend a dividend (not to declare an interim dividend).

3.2 Distributable Profits

The profits which may be distributed as dividend are:

> "accumulated realised profits, so far as not previously utilised by distribution or capitalization, less accumulated realised losses, so far as not previously written off in a reduction or reorganization of capital duly made.

The word 'accumulated' requires that any losses of previous years must be included in reckoning the current distributable surplus. A profit or loss is deemed to be *realised* if the profit or loss falls to be treated as realised in accordance with generally accepted accounting principles at the time the accounts are prepared. Hence, accounting standards in issue, plus generally accepted accounting principles (GAAP), should both be taken into account when determining realised profits and losses.

(a) only profits realised at the balance sheet date shall be included in the profit and loss account, and

(b) losses which have arisen, or are likely to arise, in respect of the current accounting period and any previous accounting period should be taken into account. In addition, losses which arise between the balance sheet date and the date that accounts are signed should also be taken into account.

Valuation of Assets

In so far as depreciation relates to the historical cost of the asset, it must be treated as a realised loss, and debited against profit, in determining the amount of distributable profit remaining. But if the asset has been revalued any increased depreciation provision related to the increase in value of the asset may be treated as a profit.

An example may help. Suppose that an asset purchased for N20,000 has a 10 year life. Provision is made for depreciation on a straight line basis so the annual depreciation charge of N2,000 must be deducted in reckoning the company's realised profit less realised loss. Suppose now that after five years the asset is revalued to N50,000 and in consequence the annual depreciation charge is raised to N10,000 (over each of the five remaining years of the asset's life). The effect of s. 275 is that N8,000 of this amount may be reclassified as a realised profit. The net effect is that realised profits are reduced by only N2,000 in respect of depreciation, as before.

If, on a general revaluation of all fixed assets (or all except goodwill), it appears that there is a diminution in value of any one or more assets, than any related provision(s) need not be treated as a realised loss. Such a revaluation need not be recorded in the financial statements but need only be considered. However, a note must be inserted in the accounts to the effect that the directors have considered the value of the fixed assets of the company without actually revaluing all those assets and that they are satisfied that the aggregate value of those assets at the time was no less than their aggregate book value.

If there is no record of the original cost of an asset the directors may use whatever is the earliest available record of its value. If it is uncertain whether a profit or loss of any previous year was realised or unrealised they may treat any such profit as realised and any such loss as unrealised.

If a company shows development expenditure as an asset in its accounts it must usually be treated as a realised loss.

3.3 Relevant Accounts

The question whether a company has profits from which to pay a dividend is determined by reference to its 'relevant accounts' which are generally the latest audited annual accounts. Relevant accounts must be properly prepared in accordance with the requirements of the General Accounting Practice. If the auditor has qualified his report on the accounts he must also state in writing whether, in his opinion, the subject matter of his qualification (if it relates to statutory accounting requirements) is material in determining whether the dividend may be paid.

A registered society may produce *interim accounts* if the latest annual accounts do not disclose a sufficient distributable profit to cover the proposed dividend. It may also produce *initial account*s if it proposes to pay a dividend during its first accounting reference period or before its first accounts are laid before the company in general meeting. These accounts may be unaudited.

3.4 Infringement of Dividend Rules

If a dividend is paid otherwise than out of distributable profits the society, the directors and the shareholders may be involved in making good the unlawful distribution.

Any member of the registered society may apply to the court for an injunction to restrain the company from paying an unlawful dividend. A resolution passed in general meeting to approve it is invalid and it does not relieve the directors of their liability.

The Registered Society Management Committee is entitled to recover an unlawful distribution from its members if at the time of receipt they knew or had reasonable grounds for knowing that it was unlawful. If only part of the dividend is unlawful, if it exceeds the distributable profits by a margin, it is only the excess which is recoverable. If a member knowingly receives an improperly paid dividend a derivative action cannot be brought by him against the directors.

The initiative in payment of dividends rests with the management team since it is they who either recommend to members in general meeting that a dividend should be declared or they declare interim dividends (if authorised to do so). Moreover the accounts sent to shareholders are prepared by or under the supervision of management team and are approved and signed by them. Accordingly the management team are liable to make good to the society the amount unlawfully distributed as dividend if they caused an unlawful dividend to be paid in any of the following ways:

4.0 CONCLUSION

The reward expected by shareholders for investing in share capital is a dividend. This unit has demonstrated the various rules which have been evolved to ensure that dividends are only paid out of profits available for the purpose. Together they comprise additional safeguards for the maintenance of capital.

5.0 SUMMARY

In this unit, we have discussed:

- Payment of dividends;
- Distributable profits;
- Dividends of registered societies;
- Relevant accounts and
- Infringement of dividend rules.

6.0 TUTOR MARKED ASSIGNMENT

1. What are the rules governing distribution of profits and payment of dividends in a registered society?

2. Describe the relevant accounts of a registered society and list the penalties for infringement of dividend rules.

7.0 REFERENCES AND FURTHER READINGS

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UNIT 5 PUBLIC ACCOUNTABILITY

Table of Contents

INTRODUCTION

In the last unit, we discussed payment of dividends, distributable profits, dividends of registered societies, relevant accounts and infringement of dividend rules.

This unit will discuss the following topics:

(i) Accountability
(ii) The Registrar of Cooperatives
(iii) Contents of Accounting Records
(iv) Registers
(v) Returns to the Registrar of Cooperatives
(vi) Annual Accounts
(vii) The Auditor

OBJECTIVES

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

- Discuss accountability;
- Describe cooperative registry and the DTI
- List the contents of accounting records;
- State the registers in a registered society;
- List the returns to be submitted to the Registrar of Cooperatives;
- Describe the annual accounts; and
- Discuss the position of auditor in a registered society.

MAIN CONTENT

3.1 Accountability

This will be discussed on under two sub-heads namely: Public Accountability and Internal Accountability.

3.1.1 Public Accountability

It is a basic principle of company law that the advantages of trading through a separate corporate body (especially if its members have limited liability for its debt) should be matched by requiring the registered society to provide information about itself which is available to the public. Anyone who is interested in a company, typically because he intends to do business with it and perhaps to give it credit, can thus find out who owns and manages it and when is its financial position at the date of its latest accounts.

The basic sources of information about a Nigerian Cooperative Societies are as follows:

(a) Its *file at the Director of Cooperative Office* in which the Director holds all documents delivered to him by the society for filing. Any member of the public may inspect the file (called 'making a search') on payment of a small fee and may obtain copies of the documents in it.

(b) The *register and other documents* which the registered society is required to hold at its registered office (or in some cases at a different address in which notice is given to the registrar). Here too there are statutory rights of inspection.

Small companies complain that they are put at a disadvantage with their companies by filing their complete accounts at the registry. This grievance has been relieved by s. 246 (1) which permits small or medium sized companies to deliver to the registrar 'modified' accounts in short form.

3.1.2 Internal Accountability

A different aspect of the requirement that information must be given exists within a registered society. The management of the company is in the hands of the directors and they must be accountable to the members.

(a) The members have a statutory right to receive a copy of the annual accounts, together with the auditors' reports.

(b) Various transactions and interests of the management team must be disclosed in the accounts or entered in a register or other documents which members may inspect.

(c) Any loans and transactions with the cooperative society in which they have a material interest must be disclosed in the accounts.

3.2 The Director of Cooperatives

Certificate of the Cooperative Office File

On first registration, the society's file includes a copy of its certificate of incorporation and the original documents presented to secure its incorporation. Every document delivered to the Director of Cooperative in compliance with cooperative law is added to the file.

3.3 Contents of Accounting Records

Given the demands on registered societies to submit details to the Director of Cooperatives and to present accounts to their members, it is obvious that, in order to do so, transactions entered into by a cooperative society must be recorded.

A registered society is required to keep accounting records sufficient to show and explain the society's transactions. At any time, it should be possible:

(a) to determine with reasonable accuracy the company's financial position; and
(b) to ascertain that any balance sheet or profit and loss account prepared is done so in accordance with the Act.

Particular records required by the Act are:

(a) daily entries of sums paid and received, with details of the source and nature of the transactions;
(b) a record of assets and liabilities;
(c) statements of stock held by the registered society at the end of each financial year;
(d) statements of stocktaking to back up the records in (c);
(e) statements of goods bought and sold (except retail sales), together with details of buyers and sellers sufficient to identify them.

The requirements (c) to (e) above apply only to businesses involved in dealing in goods.

Accounting records may be kept in the form of bound books or in any other manner decided by the management team. If another method is used (such as loose leaf binders) added precautions must be taken to prevent falsification.

The vast majority of registered societies nowadays keep their records by means of computers. This 'non-legible' recording is permitted with the proviso that a legible form (hard copy) can be reproduced.

Accounting records should be kept at the registered society's registered office or at some other place thought fit by the management team.

Accounting records should be open to inspection by the members of the society. They have a right of inspection of all records, although the court has no statutory power to compel a society to allow its accounting records to be inspected.

Where a society fails to maintain the required records, every defaulting officer is guilty of an offence unless there were honest and excusable reasons. The penalties for such an offence are imprisonment, a fine or both.

3.4 Registers

In addition to recording transactions, a company must also keep registers of certain aspects of its constitution. Again, these requirements are designed to facilitate publicity and to regulate conduct of the company affairs.

To make inspection of the registers reasonably easy for persons who are entitled to have access to them, the company must keep them at specified places and, in order to remove difficulties that arose in the past over inspection, the Companies Act 1989 inserts s. 723A into the 1985 Act removing many of the previous details which were provided, and giving the Secretary of State wide powers to make discretionary rules by statutory instrument.

The statutory registers (with the relevant sections) are:

- the register of members;
- the register of members' interests in shares and debentures of the company;
- the register of charges;
- minutes of general meetings of the society;
- the register of written resolutions.

The requirements as to the form in which accounting records are kept also apply to the registered society. Societies with debentures issued nearly always keep a register of debenture-holders, but there is no statutory compulsion to do so (despite recommendations that there should be) should be kept at the Cooperative Office.

Register of Members

The detailed procedure surrounding the register of members is dealt with in the cooperative bye-law. This is because entry in the register of members is the fundamental means by which a person becomes a member of a registered society.

Register of Charges

The register of charges is also dealt with elsewhere, in the chapter on loan capital. The register must contain details of charges affecting the company property or undertaking, and should provide brief descriptions of property charged, the amount of the charge and the name of the person entitled to the charge. An officer who details with respect to this register is liable to a fine. Any person may inspect the charges register; members and creditors may inspect free of charge.

In addition to keeping a register of charges, a company must also keep copies of every instrument creating a charge at its registered office: s. 411. Any member or creditor may inspect the copies and register without a fee; others may inspect the register for such a fee as may be prescribed. Refusal of these rights may lead to a fine and the court has a right to compel inspection or to direct that a copy be sent: s. 412.

3.5 Returns to the Registrar of Companies

Returns must be made to the Director of Cooperatives by a registered society.

Throughout this text it is evident that the Registrar of Companies must be informed of many other occurrences, such as alteration of the company articles.

3.6 Annual Accounts

The basic principle is that the directors must, in respect of each accounting reference period of the company:

(a) prepare a balance sheet and profit and loss account;
(b) lay before the registered society in general meeting accounts for the period.

The information to be given in the accounts, their format and other matters of form and content are regulated mainly by accounting standard. There is a requirement that the accounts shall give a true and fair view, additional data must be given to supplement the statutory prescribed figures if without those additions the accounts would not give a true and fair view.

The broad requirements are that the accounts should show:

- a schedule of assets and liabilities;
- a profit and loss account, showing the amount of profit or loss before tax;
- transfers to reserves;
- paid and proposed dividends;
- corresponding amounts for the previous year;
- notes on accounting policies and on the balance sheet and profit and loss account.

These are the contents of the statutory accounts to be filed and to be presented to the shareholders.

Auditor

The accounts must be audited and the auditor's report must be attached to the copies issued to members, delivered to the Director or published.

The accounts must also be accompanied by the auditors' report giving information on a number of prescribed matters. It must contain a balance sheet of the development of the business of the society ……. year and at the end of it, and must state the directors' recommendations on the application, rendition and distribution of profits.

Circulation of Accounts

Each member and debenture-holder is entitled to be sent a copy of the annual accounts, together with the directors' and auditor's reports, at least 21 days before the meeting before which they shall be lad. Anyone else entitled to receive notice of a general meeting, including the auditor, should also be sent a copy. At any other time any member or debenture-holder is entitled to a copy free of charge within seven days of requesting it.

Adoption of Accounts by Members

The accounts must be laid before members in general meeting. It is usual to deal with the accounts at each year's Annual General Meeting. But it is not obligatory to do so – the accounts may be considered at an Extraordinary General Meeting (as when the accounts are not ready at the time when the AGM must be held to comply with AGM rules).

When the accounts are laid before a general meeting it is usual to propose a resolution that they be 'adopted' or approved. This gives the members present an opportunity of asking pertinent questions, making criticisms or suggestions etc. The approval of the accounts is regarded as a vote of confidence in the directors. If however the accounts are not 'adopted' they are still the accounts and their validity is not affected. But to reject the accounts is an expression of members' lack of confidence in the management team. In the face of this storm signal the directors are well advised to enter into discussions with prominent shareholders, who may form a shareholders' committee for this purpose.

We have seen that every member of a company (and also every debenture-holder) is entitled to receive a copy of the accounts. But only those members who are entitled to attend general meetings are able to take part in the discussion of the accounts.

It is usual to include in the accounts provision for a final dividend to be declared by resolution passed at the general meeting at which the accounts are considered.

The auditors are appointed at the general meeting at which the accounts are considered to hold office until the next such general meeting.

3.7 The Auditor

Every registered society must appoint an auditor, who must be a member of a recognised supervisory body and must neither be a member of nor be connected with the management of the registered society (section 36 (1)).

Appointment of Auditors

The auditor of a new registered society is appointed by the *management committee* to hold office until the conclusion of the first general meeting at which the accounts are considered. The registered society in general meeting may also appoint an auditor to fill a casual vacancy.

In the ordinary way the *members* appoint the auditor at each general meeting at which the accounts are considered, to hold office until the next such meeting, that is to audit and report on the accounts to be prepared for that subsequent meeting.

If members fail to appoint an auditor at the general meeting at which the accounts are considered, the registered society must, within seven days of the meeting, give notice to the Director.

The auditor so appointed under the decree holds office from the end of the 28 days period (or the conclusion of the meeting) until the end of the time for appointing auditors for the next financial year.

The auditor who is in office when the election is made remains so until the end of the time for appointing auditors for the next financial year (unless the general meeting decides otherwise). The auditor in office when the election ceases to have effect remains in office until the conclusion of the next general meeting at which accounts are laid.

When the election ceases, the auditor remains in office until the conclusion of the next general meeting at which accounts are laid, or until the end of the 'time for appointing auditors' for the next financial year.

Whoever appoints the auditor has power to fix his remuneration for the period of his appointment. It is usual when the auditor is appointed by the general meeting. Such remuneration must be disclosed in a note to the accounts.

Termination of Auditor's Appointment

An auditor may be *removed* from office before the expiry of his appointment by passing an ordinary resolution in general meeting.

An auditor may *resign* his appointment by giving notice in writing to the registered society delivered to the registered office. Alternatively, he may simply decline to offer himself for re-election.

In his notice of resignation or on ceasing to hold office for any reason the auditor must deposit at the society's registered office either:

(a) a statement that there are no circumstances connected with his resignation which he considers should be brought to the notice of members or creditors of the company; or

(b) a statement disclosing what those circumstances are.

On receiving the auditor’s notice of resignation the registered society must send a copy of it to the Director. If the auditor’s notice contains a statement of circumstances the society must also send a copy to every person entitled to receive a copy of the accounts.

Duties and Powers of Auditors

The statutory duty of an auditor is to report to the members whether the accounts give a true and fair view and have been properly prepared in accordance with the Cooperative Decree 1993. To fulfill this duty, the auditor must carry out such investigations as are necessary to form an opinion as to whether:

(a) proper accounting records have been kept and proper returns adequate for the auditor have been received from branches;

(b) the accounts are in agreement with the records; and

(c) the information given in the directors’ report is consistent with the accounts.

If the auditor is satisfied on these matters they need not be mentioned in the report.

The auditor’s report must be read before any general meeting at which the accounts are considered and must be open to inspection by members. The auditor may also attend any meeting after resigning at which his successor is appointed and also the meeting at which his office would have expired.

Auditors have wide statutory powers to enable them to obtain whatever information they may require for the purpose of their audit. In particular, they may inspect books and records and call on officers of the registered society for information or explanations. It is a criminal offence for an officer of the society to make a false statement to an auditor if it is misleading, false or deceptive in a material particular and is made knowingly or recklessly (with indifference as to its truth).

4.0 CONCLUSION

A number of statutory requirements have been examined, all of which are designed to ensure that corporate bodies (especially limited liability companies) are open to public enquiry where this is in the public interest. This is achieved primarily by:

(a) the requirement to maintain registers which can be inspected by the public;
(b) the requirement to notify the Registrar of certain important transactions; and
(c) the requirement to file with the Registrar annual audited accounts and the annual returns.

5.0 SUMMARY

In this unit, we have discussed:

- accountability;
- cooperative office;
- contents of accounting records;
- the registers in a registered society;
- returns to be submitted to the Registrar of Cooperatives;
- annual accounts; and
- the position of auditor in a registered society.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly define and describe accountability as it relates to a registered society.
2. List and explain the contents of accounting records of a registered society.

7.0 REFERENCES AND FURTHER READINGS

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UNIT 6 SHARE CAPITAL

Table of Contents

1.0 INTRODUCTION

The term 'capital' is used in several senses as follows:

(a) **Authorised share Capital**

This is the total amount of share capital which the registered society is authorised to issue by the capital clause of its bye-laws. This total must be divided into shares of fixed amount.

(b) **Issued share capital**

Sometimes called allotted share capita, is the nominal value of the shares which have been allotted and issued to members.

(c) **Reserve liability**

This is any uncalled capital which the company has resolved by special resolution shall only be called up in the course of winding up. For example a company might issue all its authorised capital of, say, N1,000,000 (in N1 shares), call up 75k per share and resolve that the balance of 25k should be reserve liability. As a result N25,000 (obtainable from members) is held back as a reserve against liabilities arising in winding up. Such arrangements are uncommon.

(d) **Local capital**

In contrast with the above, this is the term used to describe borrowed money obtained usually by the issue of debentures. Loan capital is a liability owed to creditors. It is quite different from share capital which represents the interests of members as proprietors of the company. In general, debts must be discharged in priority to any return of capital to shareholders.

(e) Shares may be classified, according to their respective rights, as ordinary share capital, preference share capital etc. 'Equity share capital' is a defined term of 2. 744. In another context, the term 'equity securities' is used in a similar sense: s. 94(2). These terms are explained in their context.

In this unit, we shall discuss types of capital, its allotments, its consideration, its allotment at a premium, return on allotments, rights and bonus issues and employees' share schemes.

2.0 OBJECTIVES

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

- list and discussed the type of capital;
- define authorised share capital;
- explain allotment of shares;
- state the consideration for shares;

3.0 MAIN CONTENT

3.1 Types of Capital

A cooperative society's capital is the funds it has available for use in the business, representing its assets. Some part of the capital employed in the business of a trading company may be provided under short-term commercial arrangements such as purchase of goods or equipments on credit or hire purchase terms, bills of exchange and other short-term credit, or it may represent profits of the business retained to finance its expansion. But some of the capital is provided by members of the company subscribing for shares or by lenders who provide loan capital by taking debentures or debenture stock. Share capital and, to a lesser extent, loan capital are elaborately regulated by company law.

3.2 Authorised Share Capital

The amount of the authorised share capital contained in the bye-laws sets a limit on the aggregate nominal value of the shares which a registered society should have.

A registered society which has share capital may, if authorised by its articles and by resolution passed in general meeting, increase the amount of its share capital requires only that an ordinary resolution shall be passed. A typical resolution would state 'the capital of the company be increased from N1,000 to N2,000 by the creation of 1,000 new shares of N1 each'.

Other alterations to authorised share capital

A registered society may also, by resolution passed in general meeting, make other alterations to its share capital, in accordance with the provisions of its bye-laws.

(a) *Conversion* of shares which are issued and fully paid into stock or of stock into issued shares.

Within one month of making any such alteration, the company must deliver to the Registrar notice of the alteration in the prescribed form. In so far as it alters the capital clause of the memorandum, it must comply with the rules on that type of alteration.

3.3 Allotment of Shares

The allotment of shares is a form of contract. The intending shareholder applies to the registered society for shares. This is an offer which the society accepts by allotting shares to him.

The terms ‘allotment’ and ‘issue’ have slightly different meanings.

(a) A share is *allotted* when the person to whom it is allotted acquires an unconditional right to be entered in the register of members as the holder of that share. That stage is reached when the management team (to whom the power to allot shares is usually given) consider the application and formally resolve to allot the shares.

(b) The *issue* of shares is not a defined term but is usually taken to be a later stage at which the allottee receives a letter of allotment or share certificate issued by the company as evidence of his title.

Modern practice places more emphasis on allotment and treats issue as merely a consequence of allotment.

Procedure for Allotment of Shares

The allotment of shares of a private company is a simple and immediate matter. Public companies listed on the Stock Exchange usually follow a two-stage procedure.

(a) They first issue a renounceable *allotment letter* (or similar document) which the original allottee may for a limited period (up to six weeks) transfer to another person by signing a form of renunciation (included in the letter) and delivering it to the transferee. The original allottee, if he does not renounce, or the ultimate renounce, sends in the allotment letter with a completed application for registration of the shares in his name. no entry is made in the *register* of members when the allotment letter is first issued.

(b) On receipt of *application for registration*, the company enters the name of the applicant in the register of members and delivers a return of allotments to the Registrar made up to show who is then on the register. The applicant becomes a member *by entry on the register* and receives a share certificate from the company.

Except where renounceable allotment letters are issued, the name of the allottee is usually entered in the register soon after, and as a direct consequence of the allotment of shares to him. He then becomes a member: s. 22.

Subscribers to the memorandum become members of the company as soon as it is incorporated and their names should be entered in the register of members without any decision to allot shares to them.

Directors' powers to allot shares

It is long established practice to delegate to the board of directors (as part of their general management functions) the decision on the terms of contract of allotment and the power to allot shares. This is effected by Table A Article 70 which assigns powers of management to the directors, although Article 2 reserves to the members the decision on membership rights attached to the new shares. But the directors may neither allot shares, except to subscribers to the memorandum in fulfillment of the latter's' promise to take shares and to employees' share schemes, not grant options or convertible securities, without authority from the members: s. 30.

The directors may only exercise the power of allotment if they are properly authorised to do so, either by the articles or by ordinary resolution passed in general meeting in conformity with s. 80 or under the provisions of s. 80A.

Public Company

s. 80 requires of a public company that the authority to allot shall be given until a specified date and for a specified period of not more than five years (from the incorporation of the company or, if given at a later date, from the date when it is given).

Private Company

A private company may use new procedures given by s. 80A which allow it to pass an elective resolution (discussed fully later in this text) conferring authority to allot shares for an *indefinite* period, or for a fixe period longer than five years. Such an authority may be revoked, varied or renewed by the company in general meeting. If an election ceases to have effect and it was given five years or more before this time, then the authority expires forthwith; otherwise it has effect as if it had been given for a fixed five year period.

All companies must specify the maximum number of shares which may be allotted: s. 80 and s. 80A. Authority may be given either generally or for a specific allotment.

A company may, in giving authority, impose additional conditions. It may also revoke, vary or renew the authority previously given but, unless s. 80A applies, authority may not extent beyond five years.

A resolution passed in general meeting to give authority to allot need only be in ordinary resolution. But a signed copy must be delivered to the Registrar within 15 days of the passing of the resolution.

The directors may be given a general authority to allot shares and may then exercise their power without further reference to members in general meeting. But it will be necessary to convene a general meeting (unless a private company uses the new written resolution procedure) to give authority by ordinary resolution in any of the following situations:

(a) If no authority has been given in advance or if it has been given subject to conditions or restrictions which deny to the directors authority to make the allotment which they now propose.
(b) If general authority given previously has expired by lapse of time or been fully used by previous allotment made under it.

3.4 Consideration for Shares

Every share has a nominal value and may not be allotted to that. In allotting shares every registered society is required to obtain in money or money's worth consideration of a value at least equal to the nominal value of the shares: s. 100. To issue shares 'at par' is to obtain equal value, say, N1 for a N1 share. If shares are allotted at a discount on their nominal value, the allottee must nonetheless pay the full nominal value with interest at the appropriate rate (5%).

Payment for shares

The price for the shares may be paid in money or 'money's worth', including goodwill and know-how. It need not be paid in cash and the registered society may agree to accept a 'non-cash' consideration of sufficient value. For instance, a registered society may issue in payment of the price agreed in the purchase of a property.

4.0 CONCLUSION

You have learnt about the types of capital. You have also learnt about authorised share capital and allotment of shares. Finally, you learnt about consideration for shares in a registered society.

5.0 SUMMARY

In this unit, we have discussed

- the types of capital;
- authorised share capital;
- allotment of shares; and
- consideration for shares.

6.0 TUTOR MARKED ASSIGNMENT

1. List and briefly explain the types of capital available in a registered society.
2. Descript allotment of shares in a registered society.

7.0 REFERENCES AND FURTHER READINGS

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MODULE 4 LIQUIDATION OF REGISTERED SOCIETY

UNIT 1 LIQUIDATION OF REGISTERED SOCIETY

CONTENTS

1.0 INTRODUCTION

A registered society like, a cooperative society, is an artificial person and could be would up or liquidated in accordance with the provision of the Cooperative Society Law Cap. of 1993 Laws of the Federation.

In this unit, you will learn about the methods of dissolution of a cooperative society, what is meant by liquidation, the types of liquidation, powers of a liquidator and the duties of a liquidator.

2.0 OBJECTIVES

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

- explain the meaning of compulsory and voluntary liquidation of a cooperative society;
- state and discuss the powers of a liquidator;
- list the duties of a liquidator.

3.0 MAIN CONTENT

3.1 Method of Dissolution

Dissolution occurs when a cooperative society's name is removed from the register of cooperatives. At this point, it ceases to exist, it has no capacity and the relationship between the cooperative society and its members is at an end.

3.2 Liquidation

Dissolution of cooperative society follows liquidation or winding up (the terms are often used synonymously). This means that the cooperative society must be dissolved and its affairs "wound up" or brought to an end. The asset are realised, debts are paid out of the proceeds, and any surplus amounts are returned to members.

Liquidation leads to dissolution of the registered society. The members of a registered society may within two months from the date of an order made under subsection (2) or of this section appeal against the order to the Minister or Commissioner of Cooperatives, as the case may be, for a decision of the order. The court may also rescind the decision and order the registered society back to the register.

There are a number of ways in which cooperative society may be liquidated. They are:

(a) by the Director, under section 38 (1) of the Cooperative Laws;

(b) by an order of the court if the number of members have fallen below the mandatory number;

(c) by cancellation of registration of judicial review by the Attorney General. This may be invoked if the Director has erroneously registered a cooperative society with illegal objects;

(d) on completion of a compulsory liquidation; and

(e) on completion of a voluntary liquidation.

Most dissolution is as a result of liquidation. However, methods above is often used by the Director suspects that in a cooperative society, the number of the members of the society has been reduced to less than ten or in case of an industrial society, to less than six. This is referred to compulsory liquidation.

Also, section 38 (2) the Director, after holding or making an inquiry or conducting an inspection under section 37 of the Cooperative Laws of the Federal Republic of Nigeria or on receipt of an application made not less than three quarter (¾) of the members of a registered society, is of the opinion that the registered society ought to be dissolved, he may make an order in writing for the cancellation of the registration of the society.

Even though a cooperative society's name is struck off the register under section 38 of the Act, any liability of the members living or dead continues and may be enforced as if no dissolution has taken place.

3.2.1 Compulsory Liquidation

A registered society may, however, be obliged to wind up by compulsory liquidation or ordered by the court on a petition usually presented by a creditor or members. The Director may also by an order in writing cancel the registration of a registered society on application of ¾ of members of the registered society after causing an enquiry to be made.

3.2.2 Voluntary Liquidation

Dissolution or liquidation that brings the business of a cooperative society to an end through the decision of the members is referred to as voluntary liquidation.

Liquidation begins with a final decision to liquidate. If the members in a general meeting resolve to wind up the registered society that is voluntary liquidation (winding up). This may be either a member or a creditors' voluntary winding up, depending on Management Committees believe or the Director that the registered society will or will not be able to pay its debt in full.

Voluntary liquidation is simpler, quick and less expensive; it is possible only if a majority of votes cast in a general meeting on a resolution to liquidate.

Whether liquidation is voluntary or compulsory, it is the hand of the liquidator who takes over control of the registered society from the Director.

Self Assessment Exercise

Identify the ways registered society could be dissolved.

3.3 Insolvency Practitioner

It is only the court or the Director that can give an order winding up a registered society. The society then ceases to exist from the date of wind up and all rights conferred under the law is now vested in a liquidator appointed by the Director for the society. It is important to note that the office of a Liquidator must now be filled by authorised insolvency practitioner.

3.4 Qualifications of a Liquidator

The person to be appointed as a liquidator:

(a) must be fit and proper;
(b) must be up to the required standard in respect of education and practical training, and experience received as a liquidator;

(c) he must not bean undischarged bankrupts;

(d) must not be a mentally ill-person.

Self Assessment Exercise

Explain the term 'Liquidator of a registered society'.

3.5 Duties of Liquidator

Given the wide powers invested in a liquidator, he has certain duties. These statutory duties include the following:

1. He reports to the Director;

2. He acts within the limit of the powers granted him by the Director;

3. He maintains a record of the names of all members of the registered society both dead or living;

4. He must exercise discretion in the application of his powers. Although he may delegate a clerical task and those which he cannot perform personally (for which he can appoint agents), a liquidator cannot delegate his duty to clerical office to use his judgement;

5. He stands in fiduciary relationship to the registered society, its credits and contributors;

6. He must cooperate with the Director;

7. He must cooperate with the official receiver;

8. He must act quickly in carrying out his duties and not delay;

9. He must keep minutes of the proceedings and resolution of creditors, contributors and liquidation committee meeting;

10. He must keep records of proceedings.

11. He must keep a record of all receipts and payments.

3.6 Common Features of all Types of Liquidator

Liquidation may begin in different ways and different procedures; it should however be noted that the working procedure is much the same in every type of liquidation. In the same vein, in every type of liquidation of a registered society, the same problems can arise.

(a) Liquidators' actions are valid even if the appointment or qualification are defective;

(b) No further dealing or change of membership will be permitted (unless the court sanctions a rectification or other change);

(c) All monies, orders, letters and other documents of the deregistered society must state prominently that the registered society is in liquidation;

(d) The Director's power to manage ceases, but the liquidation is done under his direction.

4.0 CONCLUSION

We have seen the importance of distinguishing between types of liquidation and also between liquidation and dissolution. Some of the procedural steps to take when or how a liquation commence or proceed were also discussed.

5.0 SUMMARY

In this unit, you learned about the following:

- dissolution of a registered society;
- methods of liquidation;
- liquidation;
- appointment of a liquidator;
- duties of a liquidator;
- common features in all types of liquidation.

6.0 TUTOR-MARKED ASSIGNMENT

1. How far may a liquidator delegates its powers?
2. Describe how a registered society can be dissolved.
3. What event would occur in making a liquidation decision?

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 APPOINTMENT OF A LIQUIDATOR AND POWERS OF A LIQUIDATOR

CONTENTS

1.0 INTRODUCTION – COMPULSORY LIQUIDATION

In this unit, you will continue with the study of liquidation and this will take you through to compulsory liquidation, provisional liquidator, effects of an order for compulsory liquidation, voluntary liquidation, effects of voluntary winding up, the liquidation committee and contributories.

2.0 OBJECTIVES

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

- Define compulsory and voluntary liquidation;
- State the effect of an order for compulsory liquidation;
- List out the effect of voluntary winding up;
- Discuss the role of liquidation committee;
- Explain the powers inherent in a liquidator.

3.0 MAIN CONTENT

3.1 Compulsory Liquidation

A petition presented by three fourths (¾) of he members of a registered society to the Director of Cooperative Society specifying one of the five grounds for compulsory winding up or by a

Creditor of the registered society is enough to compulsorily liquidate the society. The five grounds are as follows:

(a) The registered society has passed a special resolution that it should be wound up by the court;

(b) The number of members of the society has been reduced to below the required number;

(c) The registered society is unable to pay its debts;

(d) The court considers that it is just and equitable to wind up the society; and

(e) The registered society is being used for an illegal purpose.

Petition for compulsory winding up are most often presented by creditors who cannot obtain payment of the debt owed to them. Three-quarter (¾) members who have sufficient grounds of dissatisfaction could present a petition on the just and equitable grounds.

Self Assessment Exercise

Mention and explain four grounds for compulsory winding up of a registered society.

A creditor who petitions on the grounds of a registered society's insolvency may rely on any of the following situations to show that the registered society is insolvent. A creditor must be able to show by proof that:

(i) the registered society is not able to pay its debts as they fall due – the commercial insolvency test;

(ii) the assets are less than its liabilities – the balance sheet test.

3.2 Provisional Liquidator

Once the court has been petitioned, a provisional liquidator may be appointed by the court. The official receiver is usually appointed and his powers are conferred by the court. These powers usually extend to taking control of the registered society property and applying for a Special Manager to be appointed.

3.3 Effects of an Order for Compulsory Liquidation

The effects of the order, which may be made sometime after a provisional liquidator is appointed, are as follows:

(1) The official receiver becomes the liquidator;
(2) The liquidation is deemed to have commenced at that time;

(3) Any disposition of the registered society property and any transfer of its shares subsequent to the commencement of liquidation is void unless the court orders otherwise;

(4) Any legal proceedings in progress against the society are halted.

The assets of the registered society may remain as the legal property of the registered society but under the liquidator's control unless the court by order vests the assets in the liquidator.

3.4 Voluntary Liquidation

There are two types of voluntary liquidation – a members' voluntary winding up, where the registered society is solvent and members merely decides to "kill it off" and a creditors' voluntary winding up, where the society is insolvent or there is dispute between the members of the management committee and members resolve to wind up in consultation with the creditors.

3.4.1 Members' Voluntary Liquidation

The type of resolution to be passed varies with the circumstances of the case at hand.

(a) If the bye-laws of a registered society provides for liquidation at the end of a specified period or on the happening of an event, say, the completion of the transaction for which the society was formed, an ordinary resolution (referring to the bye-laws) suffice. This is however rare.

(b) A society may, by extraordinary resolution, resolve to wind up because it cannot, by reason of its liabilities, continue in business.

(c) A society may, by a petition signed by ¾ i.e. three-fourths of the members of a registered society forwarded to the Director resolve to wind up the society.

(d) The Director, after causing investigation to be made into the affairs of a registered society, is satisfied can by a written notice wind up the society.

Self Assessment Exercise

Mention and explain three effects of the order of compulsory winding up of a registered society.

3.4.2 Creditors' Voluntary Liquidation

To commence a creditors' winding up, the management committee convenes a general meeting of members to pass an extraordinary resolution. They must also convene the meeting of the creditors.
The meeting of the members is held first and the usual business transaction is as follows:

(a) to resolve to wind up;
(b) to appoint a liquidator; and

(c) to nominate up to five or more representatives of the liquidation committee.

The creditors' meeting should preferably be convened on the same day or at a later date. The meeting may nominate a liquidator and members of the liquidation committee. If the creditors nominate a different person to be liquidator, their choice prevails over the nomination by the members. The creditors may decide not to appoint a liquidator at all. They cannot be compelled to appoint a liquidator and if they do fail to appoint one, it will be the members' nominee who will take the office.

The effect of the voluntary winding up being a creditors' one is that the creditors have a decisive influence on the conduct of the liquidation. This is reasonable since it is assumed that a registered society is unable to pay its debts in full. The remaining assets will therefore be realised for the benefit of the creditors and the members may get nothing.

3.5 The Effect of Voluntary Winding up

The main differences in legal consequences between a compulsory and voluntary winding up are as follows:

(a) a voluntary winding up commences on the day when the resolution to wind up is passed. It is not retrospective;

(b) the official receiver plays no role in a voluntary winding up. The members or creditors select and appoint the liquidator and he is not an officer of the court; and

(c) there is no automatic stay of legal proceedings against the registered society nor are previous disposition or seizure of its asset void in a voluntary winding up.

3.6 The Liquidation Committee

A liquidation committee may be appointed in a compulsory liquidation and in a creditors' voluntary liquidation. It usually comprises an equal number of representatives of members and of creditors. The general function of the committee is to work with the liquidator, to supervise his accounts, to approve the exercise of certain of his statutory powers and to fix his remuneration.

3.7 Contributories

Every person who is a member of the registered society at the commencement of winding up and every past member is, in principle, liable to contribute to the registered society's asset whatever may be required to enable it pay its debts in full. Present and past members' even dead members are therefore called upon to contribute. Members of a registered cooperative society can not contribute more than his shares in the registered society.

3.8 Powers of a Liquidator

In order to perform his functions satisfactorily, the liquidator is given certain powers. His functions are to realise the registered society's asset to pay of its debts.

(1) All liquidators may withhold or invoke the relevant sanction;
(2) Pay any class of creditors in fully;
(3) Make compromise or arrangement with creditors;
(4) Compromise any debt or questions relating to assets;
(5) Take security;
(6) Bring or defend legal proceedings (without sanction in a voluntary liquidation).

Self Assessment Exercise

What are the powers of a liquidator?

4.0 CONCLUSION

We have seen the importance of distinguishing between types of liquidation and also between liquidation and dissolution. The unit contains most of the procedural information which you need to know on how liquidation commences and proceeds.

5.0 SUMMARY

In this unit, you learnt about the powers and duties of a liquidator, compulsory and voluntary liquidation, the liquidation committee, members' voluntary and creditors' voluntary liquidation.

6.0 TUTOR-MARKED ASSIGNMENT

1. What accounting record must a liquidator keep?
2. What are the main powers of a liquidator?

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 ARBITRATION AND COOPERATIVE SOCIETY

CONTENTS

1.0 INTRODUCTION

Conflict is inherent in any human organisation and as such occurred in a registered society. There have been some statutory provisions for dispute settlement where it touches the business of a registered society.

In this unit, you will learn to define the concept of alternative dispute resolution in respect of a cooperative society. You will also learn to know who an arbitrator is, his qualifications, powers and his activities as it concerns a registered society.

2.0 OBJECTIVES

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

- Define the concept of alternative dispute resolution in respect of a registered society;
- Describe an arbitrator;
- List out the qualifications and powers of an arbitrator; and
- Discuss the activities of an arbitrator as it concerns a registered society.

3.0 MAIN CONTENT

3.1 Disputes Requiring Arbitration in a Registered Society

Section 49 (1) of the Cooperative Law of 1990 states that "if a dispute touching the business of a registered society arises;

(a) among present or past members and person claiming through present or past members and deceased members; or

(b) between a present, past or deceased member and the society, its committee or any office, agent or servant of the society;

(c) between the society and any other committee and any office, agent or servant of the society; or

(d) between the society and any other registered society;

the dispute shall be referred to the Director for settlement.

Section 49 (2) state that "a claim by a registered society for any debt or demand due to it from a member or nominee, heir or estate of a deceased member, shall be deemed to be a dispute touching the business of the society within the meaning of subsection (c) of section 49.

3.2 Arbitration Defined

An arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. A person or persons to whom a reference to arbitration is made is called an Arbitrator or Arbitrators as the case may be. His or their decision is called an award. One or more arbitrators may be constituted into an arbitral tribunal. The decision of such a tribunal is also called an award.

Self Assessment Exercise 1:

Define the term Arbitration.

3.3 Disputes that can be referred to Arbitration

It is not every dispute or differences that can be referred to arbitration. Disputes that can be referred must be justiciable issues which can be tried as a civil matter. They must be dispute that can be compromised by way of accord and satisfaction. These include all matters in dispute about any real or personal property, disputes as to whether a contract has been breached by either party thereto.

However, disputes arising out of illegal transaction cannot be referred; also an award arising from such a reference cannot be enforced and may be set aside. Disputes arising out of void transaction, such as wagering and gaining contracts, cannot be referred. An indictment for an act of a public nature cannot be referred. It is a settled policy of the law that an arbitrator should not be empowered to settle a criminal charge which is a matter of public concern.

3.4 Parties to Agreement to Arbitrate

The capacity to enter into an agreement to arbitrate is a coexistence with the capacity to contract. Consequently, every person who is capable of entering into a contract may be a party to an arbitration agreement. Conversely, a person who has no capacity to contract cannot enter into an arbitration agreement.

A corporation aggregate may be a party to an arbitration agreement in the same way as a natural person. But for other agreements to be valid, it must be in conformity with the rules which normally regulate transactions by the corporation.

3.5 Persons Bound by the Agreement

Parties to the agreement are of course bound by it. If the subject of the reference is assignable, the assignee of a party is bound. A third party, who is not a party to the arbitration agreement or an assignee of such a party cannot impose himself on the proceeding.

Self Assessment Exercise 2:

Identify the nature of disputes that can be referred to arbitration in a cooperative society.

3.6 Arbitration in Cooperative Society

Self Assessment Exercise 3:

The arbitration/award involving a cooperative society is final. Comment.

4.0 CONCLUSION

The question which is often asked is, why do parties, particularly in the business world, sometimes prefer arbitration to litigation in the ordinary courts of the land. The answer is that arbitration can be quicker than litigation. A court action involves conformity with laid down procedure, which cannot be circumvential by the parties and this takes time. The decision of an arbitral tribunal is final and binding on the parties. Consequently, an arbitral award is not subject to appeal.

5.0 SUMMARY

In this unit, we learnt about the definition of arbitration, arbitration laws in Nigeria as it applies to cooperative societies, the importance and advantage of arbitration in cooperative societies.

6.0 TUTOR-MARKED ASSIGNMENT

Arbitral award involving a cooperative society and its members is final and not subject to appeal. Comment.

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UNIT 4 APPLICABLE LAWS IN THE FEDERATION

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MODULE 5

UNIT 1 PROPERTY AND FUND OF REGISTERED SOCIETY

CONTENTS

1.0 INTRODUCTION

2.0 OBJECTIVES

3.0 MAIN CONTENT

3.1 Cooperative Society

Among private corporations is the cooperative society. A cooperative society is a retail organisation in which the consumers are members who provide the capital and share the trading profits in the form of dividend on purchases made by each member.

The range of commercial activities of cooperative societies may be as wide as there are organisations; and so their modes of operation. It is known that some societies are in marketing of products while some operate as loans societies. In fact, section 31 of the Cooperative Societies Law 1959 of Western Nigeria stipulates that loans can be given only on the "produce or goods in which a society is authorized to deal".

As a corporate business organisation, a society is to receive deposits and loans from persons who are not its members, and can grant loans to another society secured only by the produce, subject to the approval of the registrar of cooperative societies and its regulations or bye-laws. A society may invest or deposit its funds in approved banking institutions, government securities or any other registered societies approved by the registrar.

In producers' cooperative societies, the producers join together to market their products and share the profits. It is noted that in Europe, societies do operate in agriculture as well as in viticulture.

Basically, the management of a cooperative society is regulated by the statute and more extensively by Cooperative Societies Regulations and its bye-laws.

A cooperative society possesses most of the attributes of a company. Under the cooperative societies legislation in Nigeria, it is not only a body corporate on registration but also enjoys perpetual succession and has a common seal. It can enter into contract and hold movable and immovable property, invest funds and dispose of the surplus. And like a company, a cooperative society may be registered with or without limited liability, and can hold and dispose of its property in the same way as a company can do. In particular, a society shares most of the characteristics of a company with regard to allocation of shares, right of members to dividend, and the appointment of a *liquidator* on dissolution.

The administrative structure of a cooperative society is akin to that of a company in many respects. So are the many features of the two. Both company and cooperative society are managed by their members' general meeting and an elected body of executives called respectively "board of directors" and "governing committee". The fundamental difference between the two, however, is that the 'capital' of the cooperative society may consist in the contribution of not only money but also in products or whatever items the society is doing business in.

The administration of a cooperative society is governed largely by the Cooperative Societies Regulations 1959 made under section 53 of the statute. "The supreme authority in a registered society", like that of a company, is "vested in the general meeting of members", made up of original members and such other members admitted in a "manner and on such conditions as the bye-laws shall prescribe". The annual general meeting of members, convened by the executive committee, performs almost precisely the type of functions that the annual general meeting of a company does. The meeting is to receive the reports of the committee of management and consider financial reports of the society, elect new officers and the committee, adjudicate on complaints which are duly notified to members before the meeting.

Every member of the society is entitled to notice of the annual general meeting and is entitled to attend and vote. Where it becomes desirable, a special meeting of members may be called between annual general meetings. the meeting elects the committee for one year's tenure, though a requisition may be made for such meeting or at the instance of the registrar.

Like the board of directors of a company, the committee is to administer the general affairs of the society, and is liable for any loss sustained by the society. The society can remove any of its members; but perhaps not of the committee. This is fundamentally different from the power of a company to remove any director. But a member of the management committee may be removed at the instance of the registrar if, in his opinion, such committee member is no longer fit to discharge the duties of his office, and it will be competent of the registrar, if the place of the officer is not filled by the society within thirty days of his removal, to fill the vacant office.

Dispute among members of the society or between it and its officers are required to be referred to the registrar who might settle the dispute or refer to arbitration. The registrar is empowered to "revise' the decision of an arbitrator.

The Law makes provisions for appeals to the registrar and commissioner by persons dissatisfied with the decision of the arbitrator, but the decision of the arbitrator as revised by the registrar or the commissioner was considered final and not subject to review by the court. This provision of the Law cannot now be valid in view of section 36(2) of the Nigerian Constitution 1999 which says that "a law conferring on any government or authority power to determine questions arising in the administration of a Law that affects or may affect the civil rights and obligations of any person" shall not be valid unless "such Law contains no provision making the determination of the administering authority final and conclusive".

We can understand why the Law makes no provision for the mode of approaching the court from the decision of the registrar. However, it is now settled law that where there is no provision for enforcing a right, "the usual form of an action may be adopted". But in the case of *Benjamin Olatunji v. The Registrar, Cooperative Societies*, wherein the plaintiff sought a declaration that the report of the inquiry conducted into the affairs of his cooperative society be released, the court held that "although an order of mandamus is coercive it has very little advantage over declaratory judgements". The plaintiff has to make a choice.
The cooperative societies regulations stipulate that whether at first instance or on appeal, proceedings before the registrar or commissioner shall, "as nearly as possible, be conducted in the same way as proceedings before a court of law", and the provisions regarding the right to fair hearing are to apply "*mutatis mutandis* to such proceedings". This was why the case in *Sunday Fatogun & Ors. V. Ibadan Cooperative Textile Distributive Thrift and Credit Society Ltd. & Ors*, was instituted.

In that case, there arose a rift among the members of the management committee of the Ibadan Co-operative Textile Distributive Thrift and Credit Society (hereinafter called "the society"). Pursuant to section 51(4) of the Law, an arbitrator was appointed to inquire into and settle the dispute. During the arbitration proceedings, the chairman and treasurer who were the principal "accused" were denied legal representation. At the end of the domestic proceedings, the two officers were held liable to pay the sum of N40,000 into the coffers of the society. In the appeal to the commissioner the plaintiffs' right to legal representation was also ignored.

The 'accused' challenged both the arbitration procedure and the award in the High Court of Ibadan for breach of the rules of natural justice in denying them legal representation. The counsel representing the defendant society conceded that the legal right of the plaintiffs to fair hearing had been violated. The plaintiffs consequently withdrew the matter from court and it abated.

3.2 Crisis Situation

Every human organisation is prone to crises. Accordingly, the common law (and sometimes statute) makes provisions for the resolution of crises within corporation organisations.

In such a situation, the plenary organ of the corporation, such as the council or a company's general meeting, retains the ultimate power of control and, therefore, the duty to act in place of the defaulting organ to which the duty has been assigned by statute.

One fundamental problem that had arisen at one time or the other is where the *ultimate* organ has an interest in the matter that is the cause of the crisis. The general rule of the common law is that he who has an interest in a matter cannot be a judge in the cause; that patently is a violation of the principle of natural justice. However, in extreme cases when the course of justice so demands, the courts have invoked the *doctrine of necessity* to allow such organ on person to act in spite of personal interest.

It has been observed that the doctrine enables a person or tribunal to take up a cause in which he or it has an interest by sheer force of compelling circumstances.

Nwabueze asserts that the doctrine of necessity is implied in the constitution of every nation, while Professor Glanville Williams is of the view that "the law …. includes the doctrine of necessity". Nwabueze adds:

> "… the doctrine of necessity does not operate from outside the law, but is implied in it as an integral part thereof …"

The doctrine operates both in public law as well as in private law. Lord Pearce described the doctrine of necessity as "the principle … of implied mandate". Evans states:

> "The adjudicator who is subject to disqualification at common law may be required to sit if there is no other competent tribunal or a quorum cannot be formed without him. Here, the doctrine of necessity is applied to prevent a failure of justice".

In *Olakunrim v. Ogunoye,* the plaintiff and others were traditional high chiefs of Owo, a town in Ondo State. The case arose from the deposition of a previous Olowo who was replaced by the defendant as Oba. The plaintiffs were ardent supporters of the deposed Oba and so denied the new ruler (the defendant) their loyalty and cooperation. After a number of warnings to no avail the defendant deposed the chiefs of whom Olakunrin was the arrow-head. They challenged the deposition, one of their grounds of complaints being that as the main interested in securing the obedience of the plaintiffs, the Oba was a party with an interest who could not impartially determine their guilt in the case. Bello, JSC said:

> "Because of the special circumstances of the instant case, the rule of natural justice must give way to the rule of necessity … The rule of necessity permits an adjudicator to be a judge in his cause if his participation is absolutely necessary to arrive at a decision".

Nnamani, JSC, noted that "the common law disqualification for interest may be waived and may also be removed by statute by express words or necessary intendment. He then added:

> "It seems to me that we are dealing with a disqualification removed by subsidiary legislation, at least by necessary intendment, and I see no room for contrary construction. Besides, it is also settled that a person who is *prima facie* disqualified for interest or bias may be held, on ground of necessity, competent and *obliged* to adjudicate if no other duly qualified tribunal can be constituted".

4.0 CONCLUSION
5.0 SUMMARY
6.0 TUTOR-MARKED ASSIGNMENT
7.0 REFERENCES/FURTHER READINGS

UNIT 2 RELATIONSHIP WITH OTHER REGISTERED SOCIETY

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UNIT 3 POWER TO GRANT LOANS

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UNIT 4 POWER OF INVESTMENT

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MODULE 5

UNIT 1 PRIVILEGES OF COOPERATIVE SOCIETY

CONTENTS

1.0 INTRODUCTION

This aspect of the unit will concern itself with basis of having a cooperative society and some of the protections offered cooperative society by the government as well as some of the privileges enjoyed by cooperative society.

In this unit also, you will learn about the exemption from certain duties, fees and taxes as well as powers to grant loans and advances.

2.0 OBJECTIVES

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

- the creation of changes in favour of cooperative society
- the exception offered cooperative society from production of their books;
- the exclusive use of the name cooperative;
- exemption from the application of certain statute;
- powers to grant loans and advances.

3.0 MAIN CONTENT

3.1 Creation of Charges in favour of Registered Society

The Cooperative Society Act of 1993 creates a first charge of a member's property in favour of the society in respect of debt and outstanding demand payable to the society.
This is however subject to the following:

(a) claim by the federal or state government;
(b) the lien or claim of a landlord in respect of rent;
(c) any prior registered charge of immovable property;
(d) bona fide purchases for value without notice (Section 35).

However, it must be noted that for a charge to be effective, the property which is the subject of charge must have been acquired from the loan granted the member by the society or part of it.

A registered society shall also have a charge upon the shares or interests in the capital and in the deposits of a present or past deceased member (Section 36). The dividend, bonus or profit payable to a present, past or to the estate of a deceased member shall also be liable to charge in like manner {Section 10 (b)}.

3.2 Exception from Production of Books

Section 96: Unless a cooperative society is a party to a legal proceeding, an officer of a society shall not be compelled to produce any of the society's books, the content of which can be proved by a certified true copy or appear as a witness to prove any matter, transaction or accounts recorded in the book except for special reason, the court so ordered.

Self Assessment Exercise

The court of law can order for the production of the books of a cooperative society in relation to a dispute between two members of a society. Comment with reference to Decree 90 of 1993.

3.3 Exemption from Certain Duties, Fees and Taxes

All instruments executed by or on behalf of registered society or by any officer or member of registered society, relating to the business of the society shall be exempted from stamp duties chargeable under Stamp Duties Act and from registration fees payable under any law, relating registration of instruments for the time being in force throughout the federation {Section 20 (1)}.

Registered society is exempted from payment of tax on profit of cooperative activities carried out with its members {Section 20 (2)}; also Section 19 of Company Income Tax Act Cap 21 Law of the Federation of 1990.

3.4 Exclusive Use of the Name Cooperative

A registered society, to the exclusion of any person, has the right to trade or carry on business under any name or type of which the word ‘cooperative’ as part {Section 45 (1)}. This exclusive right is however subject to permission to use the name by the Director of Cooperative. It is an offence to contravene this provision as such offence, on conviction, attracts a fine not exceeding fifty naira (N50.00).

Self Assessment Exercise

The penalty for the contravention of the exclusive right to use the word ‘cooperative’ is too low. Comment.

3.5 Protection from Application of Certain Statute

The provisions of Money Lenders Law of state shall not apply for registered society {Section 55 (1)}. Provisions of Arbitration Act shall not apply on any matter referred to arbitrator under provisions of this Act; provisions of Paid Brokers Law of State shall not apply to agriculture produce or to products of handicraft, main pledged, paired or otherwise delivered society by number {Section 55 (8)}. Provisions of Companies and Allied Matters Act of 1990 and Trade Unions Act shall not apply to registered society {Section 55 (4)}.

3.6 Loans and Advances

A registered society cannot grant loan or advance to a person who is not a member of the society except where such outsider is another registered society and the majority of members consent that the loan be so granted to the registered society (Section 30).

It is customary to attach to the decision or consent to borrow the condition that the money shall be utilised for a specific purpose {Section 31 (2)}. Where this is so, the purpose, or purposes shall be adhered to. Non-adherence to purposes amount to misapplication of the fund of the society, an act which constitute an offence punishable on summary conviction with a fine of not less than one thousand naira (N1,000.00) or imprisonment for six months or both.

Self Assessment Exercise

Funds taken from cooperative society are channeled for specific purposes. A misapplication of society’s fund could attract punitive measure. Comment.

4.0 CONCLUSION

The privilege, regulation and control to which a registered society is subjected to are geared towards the same direction to strength and make attractive cooperative business for further enhancement of cooperative goals.

5.0 SUMMARY

In this unit, you learnt about:

(a) the creation of charges in favour of registered society;
(b) exemption from production of books;
(c) exemption from certain duties, fees and tax;
(d) loans and advances by cooperative society; and
(e) the protection from application of certain statute.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss how charges can be created in favour of a cooperative society.
2. The Arbitration Act doesn't apply to cooperative society, Discuss.

7.0 REFERENCES/FURTHER READINGS

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Registration of Cooperative Society.

UNIT 2 POWERS OF COOPERATIVE SOCIETY

CONTENTS

1.0 INTRODUCTION

Here in this unit, we are concerned with studying the powers of cooperative society. In the earlier unit, we discussed the issue of privileges of cooperative society. We will address the issues of the powers of cooperative society, examining the relevant instruments for assessing the cooperative society.

2.0 OBJECTIVES

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

- understand the powers of cooperative society in relation to investment of the society's fund;
- discuss payment of dividend and bonus;
- explain the process of maintaining the minimum number of members;
- highlight the restriction on the number of members;
- state and discuss the power to settle dispute;
- describe the powers to borrow money.

3.0 MAIN CONTENT

3.1 Investment of Fund

A registered society is required to invest or deposit its fund in:

(a) a cooperative bank or any other bank approved for the purpose by a committee of that society;

(b) any security issued or guaranteed by the federal government;

(c) in any other manner approved by the committee of the society.

These provisions protect the fund of the society against arbitrary treatment in private hands.

3.2 Payment of Dividend and Bonus

The society has the power to pay dividend and bonus, but these are not payable until it is approved by the committee of the society.

Usually, provisions are made for the payment of at least one-fourth of the net profit of the registered society into what is called a 'reserved fund' and a further contribution of an amount not exceeding 10 per cent of the remainder of net profit to an education fund.

Contribution to education fund is subject to the approval of the Director of Cooperative. Contravention of the above amounts to an offence punishable on conviction with one thousand naira (N1,000.00) fine or six months imprisonment or both {Section 34 (4)}.

3.3 Maintenance of Minimum Number of Members

A registered society shall at all times maintain the required minimum number of members of the society. In other words, the number of member of the society shall not be less than ten (or six in the case of industrial society) at any point in time of its existence.

Membership reduction below the minimum number is a ground for the order of cancellation of registration by the Director {Section 38 (1)}.

Self Assessment Exercise

Only two people are enough to form a cooperative society. Discuss this statement in line with the provision of section 38 (1) of the Cooperative Society Act.

3.4 Restriction on Interest of Members

Except with prior consent of registered society concerned, no person shall be member of more than one registered society whose primary objective is to grant loans to its members (Section 24).

No member other than another registered society shall hold more than 20 per cent of the share capital of registered society (Section 27).

3.5 Exception from Registration of Instrument

3.6 Registration of Membership

3.7 Settlement of Dispute

If dispute touching business of registered society arises among members or between members, or between member and society, its committee or any officer, agent or servant of the society or between society and any other committee and any officer, agent or servant of the society or between society and any other registered society, such dispute shall be referred to the Director for settlement {Section 49 (1)}. The Director shall settle disputes, or refer it to Arbitrator for disposal {Section 49 (3)}.

Appeal only lies with the Minister or Commissioner as the case may be within 30 days from the date of decision and subsequent decision of Minister or Commissioner shall be final and conclusive {Section 49 (6)}.

3.8 Power to Borrow Money

A registered society may subject to the majority decisions or consent of the general meeting of its members, borrow, whether by way of mortgage or otherwise on such terms and conditions as the society wish with the consent aforesaid may determine; such sums of money as may be required for the purpose for which the society is established {Section 31 (1)}.

Self Assessment Exercise

The power to borrow by cooperative society is limited. Discuss.

4.0 CONCLUSION

As stated earlier, the privileges, power, regulation and control of cooperative society is subjected to gear towards the same direction to strengthen and make attractive cooperative business to further enhancement of cooperative goals.

5.0 SUMMARY

In this unit, we learnt about the powers of cooperative society, the limitations or conditions precedent to the exercise of the powers were also stated therein.

6.0 TUTOR-MARKED ASSIGNMENT

To what extent is the power of registered society to borrow limited? Discuss with provisions of the Cooperative Society Decree.

7.0 REFERENCES/FURTHER READINGS

UNIT 3 DIVISION, AMALGAMATION AND CANCELLATION OF THE REGISTRATION OF COOPERATIVE SOCIETY

CONTENTS

1.0 INTRODUCTION

If a registered society is becoming too large in number, it will be better to take it before the general body specially called for the purpose to discuss whether the society should be wounded up, divided into two or more units or liquidated. The procedures for any of the three steps aforementioned are clearly stated in the Cooperative Act of 1993 Laws of the Federation. In this unit, we shall discuss the division of registered society, amalgamation of registered society, cancellation of the registered cooperative society and the effect of cancellation of registration of registered society.

2.0 OBJECTIVES

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

- Discuss the division of registered society;
- Explain what amalgamation of registered society entails;
- Discuss the cancellation of the registered cooperative society; and
- List the effects of cancellation of registration of registered society.

3.0 MAIN CONTENT

3.1 Division

A registered society may, at a meeting of its general body, specially called for the purpose of which at least fourteen days notice shall be given to the members, resolve to split into two or more societies {/Section 51 (1)}.

A preliminary resolution passed under the provision of the Act shall contain proposals for the division of the assets and liabilities of the society among the new society into which it operates and specify the members who shall constitute each of the new societies.

3.1.1 Procedure for Division of Registered Society

A copy of the preliminary resolution shall be sent to all members and creditors of the registered society.

A member of the registered society on receipt of the notice may decide not to be a member of the new societies and he/she may notify the society thus.

Also, a creditor to the registered society may demand a refund of the amount due to him.

After the expiration of two months from the receipt of the preliminary by all members and creditors of the society, a general meeting of the society, of which at least fourteen days' notice shall be given to its members, shall be convene for considering the preliminary resolution. The agenda at the meeting shall involve the following:

(a) the repayment of the share capital of all members who have given notice not to be member of the new society;

(b) The satisfaction of the claims of all creditors who have also given notice of refund of amount due to them;

(c) the bye-laws of the new society;

(d) the name of the new society;

(e) the assets and liabilities of the new society to be registered.

3.1.2 Registration of the new Society

The Director of Cooperative shall register the new cooperative society in his opinion, if they had followed the laid down rules in Decree 90 of 1993.

It is trite to note that immediately the preliminary resolutions of the registered society is confirmed by a resolution passed either without change or with such changes as the registered society deemed necessary, the opinion of the Director are not material. He may therefore register the new societies with their by-laws and the registration of the old society is deemed cancelled.

Self Assessment Exercise

State the conditions under which the opinion of the Director will be material in the registration of a new society emerging through division.

3.2 Amalgamation

Amalgamation is when two or more registered societies may, at a general meeting of each society, specially called for the purpose, pass a resolution which is also known as preliminary resolution to amalgamate into one society. It must however be noted that a copy of the preliminary resolution should be sent to every member of the registered societies and the creditors of the societies. The preliminary resolutions only needed to be confirmed by majority of the members of the registered societies to become effective and the Director, notwithstanding any other facts will have to register the new society and the certificate of registration of the old societies stand cancelled.

3.3 Cancellation of Registration

Registration is a magic wand which confers artificial personality on the registered society upon registration.

The society becomes by name with which it is registered, a body corporate with perpetual succession and common seal with powers to:

(i) hold movable and immovable properties of any description;
(ii) enter into contract;
(iii) institute and defend suits and other legal proceedings, and
(iv) all things necessary for the purpose of its constitution.

The Director may, by order in writing, cancel the registration of a primary society, if at any time it is proved to the satisfaction that the number of the members of the society has been reduced to less than ten (10) or in case of an industrial society, to less than six (6), and the order shall take effect from the date it is made.

If the Director, after holding or making an inquiry or conducting an investigation or inspection under section 37 or on receipt of an application made by not less than three-fourths of the members of the registered society, is of the opinion that the society ought to be dissolved, he may make an order in writing for the cancellation of the registered society. Appeal only lies to the Minister of Commissioner of Cooperative as the case may be.

If appeal is not lodged within two months from the making of the order, the order takes effect at the expiry of the period stated. However, the order shall not take effect until it is confirmed by the Minister or Commissioner.

Self Assessment Exercise

Discuss the role of the Minister or Commissioner on the cancellation of registration of a registered society.

3.4 Effect of Cancellation of Registration

Where the registration of a society is cancelled by an order of the Decree, the Society shall cease to exist as a corporate body from the date on which the order takes effect.

Self Assessment Exercise

What is the effect of cancellation of registration of a registered society?

4.0 CONCLUSION

To avoid personal liability, it is common practice for a registered society to take decision or estimate the assets and liabilities of the society in order to decide whether to divide a society into two, amalgamate registered society in order to avoid unpleasant consequences of cancellation of the registration of registered society.

5.0 SUMMARY

In this unit, we learnt about division of registered society, amalgamation of two or more registered society, cancellation of registration and the consequences on a registered society.

6.0 TUTOR-MARKED ASSIGNMENT

Enumerate the consequences of the cancellation of the registration of registered society.

7.0 REFERENCES/FURTHER READINGS

UNIT 4 REGISTER OF MEMBERS OF COOPERATIVE SOCIETY

CONTENTS

1.0 INTRODUCTION

In this unit, we shall discuss about the statutory provisions as to form and content, location, inspection, rectification, notices to the registrar, joint holders, and others of the register of members of cooperative society.

2.0 OBJECTIVES

At the end of this unit, you should be able to state and discuss the statutory provisions as to the form and content, location, inspection, rectification, etc. of the register of members of cooperative society.

3.0 MAIN CONTENT

3.1 Statutory Provisions as to form and contents, location, inspection etc.

This topic will be discussed under the following sub-topics:

3.1.1 Contents: s.352 CA 1985

Every registered society must keep a register of members, showing:

(a) the name and address of every member;

(b) the date on which he was entered as a member and the eventual date on which he ceased to be a member;

(c) the number (and the distinguishing number of shares if relevant) and, where the society has more than one class of issued shares, the class of shares which he holds (unless the society has no share capital) and the amount paid up on each share. If the shares have been converted into stock corresponding particulars of stock held are entered.

Any entry relating to a former member of a registered society may be removed from the society's register of members after the expiration of twenty years from the date on which he ceases to be a member.

3.1.2 The form of the Register

(a) Section 722 CA 1985 provides that any register, index, minute book or accounting records required by the registered society are to be kept by cooperative society may be kept by making entries in bound books or by recording the matters in question in any other manner.

By s. 723 of the 1985 Act the power to keep a register or other record by recording the matters in question otherwise than by making entries in bound books, includes power to keep the register or other record by recording the matters in question otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form. This, in effect, legalizes the use of a computer for the keeping of registers, books of accounts and other records, and it is under the authority of s. 723 CA 1985 that the Director of Cooperatives of the clearing banks and similar organisations operate their computer-based registers.

The detailed requirements relating to registers and records kept in non-legible form are contained in the Companies (Registers and Other Records) Regulations 1985 (S.I. 1985 No. 724). Special forms are prescribed for notifying the Director of Cooperatives of the place where registers kept in non-legible form may be inspected in legible form.

(b) By s. 354 CA 1985 if the membership of the registered society exceeds 50, there must be an alphabetical index, unless the register itself is in the form of an index. However, this requisite can be dispensed with, in any case, by utilising the provisions of s. 722 of the 1985 Act and keeping the register in looseleaf form, provided adequate precautions are taken to prevent fraud and falsification.

(c) Failure to take adequate precautions against fraud and falsification renders the registered society and every officer in default liable to fines; therefore, it is usual to take the necessary security measures, for example:

   (i) Fitting the register with a suitable locking device, and placing the keys in the custody of a responsible officer of the registered society.

   (ii) Keeping the register in a fireproof safe or strongroom, a precaution to be taken whatever form the register may take.

   (iii) The issue of new sheets to be carefully supervised preferably by the officer who has custody of the keys.

   (iv) Duplicate keys may be deposited with the registered society's bank and instructions given to hand them over only against instructions of authorised signatories.

   (v) The loose sheets for the register may be specially watermarked and printed with the registered society's name, for purposes of identification.

   (vi) The sheets may also be consecutively numbered, so that closer records can be maintained of sheets issued.

   (vii) No unauthorised persons will be given access to the register(s) or to the loose sheets for the register.

   (viii) The microfilming of loose sheets in use at regular intervals is a useful additional safeguard against loss of the records by fire or any other risk.

3.1.3 Advantages of using a looseleaf Register

Although a bound register may be quite adequate for, say, a small registered society with few members and little or no share transfer activity, larger registered societies will usually derive great advantage from the use of a looseleaf register, apart from being able to dispense with an index.

The principal advantages are as follows:

(a) The register can be split up, for example, when preparing dividend lists or the annual return, to enable the secretary or registrar to distribute the work more evenly among the available staff.

(b) The members' accounts can be kept in strict alphabetical order and are, therefore, more easily located.

(c) Closed accounts can be withdrawn entirely, i.e. after a suitable interval the accounts of any persons who have ceased to be members can be withdrawn and subsequently filed away in a safe place.

(d) Accounts of new members are easily inserted in their proper alphabetical order.

(e) Inspection is facilitated. If a member or other persons demands to inspect the register, the fact that it is in looseleaf form would give greater facility for inspection and, moreover, as it could be inspected in sections, registration work could still proceed on the other sections.

(f) Microfilming of sheets is simplified. If, as indicated above, it is desired to microfilm the particulars in the Register of Members at regular intervals, it is much simpler to do so from loose sheets rather than from a bound book.

3.1.4 Location: s.353 (1) CA 1985

(a) It must be kept at the registered office of the registered society, or at any office of the society (or its agent) at which it is written up.

(b) It must, however, be kept within the registered society's domicile, i.e. within the country in which the society was registered.

(c) The index (if any) must be kept at the same place as the register.

(d) When the register is not kept at the society's registered office notice specifying the address at which it is kept must be given to the Director of Cooperatives on Form G353.

3.1.5 Changes and Alterations

(a) All entries and amendments to the registers require the prior approval of the Management Committee of the society.

(b) The company must register any changes in the particulars required to be entered in the register as soon as it is made aware of them.

(c) Any alteration to the register must also be made within 14 days in the index, if any: s. 354 CA 1985.

(d) Great care is essential in making alterations in the register; for example:

  (i) an entry to be cancelled must on no account be erased;

  (ii) to cancel an item it should be neatly ruled out and the correction typed or written above or alongside the cancelled entry;

(iii) any alteration must be initialed by the person who makes the alteration.

3.1.6 Inspection

Provisions as to inspection and the taking of copies of the register are set out in s. 356 CA 1985.

(a) The register (and index, if any) must be available:

(i) for inspection by any member, free of charge; and
(ii) for inspection by any other person, on payment of such fee as may prescribed.

The obligation imposed on a company the Companies Act to allow inspection, or to furnish a copy of any register or other record shall under s. 723(3) be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant of it in legible form.

(b) If, however, the company gives notice of its intention to close the register (by advertisement in a newspaper circulating in the district in which the registered office is situated), the register may be closed for any time or times not exceeding on the whole 30 days in each year: s. 358 CA 1985.

(c) The register may be closed, for example, when dividends are paid, or when bonus or rights issues are made to existing members. On the other hand, some registered societies prefer not to close the register in such cases and simply declare that the dividend shall be paid (or the bonus shares issued) to members on the register at a specified date.

(d) Any person may demand a copy of the register (or any part of it) on payment of the appropriate fee and the copy must be sent to the person requiring it within ten days of receiving the request.

(e) Refusal to grant inspection or default in supplying copies on request:

(i) renders the registered society, and every officer in default, liable to fines; and
(ii) the court may compel inspection and order that the required copies be sent.

(f) Inspection cannot be refused on the grounds that it is desired for purposes hostile to the registered society. Davies v. Gas Light & Coke Co. (1909).

(g) The right of inspection ceases when a registered society goes into liquidation – but the court can order inspection by creditors and contributories: s. 155 I.A. 1986.

3.1.7 Rectification

(a) Section 359 CA 1985 gives the court power to order rectification of the Register of Members:

(i) if a person who has not agreed to take shares is included in the register, e.g. where he has been induced to take shares by misrepresentation; or

(ii) if his name is omitted or wrongfully removed from the register, e.g. by reason of an invalid forfeiture or forged transfer; or

(iii) if there has been default or unnecessary delay in recording the fact that a person has ceased to be a member, e.g. the directors may delay unduly the registration of a transfer which they have no power to reject.

(b) Application to the court for rectification may be made by the person aggrieved any member of the registered society, or the society itself, according to the circumstances.

(c) The court may refuse the application, or order the rectification and payment of damages by the company to the aggrieved party: Alabaster's Case (1868).

(d) The section is not exhaustive of the court's powers of rectification: Burns v. Siemens Bros. Dynamo Works Ltd. (1918).

Note: The register is only prima facie evidence of matters which the Act requires to be entered in it, but those who apply for its rectification must bear in mind that the onus of proof lies with the person who contests its accuracy. If, therefore, a person allows his name to remain in the register, he may be held liable as a member.

3.1.8 Notices to the Registrar: s.353 (2) CA 1985

(a) If the Register of Members is kept elsewhere than at the society's registered office, notice in the prescribed form (Form G353) must be sent to the Director of Cooperatives, stating where the register is kept. The notice must be given within 14 days; thus notice of its location is not required so long as it is kept at the registered office, but if it is removed to another place the Director must be notified within 14 days of the change. Any subsequent change of place must also be notified within 14 days of the change.

(b) The registered society and any officer in default are liable to fines for non-compliance with the above requirements: s. 353(4) CA 1985.

3.1.9 Joint holders

(a) The joint holder first named in the Register of Members is, according to the Bye-Law of most registered societies, entitled to receive payment of dividend and to exercise voting rights of the joint holding. As a rule, notices will be sent to him as the 'senior' joint holder.

(b) For that reason, joint holders have the right to determine in which order their names shall be entered in the register.

(c) Alternative, they are entitled to require the registered society to split their holding, so that each joint holder becomes the first named in the register for part of the holding; Burns v. Siemens Bros. Dynamo Works Ltd. (1918).

(d) A limit may be imposed by the Articles as to the number of persons who may be registered in respect of a joint holding.

3.1.10 What constitutes Membership?

Entry in the Register of Members is only prima facie evidence of membership. A person may become a member in the following ways:

(a) By subscribing to the Bye-Laws. This according to s. 22(1) CA 1985, is sufficient to indicate agreement to become a member. Neither allotment nor registration is necessary in this case: Evans' Case (1867).

(b) In other cases, a person becomes a member by:

  (i) agreement to become a member;
  (ii) entry of his name in the Register of Members: s. 22(2) CA 1985.

Note: A person improperly entered in the register may constructively agree to his name remaining there, by exercising the rights of a member; in that case he may be estopped from denying his membership.

3.1.11 Notice of Trust

(a) Section 360 CA 1985 provides that: "No notice of any trust, express, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in England'.

(b) A person entered in the Register of Members is the person legally entitled to deal with the shares, but some person or persons may possess an equitable or beneficial interest in them, e.g.:

  (i) the registered member may have borrowed money from a banker, or other person, on the security of the shares; or

  (ii) he may be merely a nominee of a person or persons entitled to the beneficial interest in the shares, e.g. the nominee of a registered society; or

  (iii) he may hold them as a trustee, i.e. in trust for another.

(c) However, by virtue of s. 3360 CA 1985, the company is unable to take notice of these outside interests, and is entitled to regard the person named in the register as the beneficial owner of the shares in his name, even if he gives notice that some other person has a lien on, or equitable interest in, the shares concerned.

Note: A company is, nevertheless, bound to accept certain documents, such as probate of a will, as sufficient evidence of a legal representative's powers to deal with shares: s. 187 CA 1985.

(d) On receipt of a 'notice of trust', the usual procedure is as follows:

(i) Write a letter in reply, stating that the registered society is unable to recognise the trust or to act upon it in any way. The notice may be returned with this letter, which ought to be sent by registered post or recorded delivery, to the person submitting the notice.

(ii) Keep an unofficial record of the contents of the notice, but not in the Register of Members.

Note: Although s. 360 CA 1985 enables the registered society to treat the registered holder of shares as the beneficial owner, it cannot ignore the notice as regards fixing priorities in respect of a lien: Bradford Banking Co. v. Briggs (1886). An unofficial note will warn the registered society that notice of a lien has been received which will, should the occasion arise, have priority over their own lien on the shares concerned.

3.1.12 Stop Notice

(a) Although, as stated above, a registered society cannot recognise notice of a trust, under the Charging Orders Act 1979, s. 5, and the Rules of the Supreme Court, Order 50, Rules 11 – 14, any person claiming to be beneficially interested in shares of a registered society who wishes to be notified of any proposed transfer of those shares may serve a stop notice on the registered society.

(b) To obtain such the person concerned must file with the Central Office of the Supreme Court (or a district registry) an affidavit identifying the shares in question and describing his interest in them, together with the notice being served. The copy of the notice served on the registered society must be sealed with the seal of the Central Office (or district registry) and must be accompanied by an office copy of the affidavit.

(c) On receipt of such notice, the registered society is restrained from accepting any transfer of the shares included in the notice for a period of 14 days after giving notice of lodgement of the transfer to the person indicated in the notice as having an interest in the shares.

(d) During the 14-day period, the interested party must take whatever steps are necessary to prevent the registered society from accepting a transfer of the shares.

(e) If, after 14 days, no further instructions have been received by the registered society, it can then proceed to register the transfer of the shares affected.

3.1.13 Designated Accounts

(a) The increasing amount of work done in recent years by banks and insurance companies as executors and trustees has resulted in a corresponding increase in the number of requests which registered society registrars receive to open 'designated accounts', e.g. a banking company acting as trustees for many persons may ask to have several accounts opened in its name, so that the separate holdings of its clients can be easily distinguished by letter or number.

(b) Some registered societies refuse to permit designated accounts, as they consider that in acting upon such instructions they would be taking notice of a trust, contrary to the requirements of s. 360 CA 1985.

(c) It appears to have been unofficially established that the designation or 'earmarking' of accounts does not of itself constitute notice of a trust. Nevertheless, it has been suggested that registered societies acting upon instructions to designate accounts might protect themselves by:

   (i) reserving the right to treat all the designated accounts as one account if at any time they should think fit to do so; and

   (ii) making it clear to the sender of the notice that they are not recognising a trust.

(d) Despite such precautions, the method used to designate accounts in the Register of Members also requires careful consideration.

(e) The Continuing Obligations of the Stock Exchange require listed registered societies to permit members to have designated accounts.

3.1.14 Registration Fee

The fee payable on registration of an Annual Return is ……….

4.0 CONCLUSION

Every registered society must keep a register of members, showing the name and address of every member; the date on which he was entered as a member and the eventual date on which he ceased to be a member; the number (and the distinguishing number of shares if relevant) and, where the society has more than one class of issued shares, the class of shares which he holds (unless the society has no share capital) and the amount paid up on each share. If the shares have been converted into stock corresponding particulars of stock held are entered.

5.0 SUMMARY

In this unit, we have discussed the statutory provisions as to the form and content, location, inspection, rectification, etc. of the register of members of cooperative society.

6.0 TUTOR-MARKED ASSIGNMENT

7.0 REFERENCES/FURTHER READINGS