

**THE STATUS OF SHARI'AH IN THE NIGERIAN LEGAL
EDUCATION SYSTEM: AN APPRAISAL OF THE ROLE OF
*MADA'RIS***

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ABSTRACT

The stiff competition between the English Common Law and the Shari'ah (Islamic Law) throughout the colonial administration in Nigeria to date, has created a gap between the need for expertise in Shari'ah in the nation's social and judicio-legal environment and the level of training provided by the Nigerian legal education system. This article studies the gap and contends that the Shari'ah content of the curriculum of the institutions offering Common and Islamic Law in particular, is not sufficient to enable its graduates to suitably handle the legion of Islamic legal matters in all levels of courts and other social services in the country. The madāris (Islamic Basic Schools) that should provide basic education to the LL.B Shari'ah or LL.B Common and Islamic law students are disintegrated from the mainstream of the admission requirements for the undergraduate degree programs. It concludes that unless the string between the madāris and the degree awarding institutions is connected, great disservice will continue to be done not only to the Islamic legal and judicial system but also to the cause of justice.

Keywords: Nigeria, shari'ah, status legal education, madāris

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STATUS SHARI'AH DI BAWAH SISTEM PENGAJIAN UNDANG-UNDANG NIGERIA: SUATU PENILAIAN TENTANG PERANAN MADRASAH-MADRASAH

ABSTRAK

Pertandingan yang sengit di antara Common Law Inggeris dan Shari'ah (undang-undang Islam) sepanjang zaman pemerintahan penjajah di Nigeria sampai sekarang, telah mewujudkan satu jurang di antara keperluan kepakaran dalam Shari'ah dalam persekitaran sosial dan perundangan serta kehakiman dan tahap latihan yang diperuntukan di bawah sistem pengajian undang-undang di Nigeria. Makalah ini mengkaji jurang tersebut dan menegaskan bahawa kandungan Shari'ah di dalam kurikulum institusi yang menawarkan Common Law dan Undang-undang Islam secara khusus, tidak memadai untuk membolehkan graduan-graduan menangani kepelbagaian perkara yang melibatkan perundangan Islam di semua tahap mahkamah dan perkhidmatan sosial yang lain di dalam negara itu. Madrasah-madrasah (sekolah Islam asas) yang patut menyediakan pendidikan yang asas kepada pelajar-pelajar LL.B Shari'ah atau LL.B Common dan Undang-Undang Islam tidak selari, malah dilihat hancur daripada arus perdana syarat kemasukan program-program ijazah. Kesimpulannya ialah apabila hubungan di antara madrasah-madrasah dan institusi yang menganugerahkan ijazah tidak disambungkan, kerugian akan berterusan, bukan sahaja kepada sistem perundangan dan kehakiman Islam tetapi juga kepada kausa keadilan.

Kata kunci: Nigeria, shari'ah, status pengajian undang-undang, madrasah-madrasah

Our inheritance consists of physiological paths; it was nevertheless mental process in our ancestors that traced the paths. If they come to consciousness again in the individual, they can do so only in the form of other mental processes; and although these processes can become conscious only through individual experience and consequently appear as individual acquisitions, they are nevertheless pre-existent traces which are merely 'filled out' by individual experience. Probably, every 'impressive' experience is just such a breakthrough into an old previously unconscious river-bed. (Jung, C. G., *Psychic Energy*, 1960)

INTRODUCTION

The art of imparting and applying Islamic legal education predates the existence of Nigeria as a nation. The operational judicial system, which was the offshoot of the Usman Dan Fodiyo Jihad of 1804, had men of considerable learning in Islamic law adjudicating on disputes. Regardless of the spurious justification for overthrowing the Sokoto Caliphate system,¹ Lord Fredrick Lugard, the British High Commissioner for northern Nigeria, was said to have confessed at the inception of the colonial rule that the judges he found presiding over the *Shari'ah* courts in the caliphate were men of great respectability and considerable learning.² Apart from the general duty on Muslims

¹ Sokoto Caliphate is the Islamic system of government established immediately after Sheikh Usman Dan Fodiyo jihad of 1804 with headquarters in the Sakwato (now Sokoto) city and territory covering part of old Sudan and Borno empire, stretching across a greater part of the Savannah region of West Africa, between Lake Chad in the east and middle Nigeria in the west and formed the greater part of the present Northern Nigeria; the system lasted for 100 years, between 1804 and 1903 when the British Colonial government forcefully took-over, Murray Last D., *The Sokoto Caliphate*, (London: Longmans, 1967), 55; the Map of the Caliphate is assessed February 21, 2016, <http://www.nairaland.com/1874957/map-sokoto-caliphate>.

² Awwalu H. Yadudu, "Colonialism and the Transformation of Islamic Law in the Northern States of Nigeria", *Journal of Legal Pluralism*, 32, (1992), 103-139.

to seek religious knowledge,³ it is the tradition of devout Muslims to go further, travelling around the world in search of additional knowledge of Islamic law. This was in keeping with the stipulation in the glorious Qur'an where Allah (swt) says:

And it is not (proper) for the believers to go out to fight (Jihad) all together. Of every troop of them, a party only should go forth, that they (who are left behind) may get instructions in (Islamic) religion, and that they may warn their people when they return to them, so that they may beware (of evil).⁴

Although there was initially no well-articulated curriculum of studies for Islamic law especially in this part of the Muslim world, students continued to learn different aspects of Islamic law till the teacher was satisfied of their scholarship. However, later contacts of the products of this system with the outside world, like scholars from Sankore University and Timbuktu influenced an institutionalised and more standardised content, method of delivery and final products of Islamic schools. As far back as the late 16th Century, *madāris* were being established in the Borno Empire where teaching of the Islamic legal system was embedded in the curriculum. High standards were maintained in this learning system and the application of the learning especially in the courts, till the coming of the British colonialists⁵.

Volumes of scholars' ink have flowed in the river-bed of the colonial administration policies aimed at subjugating the well-established Islamic legal system met on the ground. The attachment

³ Various Quranic verses like Quran, al-Baqarah (2): 31; in this work, all translations of the glorious Quran are based on Muhammad Taqiuddeen al-Hilaalee, and Muhammad Muhsin Khan, *Interpretation of the meaning of the Noble Quran*, (Darussalam: Riyadh, online version available at www.fatwa-online.com , also, Quran, az-Zumar (39): 9 "... Say: "Are those who know equal to those who know not?" It is only men of understanding who will remember (i.e. get a lesson from Allah's Signs and Verses); and Quran, al-Mujaddalah (58): 11 and *ahadith* like: *Talab alilmi faridatun ala kulli Muslimi wal Muslimat, talab al-ilm mina lahdi ila lahdi*, and *Faarifni qabla an taabudni* amongst others establish the importance of Knowledge, generally Muhammad Muhsin Khan, *The Translation of Meanings of Sahih al-Bukhari* (Madinah: Dar al-Fikr.) vol. 1, the book of Knowledge.

⁴ The Qur'an, At-Tawbah (9):122.

⁵ John Spencer Trimingham, *Islam in West Africa*. (London: Oxford University Press, 1959), 30.

of the people of the north to Islam and the *Shari'ah* legal system made the *Shari'ah*, in particular, the subject of subjugation. The methodology adopted was to control, subjugate and secularise, the *Shari'ah*. These methods were considered as sure ways of controlling and secularising the Muslim subjects.⁶ This was with the convictions of the colonisers, that through relegation of the existing courts, demotivation of its administrative personnel and disconnection of the schools producing the experts of the legal system, they thought that it would only be a question of time before the Islamic system would wither away.⁷

The technique adopted was to restrict and limit the application of Islamic Law. A tripartite test of non-repugnancy to natural justice, compatibility with English Law and conformity with public policy were the handy tools of restrictions.⁸

Judicial officers were relegated by a direct subjection of their recruitment, supervision, control and punishment under the Resident who had no inkling of their professional training and functions. Furthermore, training of the existing *Alkalai* (Judges) especially in the Arab world was termed as creating contact with the crudest and extremist forces of nationalism and anti-British propaganda.⁹

The existing *madāris* (Traditional Islamic Schools) which trained the judicial officers were tactically disconnected from that role in the emerging system of legal education. The Northern Province Law School was simply taken over by the colonial administration who gradually directed it towards the pattern of western schools. Working to the schemes of the colonialists, the school, which initially produced eminent jurists of Islamic Law was relegated to its present status and regarded as no better than any other secondary school.

Despite the fact that a bulk of civil litigation in Northern Nigeria has been and still is being adjudicated through Islamic Law, the Shari'ah content of the training of the judges and legal practitioners

⁶ Muhammad Tabiu, "Islamic Law in Nigeria: A Historical Perspective on Some Basic Issues", *Journal of Islamic and Comparative Law*, 19, (1993), 31.

⁷ Yadudu, "Colonialism and the Transformation" 105-110.

⁸ Ibrahim Abikan Abdulqadir, "The Application of Islamic Law in Civil Causes in Nigerian Courts", *Journal of Comparative and International Law*, 6, (2002), 98-99; and Muhammad Tabiu, "The Impact of Repugnancy Test on the Application of Islamic Law in Nigeria", *Journal of Islamic and Comparative Law*, 18, (1991), 53-76.

⁹ Abubakar Mustapha, "Islamic Law in Nigeria: An Educational Perspective", *Journal of Islamic and Comparative Law*, 19, (1993), 16.

administering the law is comparably low. This fact remains unchanged even as the successive constitutions of the Federal Republic of Nigeria since 1979 to date, have created specific roles relating to Islamic personal law for both the advocates and the higher bench from the Sharī'ah Court of Appeal to the Supreme Court.¹⁰ Many more roles are being created by adoption of the full application of Islamic law in both civil and criminal matters in the present democratic dispensation.¹¹ The recent initiative of the Central Bank of Nigeria to integrate Islamic Financial Services into the financial system is no less seen as an additional role for the bank. Ironically the *madāris* which are formally disconnected from the process of legal education have remained the main trainers of both the legal practitioners, and justices administering the Islamic aspect of the nation's pluralistic legal system.

The article therefore compares the Sharī'ah training in the Nigerian legal education with its counterparts in the Arab speaking countries like Saudi Arabia, Morocco, Libya, Egypt, Sudan etc., to determine the adequacy or otherwise of the former. It also looks into the role being played by the *madāris* to sustain the minimal performance level of the Islamic part of the legal system. It canvasses for deliberate efforts at re-connecting the *madāris* to the main stream of the Nigerian legal education and an improved curriculum for the Islamic law degree awarding institutions in the country for an optimum Sharī'ah services delivery.

LEGAL EDUCATION IN NIGERIA

By the time of Nigerian Independence in 1960, its legal system had become so confused with three distinct legal systems operating side-

¹⁰ For the first time, the Constitution of the Federal Republic of Nigeria (CFRN), 1979 created Sharī'ah Court of Appeal with jurisdiction to hear appeals from Area Courts on matters of Islamic Personal Law which include issues of marriage, divorce, guardianship of an Infant, Will, *waqf* (endowment), gift etc. ss. 240-244 ; ss. 260-264, CFRN, 1999 as amended for similar provisions.

¹¹ Nigeria returned to democratic governance in 1999 after about three decades of Military rule and by that year, the civilian government enlarged the powers of the Sharī'ah court to adjudicate on criminal matters on which they hitherto lacked jurisdiction, for instance, Kano State of Nigeria, Kano State Shariah Penal Code Law, 2000 (Kano State Law No. 1, 2000); Kano State Shariah Court Law, 2000 (Kano State Law No. 6, 2002).

by-side. These are the English Law introduced by the colonial administration and super-imposed over the other laws. Others are the existing Islamic Law and customary Law. For the English law, training of practitioners was done in England during the colonial era and shortly afterwards¹².

It needs to be mentioned here that before colonial intervention, the Shari'ah educational system was flourishing in different parts of what constitutes the present northern Nigeria like Borno¹³ and Sokoto¹⁴ caliphates. The trainings were so advanced that the system produced renowned Muslim Scholars¹⁵ and global Islamic law jurists.¹⁶ However the extension of the colonial rule to the north in 1903 and the amalgamation of the northern and western protectorates in 1914 vis-à-vis the introduction of the English legal system and her overshadowing influence on Islamic law, saw the gradual eclipse of the Shari'ah educational system. Oba¹⁷ identified four main methods by which the Shari'ah education system was eclipsed by the colonial administration:

¹² Nwogugu, E. I., *A Quarter Century of Legal Education in Nigeria; An Appraisal*, (Lagos: Nigerian Institute of Advanced Legal Studies, 1985) 1; Abulmumini Adebayo. Oba, "Towards Rethinking Legal Education in Nigeria", *Journal of Commonwealth Law and Legal Education*, 6:1, (2008), 97.

¹³ See John Ellis Lavers, "Islam in the Borno Caliphate: A Survey (1500-1800)", *ODU*, 5, (1971), 27-53.

¹⁴ See Shehu Shagari and Jean Boyd, *Usman Dan Fodio: The Theory and Practice of his Leadership*, (Lagos: Islamic Publication Bureau, 1978), 28-39; Ibrahim Ado-Kurawa, *Shariah and the Press in Nigeria: Islam versus Christian Western Civilisation*, (Kano: Kurawa Holdings, 2000), 218-231.

¹⁵ The like of Al-Tazakhti, the *Al-Kali* (Hausa pronunciation of *al-Qadi*- judge) who wrote a leading commentary on Mukhtasar Khalil, a major Maliki School work, Ruxton, F. H., *Maliki Law*, (London: Luzac and Co., 1916), 1.

¹⁶ The Kastinawa scholars of the present Kastina State were reputed to have international stature, Kani, A. M., "The Place of Kastina in the Intellectual History of Bilad al-Sudan up to 1800," in Tsga I. A. and Abdalla, U. A. (eds..) *Islam and the History of Learning in Katsina*, (Ibadan: Spectrum Books, 1997); Katsina, M. N. "Discourse on the Intellectual Legacies of some pre-Jihad Muslim Scholars in Kastina, in Tsga, I. A. and Abdalla, U. A. (eds..) *Ibid*; and, Usman M. Bugaje, "Some Reflections on the Development of Islamic Learning", in Tsga, I. A. and Abdalla, U. A. (eds..) *Ibid*.

¹⁷ Abulmumini A. Oba, "Lawyers, Legal Education and Shariah Courts in Nigeria" *Journal of Legal Pluralism* 49, (2004), 117 – 118.

1. Through indirect rule,¹⁸ English Law was introduced and was given primacy over the Islamic law vide gradual taking over of the control of Islamic courts in terms of the appointment and discipline of her judges.
2. The language of the law, the courts and official communication, Arabic, was changed to Hausa written in *ajami* script¹⁹ and later to English language, thereby creating a wide gap between the scholars and their orthodox sources.
3. Abrogation of Shari'ah rules and direct implantation of common law of England in its place thereby forcing application of an admixture of the two laws along with the notion of equity and good conscience.
4. The civil service structure created was such that rendered the scholarship of the Shari'ah system trainees irrelevant, making them unemployable and thereby forcing an exodus therefrom to Western education.²⁰

This confused situation within the competing legal systems rendering the foreign trained practitioners ineffective, amongst others, necessitated the need for cost effectiveness and better grooming for acquaintance.²¹ The confusion was couched in form of the need for legal education for Africans within Africa and the Unsworth Committee was set-up on the eve of independence (1959) to make recommendations for the future of legal education in Nigeria.²²

¹⁸ Indirect rule system was the idea of Lord Lugard by which indigenous political and social form of British colonies were tolerated and preserved where possible, while the central colonial government acts through the native rulers and allowed European civilisation to permeate slowly, *Encyclopaedia Americana*, International edition, s. v. "indirect rule."

¹⁹ Using of Arabic script in writing languages other than Arabic Language.

²⁰ See also Daud O. S. Noibi, *Yoruba Muslim Youth and Christian Sponsored Education* (Ijebu Ode: Shebiotimo Publications 1987), 12-14.

²¹ Akintunde O. Obilade, *The Nigerian Legal System* (Lagos: Spectrum Law Publishing, 1993), 271

²² See Cyprian O. Okonkwo, "A Historical Overview of Legal Education in Nigeria" in Ignatius A. Ayua and Abel D. Guobodia (eds.) *Legal Education for the Twenty-First Century Nigeria*, (Lagos: Nigerian Institute of Advanced Legal Studies, 2000), 2.

To implement the recommendation of the Unsworth committee,²³ the government passed the Legal Education Act (No. 12) and the Legal Practitioners Act (No. 33), both of 1962.²⁴ Faculties of Law were established to undertake the academic content of the training while the Nigeria Law School handles the professional training. The Council of Legal Education (CLE)²⁵ supervises the activities of the Law School while the National Universities Commission (NUC)²⁶ supervises the academic content of the degree program. For the curriculum of law program, the NUC enacted the Approved Minimum Academic Standard (AMAS),²⁷ now Benchmark Minimum Academic Standards (BMAS),²⁸ for academic programs in Nigerian Universities to be accredited. Presently both the CLE and NUC conduct joint accreditation exercise to ensure that a law degree program gives minimum basic knowledge of the law upon which the law school courses were designed.

What is most important at this point is that contrary to the mandate and recommendation of the Unsworth committee for a legal education to adapt to local needs,²⁹ the Nigerian legal education was tailored to suit the English Law component of the legal systems. The other components, namely, Islamic Law and Customary Law were given no prominence in both the NUC (AMAS 1989) and the vocational training³⁰. Through the personal efforts of eminent advocates of Islamic law, some Nigerian universities are offering the

²³ The recommendations include establishment of a Nigeria system of legal education adapted to local needs, establishment of a Faculty of Law in Nigerian universities, establishment of a Law School for vocational training and the Council of Legal Education, Report of Unsworth Committee of 1959, as published by the Federal Government Printers, Lagos.

²⁴ Now Caps. L 10 and L11, Laws of the Federation of Nigeria (LFN), 2004.

²⁵ Established by Legal Education (Consolidation etc.) Decree (No. 13) 1976 now Cap. L10 LFN, 2004.

²⁶ Established by NUC Act 1974 now Cap. N81 LFN, 2004.

²⁷ NUC, Approved Minimum Academic Standard (AMAS), 1989.

²⁸ NUC, Benchmark Minimum Academic Standards (BMAS), 2007.

²⁹ See Tahir Mammam, "A Review of the Framework of Legal Education in Nigerian Universities", 3rd Mustapha. Akanbi Faculty of Law Annual Lecture, held at the auditorium, University of Ilorin, on Monday, November 8, 2010, 1-2.

³⁰ See Abdulqadir Zubair, *Shariah in our Citadel of Learning*, (Ilorin: University of Ilorin, 2003), 21-22; Muhammad Tabiu "The Right of Audience of Legal Practitioners in the Shariah Court of Appeal in Nigeria" *Journal of Islamic and Comparative Law*, 15-17, (1985-1987), 24.

LL.B. program with some aspects of Shari'ah.³¹ Despite this, the NUC recognises only five (5) optional courses of 8 credit units each to any department of Islamic Law.³² Worse still, none of the Islamic Law courses is a pre-requisite for admission into the vocational training at the law school.³³ This is a clear case of a disconnection in both the academic and the vocational training of both the members of the Nigerian Bar and Bench.

The late Doherty Oluwatoyin in a criminal procedure class of the Nigerian Law School 1998 academic session, lamented the reaction of some of the law graduates, showing that they were hearing *Ijma'* (consensus of Muslim Jurists), *Qiyas* (analogical deductions), *Istislah* etc. as secondary sources of Islamic law for the first time in their lives. She expressed surprise that such rudiments were not taught as part of law degree courses of a nation in which Islamic law forms a significant part of its legal system.³⁴ That same year, the procedure of the Shari'ah Court of Appeal was hurriedly put together and taught as a component of the civil procedure. Yet the content was nothing to write home about as a Shari'ah need of the trainees.

³¹ These are Ahmadu Bello University Zaria started in 1975, Bayero University Kano, 1978, Usman Dan Fodiyo University, Sokoto, University of Maiduguri, University of Ilorin 1994, Lagos State University Ojo, AL-Hikmah University, Ilorin, started in 2015.

³² See Zubair, "Citadel of Learning", 22, *The BMAS 2007* currently in use has improved the nominal recognition to Islamic Law Courses by placing the following five courses as optional courses: Islamic Law of Crimes and Tort, Islamic Law of Transactions, Islamic Law of Procedure and Evidence, Islamic Law of Family and Succession and Islamic Jurisprudence, NUC, *BMAS (Law) 2007*, 26.

³³ The core courses to be offered by a university to be accredited by the Law School and thereby have its products admitted are: The Nigerian Legal System, Law of Contract, Law of Tort, Constitutional Law, Law of Evidence, Criminal Law, Nigerian Land Law, Equity and Trust and Commercial Law, General Information Concerning Application for Bar Part I Admission," accessed February 21, 2016, <http://www.nigerianlawschool.edu.ng/Notices/BarInstruction2015>.

³⁴ The surprise was because, according to her, she learnt those terms in the course of her legal training in England.

THE PLACE OF SHARĪ'AH IN THE NIGERIAN LEGAL SYSTEM

The place of the Sharī'ah in the Nigerian legal system can be appreciated through the consideration of the Sharī'ah legal services requirement and the recognised service providers vis-à-vis the training they received. The service requirement was, for a long time, restricted to the Islamic court system in the Area Courts, Shari'ah Court of Appeal and Shari'ah Panel of the Court of Appeal and Supreme Court. The service providers are mostly the lawyers and judges usually trained under Nigerian legal education system, Islamic law graduates of other universities most often, from North Africa and Middle East and non-law graduates like graduates of Islamic Studies and sometimes Arabic Language graduates.

Sharī'ah Service Requirements

Despite the subjugating policies of the colonial administration against the Sharī'ah, the fact remains that the bulk of litigation especially in Northern Nigeria are adjudicated on the principles and procedures of Islamic law. The reason for this is that a majority of the civil and criminal matters are initiated in the Area Courts,³⁵ being the courts closest to the grassroots which at times, uses the local language.

Aside from the Area Courts, a number of the Nigerian Courts of record have cause to deal with Sharī'ah matters. Before the expansion of the scope of application of Islamic law in Nigeria in the year 2000,³⁶ appeals from Upper Area Court lie in the Shari'ah Court of Appeal only on matters concerning Islamic personal law.³⁷

³⁵ Area Courts and Upper Area Courts in the north have almost unlimited jurisdiction in civil matters while the latter with wider jurisdiction was only restricted in capital offences in criminal matters, S. 14, Area Court Law, Laws of Kwara State, 2006.

³⁶ This was the year some states of the Federation including Zamfara, Sokoto, Niger, Kebbi, Kano, Bauchi, Katsina, Jigawa, Gombe, Yobe and Borno States began expansion of the scope of the application of Shariah and jurisdiction of the courts to cover Islamic penal matters and wider civil jurisdiction.

³⁷ See S.54 (a) Area Court Edict, No. 2, 1967 (Now S. 54 (1) Area Court Law, Laws of Kwara State, 2006; Islamic Personal Law include matters of marriage, divorce, custody of children of the marriage, *waqf* (endowment) *Hibbah* (gift), *mirath* (inheritance) made by a Muslim, maintenance or guardianship of a Muslim minor of person of unsound mind, S. 277 (2) (a)-(e), CFRN, 1999 as amended.

Appeals in all other matters outside Islamic personal law, like Islamic commercial transactions, land matters and criminal matters go to the High Court. Ironically, the High Court judge who is hearing the cases, which were heard on the principles of Islamic law in the first instance, on appeal lacked the necessary knowledge of Islamic law.³⁸

Specific Constitutional Shari'ah Roles

The Constitution of the Federal Republic of Nigeria since 1979 to date has created specific recognition for some aspect of Shari'ah in the Nigerian courts, thereby creating roles for Islamic law practitioners and judges. The constitution established Shari'ah Court of Appeal to hear appeals from Upper Area Courts on matters of Islamic personal law.³⁹ These include family matters like marriage, divorce, guardianship of an infant; *waqf* (endowment); *hibbah* (gift); and questions regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm.⁴⁰ Appeal from the Shari'ah Court of Appeal on these matters lie in the Court of Appeal and ultimately in the Supreme Court which is the final court on the land. The judges handling such appeals in the two latter cases are also required to be learned in Islamic personal law.⁴¹

³⁸ A person is qualified to hold office of a Judge of a High Court of a State if he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years, Knowledge of Islamic law in not required, S. 271 (3), CFRN, 1999 as amended; for detail discussion on how the High Court judge treats matters heard on the principle of Islamic law on appeal Ibrahim A. Abdulqadir, "The Application of Islamic Law in Civil Causes in Nigerian Courts", *Journal of Jurisprudence and International Law*, 6, (2002), 96-99.

³⁹ See s. 240 CFRN, 1979; similar provision is contained in ss. 260 (1) and 275 (1) CFRN, 1999 as amended.

⁴⁰ See s. 277 (2)(a)-(e), CFRN, 1999 as amended.

⁴¹ See ss. 274 (1)(a) and 288(1) and (2), CFRN, 1999 as amended; curiously, while the Constitution requires knowledge of Islamic law for a judge of the Shariah Court of Appeal which is a lower court than the Court of Appeal and Supreme Court, justices of the the latter courts are only required to be learned in just an aspect of Islamic law (Islamic personal law).

Expanded Shari'ah Roles

The expansion of the scope of Islamic law, creation of new Shari'ah Courts and extended jurisdiction of the Shari'ah Court of Appeals has created additional Shari'ah services requirement in the judicial system. In Kano State for instance, the Shari'ah Courts Law 2000 repealed the Area Courts Edict 1967⁴² and the Shari'ah Administration of Justice Law 2000. In place of the Area Courts and Upper Area Courts, it established the Shari'ah Courts and Upper Shari'ah Courts. By the Shari'a Courts (Establishment and Territorial Jurisdiction) Order 2000 made by the Grand Kadi pursuant to section 9 of the Shari'ah Courts Law, the territorial jurisdiction of each Shari'ah Court was specified and that of the Upper Shari'ah Courts made unlimited⁴³. The cases of *Safiya Hussaini v. The State* and *Amina Lawal v. The State*⁴⁴ were heard by the Shari'ah Court of Appeal of Sokoto and Katsina states, respectively on the expanded criminal jurisdiction of the courts. Appeals from the Shari'ah Court of Appeal lie to the Federal Court of Appeal⁴⁵ and from there to the Supreme Court⁴⁶ which is the apex court of the land.

In the southern part of Nigeria, due largely to political reasons and historical antecedents, neither do the trial customary courts apply Islamic law nor has the Shari'ah Court of Appeal been created. Muslim groups like Muslim Lawyers Association of Nigeria (MULAN), Lagos State branch and another called Tadamun in Ibadan, Oyo State have constituted themselves to semi/quasi-judicial body called Independent Shari'ah Panel (ISP) to provide Shari'ah related services to the Muslim members of the public. According to Adewara Tajudeen,⁴⁷ the Muslim Lawyers Association of Nigeria

⁴² 1967, CAP 9 Laws of Kano State

⁴³ See Muhammad L. Yusufari, "Shariah Implementation in Kano State", a report submitted to an International Conference on *The Implementation of Shari'ah in a Democracy: The Nigerian Experience*, jointly organized by the Centre for the Study of Islam and Democracy, Washington D.C. and the Centre for Islamic Legal Studies, Ahmadu Bello University (ABU) Zaria, held at Sheraton Hotel, Abuja between 7th and 9th July, 2004, p. 2; Ss. 3(2) and 4(1), Shariah Administration of Justice Law of Niger State, 2015 for similar provisions.

⁴⁴ Unreported suit No.: USC FT/CRA/1/02, judgment delivered on September 25, 2003 was heard by the Shari'ah Court of Appeal.

⁴⁵ See S. 240, CFRN, 1999 as amended.

⁴⁶ See S. 233 (1), CFRN, 1999 as amended.

⁴⁷ A member of the Shariah Panel of MULAN Lagos state, interviewed on March 2, 2016 at 12:00pm (GMT +1)

(MULAN) established three ISP sittings at 1004 Housing Estate, Victoria Island; Jakande Estate, Abesan; and Amukoko Areas of Lagos state respectively to settle disputes among Muslims who have no access to Shari'ah Courts.⁴⁸

In the nation's conventional based financial system, the Central Bank of Nigeria has taken steps to integrate the Islamic Financial system into the existing contemporary system. It issued an operational license to the first full-fledged Islamic bank (Jaiz International Plc.) in 2011 and Islamic window license to some conventional banks.⁴⁹ The version of non-interest banking adopted for now is governed by the principles of Islamic Financial Jurisprudence and supervised by Shari'ah experts.⁵⁰ The CBN has issued a series of guidelines to regulate Non-Interest Financial Institution (NIFIs) especially on the Shari'ah expertise of the advisory boards.⁵¹ It is therefore to be expected that the Islamic law teachers in the seven universities where Common and Islamic law programs are being run should themselves be experts in the Shari'ah.

Shari'ah Service Providers

Although the Area Court Law requires the judge presiding over matters having to do with Muslim personal law to be learned in Muslim law,⁵² one cannot but agree with the position of Mustapha⁵³

⁴⁸ The Ibadan ISP sitting at Oja-Oba central mosque has prominent Shariah experts like Sheikh Ahmad Ajawhamy, Sheikh Isa Akindele and Sheikh Abdulrazaq Akuru among others most of whom are products of universities in Saudi Arabia and other universities according to Dr. Ibrahim Jamiu Otuyo who is familiar with the activities of the panel and interviewed on February 29, 2016 at 7:15pm (GMT+1); the ISP of the State of Osun was inaugurated on 23 April, 2006 after a proposal to the State House of Assembly to incorporate Shari'ah as part of Customary Court failed, Lateef A. Kelani, "A Critical Study of the Concept of Human Rights Under Islamic Law in Western Nigeria," (Lagos: Lagos State University, Ph. D Thesis: 2016), 257-258.

⁴⁹ Stanbic IBTC Bank Plc. and Sterling Bank Plc. are among the conventional banks operating Islamic window.

⁵⁰ See generally the preamble to the Framework for the Regulation and Supervision of Institutions Offering Non-interest Financial Services in Nigeria, 2011 as amended and particularly S. 9.1 thereof.

⁵¹ CBN, Guideline on the Governance of Advisory Committees of Experts (A.C.E.) for Non-Interest (Islamic) Financial Institutions in Nigeria, 2013.

⁵² S. 4 (2), Area Court Edict, No. 2, 1967; this law was applicable in Kwara State of Nigeria until 2006.

⁵³ Mustapha, *Islamic Law*, 18.

that the majority of the judges adjudicating on those matters are grossly incompetent. The dearth of expertise among the judges has to do with the fact that the highest Islamic law qualification of most of them is *Shahadatul Idadiyyah* or *Thanawiyyah* (roughly equivalent of junior or senior secondary school certificates) obtained from schools having no regulated or standardised curriculum.⁵⁴ The Kwara state law has even compounded the problem by removing knowledge of Islamic law and replacing it with being a legal practitioner⁵⁵ as a qualification for an Area Court judge.

The new Shari'ah laws of the majority of northern states have attempted to correct the ugly situation by requiring a judge of the Shari'ah Court to be male, Muslim, with impeccable record of Islamic righteousness and piety and; a legal practitioner with qualification in Islamic law of three years post-call experience; or holder of a degree in Islamic law from a university recognised by the Judicial Service Commission.⁵⁶ The implication of this law is that unlike the law of Kwara State that made a blanket provision for lawyers (whether or not trained in Islamic law) to become an Area Court judge, only lawyers with training in Islamic law or Shari'ah degree holders of a recognised university, even if not called to the Nigerian Bar can become judges. The Shari'ah Courts of Appeal of the States of the Federation that have established one are manned by judges expected to be experts of Islamic Law.⁵⁷ Justices who are knowledgeable, at least, in Islamic personal law are also required by the Constitution to be on the bench of the Court of Appeal and Supreme Court to hear appeal from the Shari'ah Court of Appeal.⁵⁸

⁵⁴ Oba, "Lawyer, Legal Education," 120; the Shari'ah training at this level is merely foundation for degree program but as will be shown later in this work, the content of the Shari'ah curriculum in the Nigerian universities hardly goes beyond the madaris level.

⁵⁵ S. 4A Area Court Law of Kwara State, 2006.

⁵⁶ S. 5(2) and (3), Shariah Administration of Justice Law of Niger State, 2015; a judge of Upper Shari'ah Court (the appellation adopted for this court in Kano and other states is Higher Shari'ah Court) is required to have 5 years post-call experience, S. 5 (1) thereof; this qualification has two types of degree holders in mind, namely those who obtained Islamic law degree from Nigerian universities and have three years "post-call" (post-qualification) experience and those who trained in mostly Arab Countries without the need for call to the Nigerian Bar.

⁵⁷ S. 276 Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended.

⁵⁸ Ss. 247 (1) (a) and 288 (1) CFRN 1999 as amended.

Aside from that, by virtue of Section 36 of the Constitution⁵⁹ and the decision in *Karimatu Yakubu and Another v. Alhaji Yakubu Paiko and Anor*,⁶⁰ all legal practitioners in Nigeria have the right of audience in all courts and in all matters, whether Shari‘ah based or otherwise. Tabiu⁶¹ and Oba⁶² have separately done a critique of that decision and concluded that the common law type of lawyer advocating the case of their client in the adversarial manner is unknown to Islamic law. Oba acknowledged the concept of *tawkil fil-qadāi* (agency in judicial matters) by which a litigant can be represented by his agent and a *mufti* (legal consultant) who assists the court in espousing the law, but that, such agent or *mufti* has no privilege as accorded to an attorney in common law.⁶³

Following the argument of Adewoye⁶⁴ on the inquisitorial nature of the duty of a Shari‘ah judge which may obviate the need for legal representation and the lawyers’ consequential right of audience, Oba appears to argue for foreclosure of advocates’ representation in Shari‘ah Court.⁶⁵ While one would agree with the author on recurring technical errors committed and the evasive approach to practical issues adopted by the Court of Appeal in *Karimatu’s* case, foreclosing legal representation in the Shari‘ah Court, probably borne out of the fear of murdering justice at the altar of technicality as operational in common law advocacy,⁶⁶ does not have a legal basis in the Shari‘ah. Aside from the fact that no such prohibition exists in the sources of Islamic law, nothing also prohibit a litigant from engaging a

⁵⁹ S. 36 (2) (a), CFRN, 1999 as amended.

⁶⁰ Shari‘ah Law Report of Nigeria, 1 (1961 -1989), 126 – 141.

⁶¹ See Tabiu, “The Right of Audience,” 17-26.

⁶² Abdulmumuni A. Oba, “Do Lawyers Really have a Right of Audience in the Shariah Court of Appeal? *Karimatu Yakubu and Anor v. Alhaji Paiko and Anor Revised*”, *Lagos State University (LASU) Law Journal*, IV:2, (2002), 183 – 197.

⁶³ *Ibid.*, 191-192.

⁶⁴ Omoniyi Adewoye, *The Legal Profession in Nigeria 1865-1962* (Nigeria: Longman, 1977), 2-3.

⁶⁵ He challenged another author Mutalib A. Ambali, *The Practice of Muslim Family Law in Nigeria* (Zaria: Tamaza, 1998), 75 – 80 who claimed that there is no prohibition of legal practice in the Quran and Sunnah to produce evidence in its support, Oba, “Do Lawyers,” 192.

⁶⁶ The fear is sustainable by the fact that the Counsel to the Respondent No. 1 in *Karimatu Yakubu and Another v. Alhaji Yakubu Paiko and Anor* (Supra) admitted not knowing anything about the rules and procedure of the Shari‘ah Court yet ventured into representing a client, *Ibid.*, 190.

professional as his agent within the permissible limit of law.⁶⁷ This position is fortified by the Islamic jurisprudential maxim:

الأصل في الأشياء الإباحة حتى يرد دليل الحظر⁶⁸

The basic presumption is that matters are permissible unless they are prohibited by a text.

This was the basis for the permission of the Attorney-in-fact in the Shari'ah Courts procedure of the Kingdom of Saudi Arabia. To this effect, Article 47 of the Saudi Arabian Law provides:

On the day scheduled for consideration of the case, the litigants shall appear in person or through representatives. If the representative is an attorney-in-fact he shall be the one qualified to accept a power of attorney according to law.⁶⁹

Thus, rather than limiting legal representation by legal practitioners, it is for the litigants to decide whether the inquisitorial role of the judge satisfies his/her needs for representation. Also, the Nigerian law do not preclude Shari'ah experts, not being a legal practitioner⁷⁰ from representing and acting as agents of litigants, especially in civil matters. In fact, they can cite the appropriate laws to support their case.⁷¹

The need for Shari'ah experts are also featured in the nation's financial services delivery recently when a regulatory framework of the Central Bank of Nigeria (CBN) established an Advisory

⁶⁷ The limit will include engagement for the purpose of derailing the cause of justice.

⁶⁸ Ibn Taymiyyah, Taqi al-Din Ahmad, *Al-Fatāwa al-Kubra*, (Beirut: Dār al-Ma'rifah, n.d. vol. 3.), 474; also, Sanou, Qoutoub Moustapha, *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, (Malaysia: IIUM Press, 2001), 58.

⁶⁹ Kingdom of Saudi Arabia, *Law of Procedure before Sharia Courts*, Royal Decree No.M/21, of 20 Jumada I, 1421 [19 August 2000].

⁷⁰ S. 24, Legal Practitioners Act, 1975 as amended, Cap. L11, LFN, 2010 defines Legal Practitioner as a person entitled to practice as barrister or barrister and solicitor of the Supreme Court of Nigeria while S. 2 thereof established his right of audience in Courts.

⁷¹ *Justice F.O.M. Atake v. Chief Nelson Asigboro Afejuku*, (1994) 9 Nigerian Weekly Law Report (WLNR) (pt. 368), 379 at 402.

Committee of Experts (ACE)⁷² and requires expertise in Sharī'ah in its membership. The relevant section of the regulation provides:

The proposed member of the ACE shall at a minimum, have an academic qualification or possess necessary knowledge, expertise or experience in the sciences of the Shari'ah with particular specialisation in the field of Islamic Transactions/Commercial Jurisprudence (*Fiqh al Mua'amalat*); and

It is highly desirable for the member to have:

- a) skills in the philosophy of Islamic Law (*Usul al Fiqh*);
- b) good knowledge of written Arabic;
- c) ability to speak in both Arabic and English; and
- d) exposure in the areas of business or finance especially Islamic Finance⁷³.

Shari'ah Training of the Service Providers

The reasonable expectation from the foregoing outlets requiring Sharī'ah expertise is a strong and in-depth Sharī'ah content of the Nigerian legal education processes. Unfortunately, that is not the case. Of the forty-eight (48) Faculties and Colleges of Law approved by the National Universities Commission (NUC) and Council of Legal Education (CLE) to run law programs in Nigeria⁷⁴, only seven (7) of them (14.6%) are running their programs with some aspects of Islamic Law. A majority of the remaining 85.4% have no cause to even introduce their students to the Islamic Law.

⁷² S. 4, Guidelines on the Governance of Advisory Committee of Experts for Non-Interest (Islamic) Financial Institutions in Nigeria, 2013; the Shariah Advisory Board of Islamic banks is called Advisory Committee of Experts (ACE) in Nigeria while similar Committee within the CBN is called Financial Regulation Advisory Committee of Experts (FRACE).

⁷³ S. 5.2, Guidelines on the Governance of Advisory Committee of Experts for Non-Interest (Islamic) Financial Institutions in Nigeria, 2013.

⁷⁴ This figure was sourced from the Secretary to the CLE, Mrs. Elizabeth O. Max-Uba on telephone interview granted on Wednesday, March 2, 2016 at 3:20pm (GMT+1); it is an updated figure which includes the faculties approved after the public notice of 43 accredited faculties issued on behalf of the CLE in 2014, assessed March 2, 2016, <http://www.nigerianlawschool.edu.ng/notices/quota.pdf>.

The curriculum content of the faculties offering some aspects of Islamic law are superficial and cannot produce the Shari'ah experts needed for the aforementioned services.⁷⁵ Kumo⁷⁶ aptly put the implication thus:

The effect of this neo-colonial psychology on the study of Islamic Law in our universities and its implication on our courts of law has been perhaps more profoundly negative than on any other aspect of our national life. Thus, we borrowed a leaf from the universities of the 'mother country' and confine the study of Islamic law to matters of 'personal status' leaving out all other subjects, and thereby conforming to the correct position of Islamic Law as seen from the stand-point of the Western intellectual circle. The same attitude is replicated in respect of its application by our courts of law.

This situation resulted in gross incompetence in the Area Courts or Shari'ah Courts as they are now called in the states that have adopted full application of Islamic Law.⁷⁷ The level of incompetence was manifested in the criminal cases handled by some of these courts at the beginning of full implementation of Shari'ah in those states. For instance, in the case of *The State v. Safiya Hussaini*⁷⁸ the accused person, who was a divorcee, was sentenced to death by stoning for committing adultery. The case was proved against her through *qarinah* (circumstantial evidence) of pregnancy and child birth out of wedlock. Her claim of being raped by the man who confessed to have had intercourse with her was rejected and the man was discharged and acquitted for want of sufficient proof. Ordinarily proof of and punishment for *zina* (adultery) through *qarinah* is allowed by Maliki School only and even in the school, occasion of rape would exonerate the woman.⁷⁹ More so, the possibility was raised of the pregnancy

⁷⁵ The curriculum content will be treated further in the next section hereunder.

⁷⁶ Sulayman Kumo, "The application of Islamic Law in Northern Nigeria: Problems and Prospects", in Rashid, S. Khalid ed., *Islamic Law in Nigeria: Application and Teaching* (Lagos: IPB, 1988), 43.

⁷⁷ Zubair, *Citadel of Learning*, 28; Oba, "Towards Rethinking," 95; and Abdulqadir, "Islamic Law," 108-112; Quite a number of them do not have the rudiments of the language of the law (Arabic) while some of them did not have training in Shariah but in Arabic language.

⁷⁸ Reported online, Assessed March 1, 2016, http://www.religioustolerance.org/isl_adull.htm.

⁷⁹ Mahmud S. A. Othman, *An Introduction to Islamic Law of Evidence*, Raden. A. S. R. Hisam (trans.) (Shah Alam: HIZBI, 1996), 126-127.

belonging to the accused person's former husband but the possibility was not examined. The decision was reversed on appeal.

A similar decision is seen in the case of *The State v. Amina Lawal*⁸⁰ in which the accused person was sentenced to death for *zina* at the Shari'ah and Upper Shari'ah Courts and this was reversed by the Shari'ah Court of Appeal for procedural irregularities like not allowing the accused to know the meaning and gravity of what she was accused of and failure to treat doubts created in the case in favour of the accused person.⁸¹

Those that are performing fairly well among these providers of Shari'ah services are the ones that have attended one or the other *madrasah* (pl. *madāris*) before they obtained the local degree in law. Aside from that, the people in this category include those that had Shari'ah training in universities outside Nigeria, mostly from the North Africa and the Middle East, after leaving the *madrasah*. While the first group is deficient in core technical competence, yet has advantage of sufficient combination of western education, the latter group is deficient in western education and English language which is the nation's *lingual franca* and language of the Courts.⁸²

THE ROLE OF MADĀRIS

Madāris is the plural form of an Arabic word *Madrasah*, meaning institution for Islamic studies, which include Arabic language. In its developmental mode, it evolved in three stages, that is, from *Masjid* (the mosque) as an instructional centre; *Masjid-Khan* (complex) which served as hostelry for out-of-town students and the modern *madrasah* performing the two earlier functions.⁸³ In its medieval usage, it is a college mainly for the study of law but with other literary and philosophical subjects taught as ancillary⁸⁴. In its modern

⁸⁰ Ibid.

⁸¹ Ibrahim Hauwa. "Rule of Law Prevails in the Case of Amina Lawal." *Human Rights Brief* 11, No. 3 (2004), 39-41.

⁸² Majority in this group and other locally trained experts of Islamic law are disconnected from our legal education and Shariah service delivery by deficiency in English Language.

⁸³ Encyclopaedia of Islam, New Edition, 1123.

⁸⁴ Ibid.

usage however, *madrasah* is a college of higher studies in Islamic Sciences as opposed to the traditional elementary schools.⁸⁵

In Nigeria, the role of the traditional *Kuttab* is quickly subsumed into the *madaris* which are better organised. *Madaris* have three stages of education. These are *Ibtidai'yyah* (elementary stage), *Idadiyyah* (basic stages) and *Tawjiyyah/Thanawiyyah* (post-basic stage). To this effect, *Markaz Zumratus- Su'adāi* on Abikan-Rakan crescent Ilorin⁸⁶ shall be used as our case study in both its traditional and *madrasah* form. Similar *madāris* are concentrated in northern Nigeria and are well scattered in mid-western and south western Nigeria.⁸⁷

The instructors of the *madāris* initially were products of similar institutions but with time, outstanding products of the same institution were retained. Those that were able to reach-out to the Arab world like *Ma'ahad Al-Azhar* Ilorin, have teachers from Arabian countries, especially from Egypt on collaborative basis to teach in the schools. The medium of instruction is Arabic language although vernacular is used some times, especially at the lower level, to aid understanding.

In the *madāris*, the content of the subjects taught are taken as per the content of the book of study for each subject. Most of the subjects are taken throughout the level of the study and some books are thus studied in their volumes. In this type of work, it is difficult to cover all

⁸⁵ Ibid; Often referred to in the north as *Makaranta Allo* (tablet School where portion of Quran is written on slates) and *Makaranta Ilimi* (School of (advanced) knowledge, Babatunde A. Fafunwa, *History of Education in Nigeria*, (Onitsha: NPS Educational Publishing Limited, 2002), 48.

⁸⁶ The Centre was established in 1959 by Sheikh Ahmad Rufai Ibn Uthman Abikan, it took-off and operated as the old *Makaranta Allo* for about 20 years before becoming a full-fledge *Madrasah* about 1977/78.

⁸⁷ Some of them include, *Markaz Taalim al-Arabiyy wa Islamiyy*, established by Sheikh Adam Al-Ilory Agege Lagos; *Ma'ahad Al-da'awa wal-Irshad*, Isolo Lagos, established by Sheikh Mustapha Sanusi Sughlul; *Dar Al-Ulum*, Ilorin, established by Committee of Ilorin Scholars; *Ma'ahd al-Azhar*, Ilorin, established by late Sheikh Muhammad Kamaludeen Al-Adaby, *Zumratul Adabiyyah*, Ilorin; (by same proprietor); *Zumratul Adabiyyah Al-Kamaliyyah*, Ilorin, established by Sheikh AbdulRahim Aminullah Al-Adaby; *Al-Ma'ahd al-Araby al-Islamy*, Ibadan, established by late Sheikh Murtada Abdussalam; *Ma'ahad Lithaqafat al-Islamiyyah*, Ibadan established by late Shaikh Shuayau Basary Oloriaje, amongst others in the south-west Nigeria. These are the schools that produced the Shariah content of the knowledge of the Supreme Court and Court of Appeal justices like Ahmad Belgore JCA and AbdulRahman Oredola JCA; the entire Qadis of the Shariah Court of Appeal in the Country; judges of the Shariah and Area Courts and eminent lawyers with knowledge of Shari'ah.

subjects and study materials used at all levels of study. The works is therefore restricted to the subjects and study materials used at the 3rd year, which is the final year of Thanawiyah class at the Markaz Zumratus Suadai. They are: al-Tafsir (exegesis of Quran)⁸⁸, Fiqh (Islamic Jurisprudence)⁸⁹, al-Hadith (the sayings and practices of the Prophet)⁹⁰, Matn Luggah ('Arabic' Language Lexicology)⁹¹ al-Da'awah (Propagation)⁹², al-Qawaid al-Luggah (Principles of Language)⁹³ and al-Tarbiyyah (education)⁹⁴. Other subjects in that class include, al-Tawhid (monotheism)⁹⁵, al-Tarikh (History)⁹⁶ al-Adab (literature)⁹⁷, al-Balagha (rhetoric)⁹⁸, al-Mantiq (logic)⁹⁹ and al-Thaqafah (civilisation)¹⁰⁰. Al-'Arud (poetry)¹⁰¹, Ulum al-Quran (science of Quran)¹⁰², and Usul al-Fiqh (principles of Islamic jurisprudence)¹⁰³ are also taken in this last class. Apart from al-Da'awah introduced in the 2nd year and the last two subjects introduced in the 3rd year, all the subjects are taken for the three years of thanawiyah level.

By the time a student graduates from this level, he/she has acquired an intermediate level of knowledge of Shari'ah and is fairly proficient in both written and spoken Arabic language. He also

⁸⁸ Jalalludeen Muhammad Bin Ahmad and Jalaludeen AbdulRahman Bin Abubakar, *Tafsir Jalalayn*, (Beirut: Dar Al-Kitab al-Araby, nd).

⁸⁹ Abdullah Ibn Abu Zaidal-Qayrawany, *Matn al-Risala* (Cairo: np, 2007).

⁹⁰ Abul-Fadl Ahmad Ibn Ali al-'Asqalany, *Bulughu Maramy* (Beiru: Dar al-Fikr, nd).

⁹¹ Abu Muhammad al-Qasim al-Hariry, *Maqamatul- Hariry*, (Beiru: Dar al-Fikr, nd).

⁹² Tawjih al-Da'awah wa al-Du'at.

⁹³ Ali al-Jarm and Mustapha Amir, *An-Nahw al-Wadih* (Beirut: al-Maktabah al-Lughawiyah vol.1-3, nd).

⁹⁴ *Durus fi al-Tarbiyat waTurq al-Tadris* vols. 13.

⁹⁵ Adam Abdullah al-Ilory, *Falsafah al-Wilayyah*, (Lagos: Matba'at as-Saqafah al-Islamiyyah, nd).

⁹⁶ Adam Abdullah al-Ilory, *al-Islam fi Nigeria was-Sheikh Uthman Ibn Fodiyo al-Fulany*, (Lagos: Matba'at as-Saqafah al-Islamiyyah, 2nd edn., 1978).

⁹⁷ Adam Abdullah al-Ilory, *Libab al-Adab, Qism al-Khitabah*, (Lagos: Matba'at as-Saqafah al-Islamiyyah, nd).

⁹⁸ *al-Balagha al-Wadihah lil-Madaris ath-thanawy*.

⁹⁹ Al-Mantiq al-Wadihah.

¹⁰⁰ Adam Abdullah al-Ilory, *Ad-din al-Nasihah* (Lagos: Matba'at as-Saqafah al-Islamiyyah, 3rd edn., 1978).

¹⁰¹ As-Sayyid Ahmad al-Hashimiy, *Mizan al-dhahb* (Beirut: Dar al-Fikr, nd).

¹⁰² Muhammad Sayyidy Muhammad al-Amin, *al-Tabsirah fi Ulum al-Quran*, (Madinah: Islamic University Madinah, 1418AH).

¹⁰³ Ahmad Ibn Ali *et. al.*, *Usul al-Fiqh* (Saudi Arabia: Wizaratul Arif, 1988).

becomes eligible for admission to study Shari'ah or pursue any other Islamic science in universities in Saudi Arabia, Egypt, Libya, Sudan, Morocco etc. Ironically, for reasons set forth hereunder, he/she is not eligible for admission to study Shari'ah or any other course in a faculty of law or other faculties in any Nigerian university.

To study Shari'ah or Common and Islamic law in the Nigerian universities, a candidate only needs to have passed O' level examinations in at least five subjects which must include English language and Arabic or Islamic studies.¹⁰⁴ It should be noted that Arabic and Islamic studies are taught in most of the secondary schools through the medium of English language.¹⁰⁵ Their curriculum content is also not in the least comparable to the Arabic and Shari'ah based subjects at the *Idadiyyah* level of the *madāris*, what more the *thanawiyyah* level.¹⁰⁶ The point being made here is that while the students from the *madāris*, ingrained with the prerequisite to study Shari'ah are marginalised, those that have minimal or no contact with it, especially in an era of corruption in the education system become the best candidates for admission.¹⁰⁷

This arrangement forces the products of the *madāris* aspiring to study Shari'ah or other related courses to go back to the conventional secondary schools to obtain O' level passes in the relevant subjects.

¹⁰⁴ JAMB Brochure 2015; JAMB is the acronym for Joint Admission and Matriculation Board, a Federal Government Agency responsible for conducting entry examination into the Nigerian Universities and other higher institutions of learning.

¹⁰⁵ Exception is made here in the case of Arabic Teachers' College attended by the authors now Government Senior Secondary School Jebba, College of Arabic and Islamic Studies, Ilorin and other government owned higher Islamic Study schools in the north where the two subjects are taught in Arabic Language; it must however be admitted that a good number of students in the first two schools mentioned did not attend *madrakah* and thus forcing the teachers to lower the standard.

¹⁰⁶ Oba is of the view that 'Islamic Studies' as a discipline even at the university level is a creation of the colonial masters designed as a machinery for producing orientalist within the Islamic fold- a superficial study of Islam' Abdulmumini A. Oba, "Re-conceptualizing Islamic Legal Education in Nigeria: The Case for Professionalization" *Al-Maslaha* 2, (1999-2003), 95.

¹⁰⁷ Corruption in examinations in form of impersonation by which examinations are written on behalf of candidates or cheating became rampant at a point especially in the O' Levels and JAMB examinations that most universities had to introduce post-JAMB screening before the students were admitted to the universities; JAMB has also embrace Computer based test in 2014 and biometrics capturing to eliminate the chances of such practices.

Despite this rigour, what they were offered in the university does not make them much better than they were, when they left the *madāris*. They have to rely heavily on the residual knowledge from the *madāris* to be able to deliver the Sharī'ah based services required of them by the society.

A CASE FOR A TRUE SHARĪ'AH CURRICULUM

Zubair¹⁰⁸ made a lucid comparison of the curriculum of the LL.B (Hons. Islamic Law and LL.B. (Combined Hons.) Islamic and Common Law in Nigeria with LL.B (Hons.) Islamic Law of universities in Saudi Arabia, Egypt, Morocco and Sudan. The work revealed that Nigerian Sharī'ah students are denied the opportunity of taking courses like *Fiqh* (jurisprudence), *Fiqh al-muqaranah* (Islamic comparative jurisprudence), *Tahfīz al-Quran* (memorisation of Quran), *muṣṭalah al-Ḥadīth* (science of hadith), *qawaid fihiyyah* (Islamic legal maxims) and history of Islamic legislation. This is because while each of the courses is taken for the four years of the Shari'ah program in some of the countries, the few Shari'ah Courses taken by the Nigerian legal trainees are barely accommodated and are only taken as optional/elective and not compulsory courses.¹⁰⁹ Arabic language, *Usul al-Fiqh* (principles of Islamic jurisprudence) and jurisprudence of the Quran which are also taken throughout the program in universities in those countries are merely taken in passing for one semester in the Nigerian universities.

The narrow passage given to Islamic law courses in the Nigerian legal education system is explainable from the fact that a pure Shari'ah degree program is not recognised by the NUC and the CLE. In fact, graduates of Shari'ah from universities outside Nigeria would spend two (2) additional years taking remedial courses in a Nigerian

¹⁰⁸ Zubair, *Citadel of Learning* 23-29.

¹⁰⁹ Only six (6) courses namely, Introduction to Islamic Law, Islamic Law of Crimes and Tort, Islamic Law of Transactions, Islamic Law of Procedure and Evidence, Islamic Family Law and Succession, and Islamic Jurisprudence are recognised as optional courses in the NUC BMAS 2007, 26 thereof; although it may be argued that what is provided in the BMAS is a minimum standard, the credit weight of the compulsory and required courses leaves no room for expanded Shari'ah Courses.

university before they are admitted to the Nigerian Law School for their one (1) year vocational training.¹¹⁰

In terms of the curriculum content, one only needs to compare what the students of the *Madāris* have learnt in Fiqh¹¹¹ at the final level of the basic class with the content of Islamic family law, and *mirath wal-wasiyyah* (inheritance and bequeath)¹¹² in the Nigerian universities. *Madāris* students deal with these subjects at a more advanced level in their study of *al-Risālah*¹¹³ for the three years post basic studies. These are aside from the combined effect of their study of the three volumes of *al-Nahw al-Wādiḥ* for post basic classes putting them on a good footing in consulting orthodox references independently.

Therefore, one cannot but agree with Zubair¹¹⁴ that the departments of Islamic law would have to add more courses for their products to compete favourably with Shari'ah products of especially the Arab countries. Beyond that, a total review of the content of the existing curriculum would have to be undertaken to make it comparable with international standards. But before this is done, the question to be asked is, do the students with O' level Arabic/Islamic studies background have the basic foundation for an improved Shari'ah curriculum? The answer is certainly in the negative. The *madāris* products are best suited to such true Shari'ah curriculum, hence, the need to integrate the *madāris* to the main stream of LL.B Shari'ah program.

INTEGRATING THE DISINTEGRATED

Integration of the *madāris* to the mainstream of legal education is a function of both the government and private stakeholders of the

¹¹⁰ Information on remedial programme for law graduates of universities outside Commonwealth countries is available on the website of the Nigerian Law School assessed March 2, 2016, <http://www.nigerianlawschool.edu.ng/Notices/Status.pdf>.

¹¹¹ From the chapters of *Nikah* (marriage), *talaq* (divorce) *adanah* (custody of children) and *Wiratha* (inheritance) in the book *Muqadimat al-Inziyyah*.

¹¹² University of Ilorin, Academic Programmes (undergraduate and Sub-degree) 2009-2013, Unilorin Press, 2003, 632-633 for the curriculum content of the courses taken in the fourth year of the degree program.

¹¹³ *Al-Risala*, 89-97.

¹¹⁴ Zubair, *Citadel of Learning*, 29.

Islamic education. On the side of the government, the intendment of the ‘ancestors’ of a standard teaching and administration of Sharī‘ah which brought about the then Northern Provinces Law School in 1934 would have to be revived. To do this, all the Arabic schools and Arabic Teachers’ Colleges established by the government pursuant to the *raison d’être* of the law school would need to be restructured with a preparatory curriculum for admission for Sharī‘ah or Common and Islamic Law program. English language, English literature, one Nigerian language and at least two social science subjects would need to be introduced. This would avail them the option of pursuing a degree program in other Arts or Social Science field without diminishing their qualification to study Sharī‘ah.

Furthermore, the government would also have to show interest in the *madāris* by facilitation of a uniform standard of their curriculum. This entails registering them with the government and incorporating them to the fold of schools for monitoring and supervision by the Ministry of Education.¹¹⁵ When the *madāris* come under the monitoring and supervision of the Ministry of Education, they should be made to introduce the subjects mentioned above for the government owned Arabic schools. However caution would need to be exercised to avoid a repeat of what the colonial administration did to the Northern Provinces law schools in terms of eroding their Sharī‘ah basis.

By extension, the national examination bodies like West African Examination Council (WAEC) and National Examination Council (NECO) etc. would need to review their examination items to test the core Sharī‘ah content of the curriculum of the *madāris* and allow their students to participate in the O’ Level examinations.

CONCLUSION

In the foregoing paragraphs, it has been shown that the quantum of Sharī‘ah in the Nigerian legal education system is not sufficient to train the type of Sharī‘ah graduates needed to deliver the Sharī‘ah services requirements of the country. This state of affairs is a colonial

¹¹⁵ The Kwara State government recently took a step in this direction by establishing Arabic Board in 2014 to coordinate the activities of the traditional Arabic and Islamic studies schools, although the activities of the board have not been felt.

heritage nourished by the successive 'neo-colonial' educational system. Efforts to return full application of Shari'ah to our public life would be futile if no attention is given to replanting the Shari'ah education system uprooted through the colonial policies. The efforts will only succeed in substandard Shari'ah degree holders who become incompetent Shari'ah teachers and frown at the students that quote Quranic verses in Arabic language. It will also produce judges who would commit errors in the elementary procedure of letting the accused person in *Zina* (adultery) case appreciate the nature and punishment of the allegation against him/her and disregard the hadith of avoiding hadd punishment on the face of doubt. To save the nation, particularly its Muslims, from this ugly situation, the *madaris* have to be connected or reconnected, as the case may be, to the nation's legal education system as a matter of urgency. God forbid the consequence of the stakeholders' failure to focus their collective efforts towards true Shari'ah in Nigeria in this direction.