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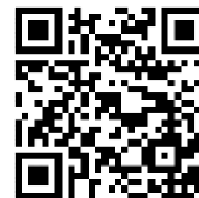
The Extent of the Application of English Laws in the Cameroonian Legal System



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ABSTRACT: The decisive events which made the introduction of English laws possible in Cameroon were the arrival of European traders, the activities of European missionaries and the introduction of the English legal system by the British Government. The arrival of these Europeans introduced certain new practices and institutions which the traditional laws of the country, particularly customary law could not cope with. Besides, the Europeans themselves were not prepared to be bound by tribal laws since the type of society to which the law and custom was appropriate was totally different from the type of society in which they (Europeans) had been brought up. After the 1st World War, Cameroon ceased to be a German Protectorate following her defeat and was thus administered by Great Britain and France under the League of Nations Mandate and subsequently under the United Nations Trusteeship Agreement. By Article 9 of the Mandate Agreement, the laws of the administering authorities were to be transplanted into Cameroon. Article 9 thus provided the basis and officially marked the beginning of the duality of Western legal systems which the people of Cameroon have since experienced and to which they remain subject to till this day. The Foreign Jurisdiction Act, 1890 was also very important and served as the enabling statute that led to the introduction and observance of English law in Southern Cameroons. The English common law, the doctrines of equity and the statutes of general application which were in force in England on the 1st day of January 1900 were then transplanted in Anglophone Cameroon viz s. 11 of the Southern Cameroons High Court Law, 1955. However, neither the statutes in England on the 1st day of January 1900, nor common law and the doctrines of equity apply in Cameroon without limitations. They are subject to local limits and circumstances. In this 21st Century, the laws of a colonial power particularly the statutes of general application should not apply again to an independent nation like Cameroon and thus should be repealed and replaced with local legislation. The Executive and Legislature should thus ensure compliance while the Government is called upon to hasten and complete the harmonization process of the common law and the civil law in a bid to give the country a unified/uniform legal system.

1. INTRODUCTION

Cameroon after its discovery by European explorers and merchants underwent a triple colonial experience – German, English and French domination.[1] On 12th July 1884, Guastav Nactigal, Bismarck's envoy, signed a treaty with two Cameroonian kings in Douala on behalf of the German Government. Two days later, on July 14th 1884 the German protectorate of Cameroon was officially proclaimed.

At the Berlin Conference, Britain and France officially recognised Germany's annexation of Kamerun.[2] Germany then demarcated the Western boundary with French Equatorial Africa. By 1887, Germany sovereignty over the Kamerun had firmly been established. For some 32 years thereafter, until February 1916, Kamerun was a German colony subject to Imperial German Law.[3]

In 1916, the Germans were defeated in the First World War by the British and French forces in Cameroon. On 4th March 1916, the victorious powers divided Cameroon into two parts which were confirmed by the Treaty of Versailles in 1919. Great Britain administered the portion of the territory lying to the West and France that lying to the East of the frontier line fixed by a joint declaration signed in London on 10th July 1919.[4] The recommended mandates were confirmed by the League of Nations, the terms of which were defined by Acts done at London on 20th July 1922. In other words, the territories were administered by both powers

[1] M. S. Tumnde, Insurance Law in Cameroon, (2012) published by Presses Universitaires d'Afrique Yaounde – Cameroon, p.1.
[2] German spelling of Cameroon. See Cameroon – Handbook prepared under the direction of the Historical section of the Foreign office – No. 118 February 1919, pp 15-25.
[3] See generally, N. Rubin, Cameroon: An African Federation, London- Pall Mall, 1971, pp. 23-43.
[4] See Annexes 374f and 374g to the minutes of the Nineteenth Sessions of the Council of the League of Nations, Appendices: League of Nations Official Journal, August 1922, 872 and 877.

under the League of Nations Mandate[5] and subsequently, under the United Nations Trusteeship Agreement.[6] The Mandate and Trusteeship Agreement sanctioned the translocation of the Laws of the administering authorities into Cameroon. Article 9 of the Mandate provided thus:

> *The mandate shall have full powers of administration and legislation in the area subject to the mandate. The area shall be administered with the laws of the mandatory as an integral part of his territory…the mandate shall therefore be at liberty to accept his laws to the territory under the mandate subject to the modification required by local conditions…*

This article provides the basis, and officially marks the beginning of the duality of Western legal systems which the people of Cameroon have since experienced and to which they remained subject to this day – a bi-jural legal system comprised of the common and civil law. At this juncture, British Cameroons passed from a mandate territory of the League of Nations to a Trust territory of the United Nations and the Foreign Jurisdiction Act, 1890, which hitherto was the enabling statute for the introduction and observance of English law in Southern Cameroons, remained in force. The common law accordingly became transplanted into the Cameroonian legal system via s. 11 of the Southern Cameroons High Court Law of 1955.

We must also note that before the official partition of Cameroon in 1916 between Britain and France and the subsequent application of Article 9 of the mandate, the transplanting of common law was also significantly influenced by repeated calls by the people of Southern Cameroons on the Queen of England to take over the territory of Southern Cameroons and administer it as well as its people. Thus, on the 7th of August 1879, King Acqua, Prince Dido Acqua, Prince Black, Prince Joe Garner and Prince Lawton of Douala jointly wrote this oft-quoted "invitation to take over" letter to the Queen of Victoria thus:

> *Dearest Madam, We your servants have join together and thought it better to write you a nice loving letter which will tell you about our wishes. We wish to have your laws in our towns. We want to have every fashioned altered, also we will do according to your consul's word. Plenty wars here in our country. Plenty murders and idol worshippers. Perhaps these lines of our writing will look to you as an idle tale. We have spoken to the English Consul plenty times about having an English Government here. We never have answer from you, so we wish to write you ourselves. When we hear about Calabar River, how they have all English laws in their towns, and how they have put away all their superstitions oh, we shall be very glad to be like Calabar now.*[7]

2. THE CAMEROONIAN LEGAL SYSTEM BEFORE THE ADVENT OF COLONIAL RULE

2.1 The role of customary law

It is trite law that, before the advent of colonial rule in the territory that now constitutes Cameroon and the subsequent importation of English laws into the territory, there were rules and regulations that guided and still guide the affairs of the people in their relationship with one another and as between the communities. These rules and regulations were recognised by the people and enforceable amongst themselves otherwise known as the native law and custom, collectively known as customary law. Customary law is both a source and form of law in Cameroon. The Customary Courts Ordinance Cap. 142 of 1948 applicable in Anglophone Cameroon[8] defines customary law as:

> *The native law and custom prevailing in the area of the jurisdiction of the court so far as it is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with any written law for the time being in force.*

The various bodies of customary law governed and still govern subjects like marriage, divorce, succession and inheritance, land tenure and chieftaincy matters. Cameroon is made up of many ethnic groups (about 250) with diverse customs and cultures. Sometimes, within the same group, customs do vary from place to place. A custom or customary law will only have the force of law only if recognised as such by the majority of the people and enforced by the courts. The Southern Cameroons High Court Law directs the High Court to observe and enforce the observance of customary law. Section 27 (1) of the said law enacts:

> *… the High Court shall observe and enforce the observance of every native law and custom which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any*

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[5] Article 22 of the Covenant of the League of Nations 1922.

[6] Article 85 of the Charter of the United Nations of June 26, 1945.

[7] E. Lewin, The Germans and Africa, Cassell & Co. Ltd., 1915, p. 138; S.G. Ardener, Eye-witness to the Annexation of Cameroon, Gvt. Press, Buea, 1968, pp. 19-20. For more on this see Carlson Anyangwe, The Cameroonian Judicial System (1987), CEPER – Yaounde, p. 24.

[8] *Jesco Manga Williams v. The President of the Native Court Victoria* (1962-1964) W.C.L.R. 34

law for the time being in force, and nothing in this Act shall deprive any person of any such native law and custom.

2.2 Attributes of a valid customary law

2.2.1. It must be the existing native law or custom

In the very old but important Nigerian case of *Lewis v. Bankole*[9], Speed Ag. C.J. stated that the first essential characteristic of customary law is that ''it must be the existing native law or custom and not the native law and custom of ancient times''[10]. Therefore, the prevailing native law and custom existing at a point of time must be the touchstone of a valid customary law. In line with this, s. 72(2) of the Southern Cameroons High Court Law 1955[11] provides that *''... such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives ...''* This is very important because the native law and custom of a particular ethnic group cannot be applicable to persons of a different ethnic group. In other words, the size of an ethnic group does not matter and as such the customary rules of an ethnic group cannot be superior to another no matter its size.

2.2.2 It must not be repugnant to natural justice equity and good conscience

The repugnancy test under s. 27(1) of the SCHCL 1955 and the Customary Court Ordinance Cap. 142 of 1948 is very crucial and it serves as a very important determinant factor in the validation of customary law by the courts in Anglophone Cameroon. The phrase ''the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience'' has given room to much debate because of the difficulty of harmonising customary law with legislative enactments. To this effect, the quantum of enforceable customary law in the modern courts is reduced by the following criteria:

(a) It must not be repugnant to natural justice, equity and good conscience;
(b) It must not be incompatible with any law for the time being in force.
(c) It must not be contrary to public policy.

It must be noted that only those rules of customary law which have passed the above tests can be enforced by the modern courts. To say that a rule of customary law will be enforced if it is not incompatible with any other law in force simply means that where statute has adequately provided for cases formerly covered by customary law the latter must yield place to the former. In other words, the enactment of the statute at once entails the repeal of the customary law on the subject.

The repugnancy test is also synonymous with the criteria of public policy. For instance, if a rule of customary law is repugnant to natural justice, equity and good conscience, then it necessarily offends against public policy.

Generally, if the court is satisfied that the custom is of general use within a particular ethnic group, it should not hesitate to uphold it. Hence, in *Immaculate Vefonge v. Samuel Lyonga Yukpe*[12], the Court of Appeal in Buea recognised and enforced a custom of the Bakweri people which forbade a husband to send away a nursing mother from the matrimonial home or to institute divorce proceedings against her. Similarly, in *Ngeh v. Ngome*[13], Gordon, C.J. refused to uphold the custom whereby a man claims paternity of a child of a runaway wife had with another man simply because he had failed to pay back the bride price or dowry.

Equally, in *Veuve Moukoko Mouelle*[14], the court held that the traditional law rule whereby it is the nearest male relative of a deceased male and not the deceased's widow who has rights to custody over the deceased's infant children and of administration of the deceased's estate, is contrary to the modern principle of equality between the sexes. The court then went on to grant custody of the deceased's infant children to the deceased's widow. In *Bollo v. Bollo*[15], the court advanced much the same reason in ruling in favour of equal partition of matrimonial property following the dissolution of a customary law marriage.[16]

In *Buma v. Buma*[17], Monekosso .J. did not only denounce the custom of the Baba II people in the North West Region of Cameroon but showed much surprise that the bride price had to be refunded in the event of divorce notwithstanding the duration of the marriage and the services that the wife had rendered in the course of the marriage.

Equally important is the fact that s. 72 (1) of the Civil Status Registration Ordinance 1981[18] (as amended) expressly condemns this customary practice in enacting that:

... the total or partial settlement of a dowry shall under no circumstances give rise to natural paternity which can only result from the existence of blood

[9] (1808) 1 NLR 81
[10] For instance, in the past, the birth of twins in some parts of Nigeria was regarded as a taboo and ill-luck. Examples were Cross River State and some parts of the Ibo land within the East. The twins were subsequently taken to designed ''Evil Forests'', where they were abandoned while some rituals were performed in the nature of ''cleansing rituals'' and appeasement of the Gods.
[11] Abbreviated, SCHCL.
[12] (Unreported)
[13] (1962-1964) WCLR 321
[14] C.S.C.O., Arret No. 43/L du 16 Janvier 1968, (Unreported).
[15] C.S.C.O., Arret No. 86/CC du 15 Mai 1971, 1 R.C.D. 64 (1972).
[16] For more on this, see also *Dayas v. Dayas*, C.S.C.O., Arret No. 30/L du 12 Janvier 1971; *Eding v. Eding*, C.S.C.O., Arret No. 138/L du 6 Juin 1967 (Unreported).
[17] (Unreported).
[18] Ordinance No. 81-02 of 29th of June 1981, (now amended by Law No. 2011/011 of 6th of May 2011).

relations between the child and his father.[19]

Another custom which our non-customary courts would be quick to condemn is that which concerns the ''inheritance of widows''. The practice prevails in many tribes in the North West Region of Cameroon, even though s. 72 (2) of the 1981 Ordinance appears to forbid the practice where it provides that:

> *... in the event of death of the husband, his heirs shall have no right over the widow nor over her freedom or the share property belonging to her. She may, provided that she observes the period of widowhood of 180 days from the death of her husband remarry without anyone laying claims whatsoever to any compensation or marital benefits or dowry or otherwise received either at the time of engagement, during or after marriage.*

Lastly, efforts by the courts and the law-maker to adapt customary law to changed circumstances do not always result in giving that law completely new facet. Sometimes, the courts and the legislator are content simply to water down the hardship of a customary law rule without the custom losing its essential character. The rule remains a customary law rule and all the courts and the legislator do is to parr off those parts considered to be inconsistent with modernisation, national development and unity. For example, payment or non- payment of customary dowry has no effect on the validity of any marriage, whether customary or not[20]. But the institution of bride price itself has not been proscribed or even declared repugnant. Section 357 of the Penal Code merely punishes abuse in respect of bride price.

In this vein, the institution of polygamy is not repugnant since the Cameroonian law-maker has not proscribed polygamy. Marriages in Cameroon are either polygamous or monogamous. For instance, s. 49 of the Civil Status Registration Ordinance requires would be spouses to specify in their marriage certificate , at the time of marriage, whether they have opted for polygamy or monogamy. If no such specification is made the marriage may be deemed to be potentially polygamous. However, s. 359 of the Penal Code punishes bigamy where either of the parties was previously married and contracts another marriage without dissolving the first one.

3. THE INTRODUCTION OF ENGLISH LAW IN CAMEROON

The application by courts in Anglophone Cameroon of laws of English origin makes the laws of English origin one of the important primary sources of law in Cameroon. In 1923 the British enacted the Cameroons under British Administration Order in-Council No. 1621 of June 1923 according to which British Cameroons was to be administered as though she formed part of the Protectorate of Nigeria. English laws and English influenced Nigerian legislation were therefore formerly extended to the British Cameroons. By this act, British Cameroons and Nigeria came to have the same courts system and laws. [21] Section 14 of the Nigerian Supreme Court Ordinance 1914,[22]directed the Supreme Court to apply the common law, the doctrines of equity and statutes of general application which were in force in England on 1st January 1900.

To this effect, s. 11 of the Southern Cameroons High Court Law 1955 re-enacted s. 14 of the Nigerian Supreme Court Ordinance of 1914 while s. 15 provided for the application of current English law in matters of probate, divorce and matrimonial causes. Section 11 and 15 of the Southern Cameroons High Court Law 1955[23] define the content of English law applicable in Anglophone Cameroon.

3. 1. Impact of s. 11 of Southern Cameroons High Court Law 1955

We must begin by noting that the common law accordingly became transplanted into the Cameroonian legal system via s. 11 of the Southern Cameroons High Court Law of 1955. Section 11 provides that:

> *Subject to the provisions of any written law and in particular of this section and of sections 10, 15 and 22 of this law ...*

(a) the common law;
(b) the doctrines of equity; and
(c) the statutes of general application which were in force in England on the 1st day of January, 1900, shall insofar as the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of the court.

From the above, the English common law, the doctrines of equity, and statutes of general application in force before the 1st day of January 1900, apply in Anglophone Cameroon because, for pragmatic reasons, the legislature of Southern Cameroons deliberately chose to receive them. Suffice it to note that the common law referred to in s. 11, applicable in Anglophone Cameroon is that as it exists in England today and not as it existed before 1900.

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[19] Section 41 (2) of the Ordinance equally provides that: ''Recognition and legitimation, except adoptive legitimation shall be based on blood relationship''.
[20] See s. 70 of the 1981 Civil Status Registration Ordinance.
[21] For more on this see Carlson Anyangwe , supra, at p. 222.
[22] No. 6 of 1914
[23] See also s. 29 of the Magistrates Courts (Southern Cameroons) Law 1955.

3.1.1 Limitations of s. 11 of the Southern Cameroons High Court Law, 1955

The triple formula by which English law was generally transplanted into British Cameroons and other British territories had given rise to academic controversy as to whether the cut-off date of 1st January 1900 applies to all three sources of law – common law, equity and statutes of general application or only to statutes of general application?[24] It is very clear that the cut-off date of 1st January 1900 applies only to statutes of general application. By implication, any English statute of general application which came into force after that date does not apply in Anglophone Cameroon. Examples of some prominent pre-1900 statutes of general application applicable in Anglophone Cameroon are – the Conveyance Act of 1881; Wills Act of 1837; Statute of Frauds 1677, Sale of Goods Act of 1893, to mention just a few. From the foregoing, post 1900 statutes of general application are inapplicable in Anglophone Cameroon. The challenge as to whether post 1900 English statutes of general application were applicable in Anglophone Cameroon came up in the unreported Cameroonian case of *Solomon Mukete AND 7 Others v. Joseph Tarh and 2 Others*[25]. This was a case decided under the English Fatal Accident Act of 1846-1864, in which the plaintiffs sued for compensation following the death of their bread winner in a road motor accident. In 1986 when the case came up, the English Fatal Accident Act 1846-1864 had been repealed and replaced by the English Fatal Accident Act 1976 and amended by the Administration of Justice Act 1982. The court in the above case rejected the claims of the plaintiffs on the grounds that their action and claims were based on the English Fatal Accident Act of 1976, a post 1900 statute of general application no longer applicable in Anglophone Cameroon. This post 1900 statute of general application was ousted by s.11 of the Southern Cameroons High Court Law which permitted the Courts of Southern Cameroons to apply only pre-1900 statutes of general application. It should be noted that the English Fatal Accident Act has completely been repealed in Cameroon and replaced with the uniform harmonized Insurance CIMA Code. Today, all matters in Cameroon relating to road motor accidents are regulated under the CIMA Code. If the *Solomon Mukete Case* were to be re-judged today, then the applicable legislation would have been the Insurance CIMA Code and the outcome probably would have been different. That is, case decided in favour of the plaintiffs. What remains of interest is that the Conveyance Act of 1881, the Wills Act of 1837, the Statute of Frauds of 1677 and the Sale of Goods Act of 1893 (as amended) are all English statutes of general application that are still applicable in Anglophone Cameroon subject to the availability or non-availability of local legislation.

Since the limiting date is 1st January 1900, any English statute of general application which came into force after that date does not apply in Anglophone Cameroon. This means that post-1900 English statutes of general application are inapplicable in Anglophone Cameroon. By the same token, any case decided in England after 1899 on the basis of a post 1900 statute is not law in Anglophone Cameroon. A post-1900 English decision will however be law in Anglophone Cameroon if the decision is based on any pre-1900 English statute of general application or if it does not involve a change of any particular common law doctrine or principle[26].

Suffice as well to state that any pre 1900 English statute of general application repealed before 1st January 1900 automatically ceases to apply in Anglophone Cameroon as well. But a pre-1900 statute repealed after 1st January 1900 will nevertheless continue to be in force in Anglophone Cameroon until, of course, amended or repealed by local legislation.[27]

3.2. Equity and common law

Considering the fact that the limiting date applies only to statutes of general application, it follows that the reception in Anglophone Cameroon of the common law and the doctrine of equity is dateless. The doctrines of equity and equity mean one and the same thing. They refer to equitable maxims[28], equitable interest[29] and equitable remedies[30], all taken together, that is to say, the whole body of principles developed by English courts of chancery from medieval times as a gloss upon the common law and which had become rigid and technical by the end of the 19th century.

Section 11 clearly refers to English statutes of general application. But it makes no express reference to English common law and doctrines of equity. However, as a matter of legal history there can be no doubt that it is the English common law and the English doctrines of equity that were intended. In 1955 when the Southern Cameroons High Court Law was enacted, the Southern Cameroons was still a British colonial territory and it was the English legal system that obtained there. By this implication the colonial British Administration did not intend Southern Cameroons to apply any other law other than that of England or the colonial territory.

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[24] See Allott, New Essays in African Law, (1970) Butterworth – London 28. Equally note the arguments of E.N. Ngwafor, ‘*’Cameroon: The Law Across the Bridge: Twenty Years (1972-1992) of Confusion’’*, Revue General de droit, Vol. 26, 1995, pp 70-72.

[25] (1986) (Unreported).

[26] See Carlson Anyangwe, op.cit. at 222.

[27] Ibid, at p. 223. A good example here is the English Sale of Goods Act 1893 (as amended) by the 1979 Act. The 1893 Act even though amended by the 1979 Act has not been repealed in Cameroon and the courts of Anglophone Cameroon up till this date still cite the provisions of the 1893 amended Act where the OHADA Uniform Act Relating to General Commercial Law is salient on the issue concerned.

[28] About 12 in number.

[29] E.g. the equitable interest of the beneficiary over the trust property.

[30] E.g. specific performance.

It must be noted that the absence of any express reference to England concerning the common law and doctrines of equity renders attractive and compelling the argument that the court need not confine itself to the English common law and doctrine of equity. Indeed, although courts in Anglophone Cameroon invariably apply the common law and the doctrines of equity, they do not regard themselves as absolutely bound by the specifically English law.

3.3. Matters of probate, divorce and matrimonial causes and proceedings

Section 15 of the Southern Cameroons High Court Law, 1955 also makes provision for the application of English law in Anglophone Cameroon in matters related to probate, divorce[31] and matrimonial causes and proceedings[32] where it provides:

> *The jurisdiction of the High Court in probate, divorce, and matrimonial causes and proceedings may, subject to the provisions of this law and in particular of s. 27, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force in England.*

First, the direction to apply in probate, divorce and matrimonial causes and proceedings, the law and practice for the time being in force in England is not imperative for, s. 15 uses the discretionary 'may' and not the mandatory 'shall'. Secondly, the phrase 'for the time being in force in England 'means currently in force in England. Thus, the law in probate, divorce and matrimonial causes and proceedings in Anglophone Cameroon changes as the law in England on those subjects changes too. This means that laws enacted by Westminster on those subjects are automatically applicable in Anglophone Cameroon. Thirdly, the application of s. 15 is subject to s. 27 which directs the courts to observe and enforce the observance of every customary law which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force.

3.4. Practice and procedure of the English High court

Here, s. 10 of the Southern Cameroons High Court Law is also very instrumental. It empowers the High courts in Anglophone Cameroon, so far as practice and procedure are concerned, to follow the practice and procedure of the English High Court of Justice in the absence of local legislation. The section provides:

> *The jurisdiction vested in the High Court shall, so far as practice and procedure are concerned, be exercised in the manner provided by this law or any other written law, or by such rules and orders of court as may be made pursuant to this law or any other written law, and in the absence thereof in substantial conformity with the practice and procedure for the time being of Her Majesty's High Court of Justice in England.*

In compliance with s.10 of the Southern Cameroons High Court Law, the practice and procedures in Her Majesty High Court in England were extended to the High Courts within Anglophone Cameroon. This includes the mandatory powers of mandamus, habeas corpus, certiorari and injunctions.

4. LIMITATIONS TO THE APPLICATION OF ENGLISH LAWS IN CAMEROON

To be more specific, even though English statutes are regarded as statutes of general application, their applicability is not without limitations. The application of the statutes could be curtailed by local circumstances as well as local jurisdictions. The following may be regarded as limitations to the application of English laws in Cameroon:

(i) The first limitation is that before an English law is applicable in Cameroon, it must have been in force or promulgated in England before 1st day of January, 1900. That is the import of s. 11 of the Southern Cameroons High Court Law 1955.

(ii) The second limitation is found in the provisions of s. 11 (c) of the Southern Cameroons High Court Law. The section provides to the effect that the English laws ''shall be in force so far as the limits of the local jurisdiction and local circumstances shall permit''. We may illustrate this with the very good Privy Council case of *Wallace Johnson v. R*[33]. In that case, the accused who had published an article attacking the government in virulent terms, was charged with the offence of sedition under s.330 of the then Gold Coast Criminal Code. In England, sedition is a common law crime of which an essential ingredient is an incitement. This ingredient was absent in the Code. It was the contention of the accused/appellant that since the intention of the framers of the code was to reproduce English law, the requirement of an incitement to violence must be read into the code as forming a part of the offence which the prosecution must prove. The Privy Council rejected this argument and upheld the conviction. It observed that whatever may have been the intention in framing the code, the fact remains that, it is in the Criminal Code of the Gold Coast colony and not in English or Scottish cases that the law of sedition is to be found, and that the case must be decided on the strength of the local circumstances.

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[31] For example the grounds for divorce under English law are applicable verbatim in Anglophone Cameroon.

[32] The 1973 Matrimonial Causes Act of England is the applicable law in West Cameroon with respect to matrimonial issues and proceedings.

[33] (1940) A.C. 231

(iii) Thirdly, English laws or statutes are usually not applicable in Cameroon on matters relating to customary laws on succession, land disputes and family ties. In the case of land disputes in particular, it is normally the *Lex Situ* , meaning that the land dispute will be decided based on the law of the place where the land in question is situated.

(iv) Lastly, there is what we may call limitation by agreement of the parties to a particular dispute. Thus, if substantial injustice or miscarriage of justice would be done or occasioned to either party due to strict adherence to the rules of English law or statute, the application of English law or statute may be excluded by agreement by the parties and instead of the application of the English law, the parties may resort to customary law to determine the case. The parties by agreement could also resort to the Alternative Dispute Resolution (ADR) mechanisms.

5. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

In this write up, we attempted to look at the English laws introduced in Anglophone Cameroon as the aftermath of colonialism. These laws which are the common law, the doctrines of equity and the statutes of general application that were in force in England on the 1st day of January 1900 have all combined with the French civil law to give Cameroon a bi-jural legal system.[34]Thus, in Cameroon as a whole, four sets of laws are applicable – local legislation, customary law, English derived laws and the French civil law. Our findings equally revealed that in spite of the phrase ''statutes of general application'', neither the statutes in force in England on the 1st of January 1900, nor the common law of England and doctrines of equity apply in Cameroon without limitation. They are subject to local limits or circumstances depending on the subject matter in question as well as local jurisdictions.[35]

5.2. Recommendations

5.2.1. Harmonization of the English common law and the French civil law

The common law and the French civil law introduced in Cameroon by Britain and France respectively are colonial laws that appear to be opposed to each other in several ramifications.[36] In other words, the adoption of a bi-jural legal system appears to have left the judiciary more divided than united. For instance, most of the common law and civil law principles are not the same, while most Francophone and the Anglophone judges are not well grounded in both legal systems. [37] The harmonization process is thus very slow. The adoption of a unified Constitution, Penal Code, Criminal Procedure Code, High Way Code, Insurance CIMA Code to mention just a few, has not resolved the situation. In addition to the disparity in the High Court Rules and Orders, most principles in tort law[38] are not the same as well as matrimonial causes issues. The citizens are generally not comfortable with the dual legal system. A complete harmonization of the two systems will thus render the judiciary more credible and will give the citizens a sense of belonging as well. This could go a long way to ameliorate the crisis rocking the two English speaking regions of Cameroon as one of the major grievance of Anglophone lawyers is the absorption of common law by the French civil law to the detriment of English speaking Cameroonians as a whole.

5.2.2. Independent Judiciary and responsible Executive

Recommendation No. 1 above cannot be achieved unless the judiciary is independent. Here we are referring to a judiciary that is not bias. In addition, it must be willing to accurately interpret principles of law and apply them in relevant cases without being directed by the Executive body. The Executive on the other hand must provide the level playing ground for the Judiciary to succeed. This refers to the required structures, funding and non – interference with judicial business.

5.2.3. A responsible Legislature

The entire business of law making lies in the legislature.[39] The harmonization process of the common law and the civil law principles is thus the exclusive duty of the legislature. We may then note that most of the colonial laws are today very obsolete because time and circumstances have changed. They must be repealed and replaced with local legislations that will meet need and aspirations of the citizens as well as the 21st century circumstances. For this to happen in Cameroon, the legislature must be independent of the executive and must be capable of initiating bills. It must be observed that most bills voted for by the legislature in Cameroon are Government introduced bills. This implies that, where the law is obsolete nothing will be done unless the Executive introduces such

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[34] The enabling instruments for the introduction of French and French derived laws in Francophone Cameroon were the Decrees of 16th April 1924 and of 22 May of the same year. Both decrees were made pursuant to the provisions of the French mandate for the French Cameroons (20th July 1922).

[35] See once again s.11 of the Southern Cameroons High Court Law 1955

[36] E.G. the High Court Orders and Rules applicable in Anglophone Cameroon are not the same in Francophone Cameroon; The Evidence Act applicable in Anglophone Cameroon is different, while the French Civil Code which is applicable verbatim in Francophone Cameroon is not applicable in Anglophone Cameroon, etc, etc.

[37] In 2018, Anglophone Lawyers of Cameroon took to the streets and decried the miss-interpretation of common law principles by French judges that are sent to the courts within the English speaking regions of Cameroon.

[38] For example, the principle of '*'res ipsa loquitur''* , a common law principle is not known under the French civil law. While the French civil insist on prove of fault under the law of negligence, the principle of ''res ipsa loquitur'' is an acceptable English common law principle in Anglophone Cameroon that can assist or avail the plaintiff where he is unable to establish the actual cause of his harm.

[39] In Cameroon, this is done by the National Assembly and the Senate in accordance with Articles 14-24 of the 1996 Constitution as amended.

a law for amendment or total repeal. The legislature should thus take its responsibility into its own hands and ensure a total harmonization as well as liberate Cameroon from obsolete colonial laws. But for now, the quantum of the Cameroonian legal system includes foreign colonial laws - the English common law, the doctrines of equity, the statutes of general application inclusive and the French civil law.

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4. See Annexes 374f and 374g to the minutes of the Nineteenth Sessions of the Council of the League of Nations, Appendices: League of Nations Official Journal, August 1922, 872 and 877.
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8. Jesco Manga Williams v. The President of the Native Court Victoria (1962-1964) W.C.L.R. 34
9. (1808) 1 NLR 81
10. For instance, in the past, the birth of twins in some parts of Nigeria was regarded as a taboo and ill-luck. Examples were Cross River State and some parts of the Ibo land within the East. The twins were subsequently taken to designed ''Evil Forests'', where they were abandoned while some rituals were performed in the nature of ''cleansing rituals'' and appeasement of the Gods.
11. Abbreviated, SCHCL.
12. (Unreported)
13. (1962-1964) WCLR 321
14. C.S.C.O., Arret No. 43/L du 16 Janvier 1968, (Unreported).
15. C.S.C.O., Arret No. 86/CC du 15 Mai 1971, 1 R.C.D. 64 (1972).
16. For more on this, see also Dayas v. Dayas, C.S.C.O., Arret No. 30/L du 12 Janvier 1971; Eding v. Eding, C.S.C.O., Arret No. 138/L du 6 Juin 1967 (Unreported).
17. (Unreported).
18. Ordinance No. 81-02 of 29th of June 1981, (now amended by Law No. 2011/011 of 6th of May 2011).
19. Section 41 (2) of the Ordinance equally provides that: ''Recognition and legitimation, except adoptive legitimation shall be based on blood relationship''.
20. See s. 70 of the 1981 Civil Status Registration Ordinance.
21. For more on this see Carlson Anyangwe , supra, at p. 222.
22. No. 6 of 1914
23. See also s. 29 of the Magistrates Courts (Southern Cameroons) Law 1955.
24. See Allott, New Essays in African Law, (1970) Butterworth – London 28. Equally note the arguments of E.N. Ngwafor, ''Cameroon: The Law Across the Bridge: Twenty Years (1972-1992) of Confusion'', Revue General de droit, Vol. 26, 1995, pp 70-72.
25. (1986) (Unreported).
26. See Carlson Anyangwe, op.cit. at 222.
27. Ibid, at p. 223. A good example here is the English Sale of Goods Act 1893 (as amended) by the 1979 Act. The 1893 Act even though amended by the 1979 Act has not been repealed in Cameroon and the courts of Anglophone Cameroon up till this date still cite the provisions of the 1893 amended Act where the OHADA Uniform Act Relating to General Commercial Law is salient on the issue concerned.
28. About 12 in number.
29. E.g. the equitable interest of the beneficiary over the trust property.
30. E.g. specific performance.
31. For example the grounds for divorce under English law are applicable verbatim in Anglophone Cameroon.
32. The 1973 Matrimonial Causes Act of England is the applicable law in West Cameroon with respect to matrimonial issues and proceedings.
33. (1940) A.C. 231

34. The enabling instruments for the introduction of French and French derived laws in Francophone Cameroon were the Decrees of 16th April 1924 and of 22 May of the same year. Both decrees were made pursuant to the provisions of the French mandate for the French Cameroons (20th July 1922).
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36. E.G. the High Court Orders and Rules applicable in Anglophone Cameroon are not the same in Francophone Cameroon; The Evidence Act applicable in Anglophone Cameroon is different, while the French Civil Code which is applicable verbatim in Francophone Cameroon is not applicable in Anglophone Cameroon, etc, etc.
37. In 2018, Anglophone Lawyers of Cameroon took to the streets and decried the miss-interpretation of common law principles by French judges that are sent to the courts within the English speaking regions of Cameroon.
38. For example, the principle of ‘’res ipsa loquitur’’ , a common law principle is not known under the French civil law. While the French civil insist on prove of fault under the law of negligence, the principle of ‘’res ipsa loquitur’’ is an acceptable English common law principle in Anglophone Cameroon that can assist or avail the plaintiff where he is unable to establish the actual cause of his harm.
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