

Contents

Dedication	...	...	...	...	...	...	...	...	xi
Acknowledgements	...	...	...	...	...	...	...	...	xii
Foreword	...	...	...	...	...	...	...	...	xv
Preface...	...	...	...	...	...	...	...	...	xix
List of Abbreviations	...	...	...	...	...	...	...	...	xxv
Table of Cases...	...	...	...	...	...	...	...	...	xxix
Table of Statutes	...	...	...	...	...	...	...	...	xliii

Chapter One

THE ORIGIN OF STATE

Introduction	...	...	...	...	...	...	...	...	1
Natural Law	...	...	...	...	...	...	...	...	3
Theory of Social Contract	...	...	...	...	...	...	...	...	7
Exponents of the Social Contract Theory	...	...	...	...	...	...	...	...	9
The Historical Development of the Rights of Man	...	...	...	...	...	...	...	...	20
The Legal Pattern of Historical Development	...	...	...	...	...	...	...	...	21
Movement From Status to Contract	...	...	...	...	...	...	...	...	22
The Reason of State	...	...	...	...	...	...	...	...	23
History of Man and the Law	...	...	...	...	...	...	...	...	25
The Equidistant Perfection between Anarchy and Despotism	...	...	...	...	...	...	...	...	27
Evidence of the Nature of Man	...	...	...	...	...	...	...	...	33
Conclusion	...	...	...	...	...	...	...	...	36

Chapter Two

THE RULE OF LAW

Introduction	...	...	...	...	...	...	...	...	39
Dicey's Exposition of the Rule of Law	...	...	...	...	...	...	...	...	40
(a) Delegated Legislation	...	...	...	...	...	...	...	...	40
(b) Administrative Tribunals	...	...	...	...	...	...	...	...	42
(c) Discretionary Power	...	...	...	...	...	...	...	...	43

(d) Equality Before the Law	43
(e) Protection of Individual Rights and Liberties	44
Implications of the Rule of Law Today	46
a. Equal Access to and Equal Protection of Law	46
b. Existence of Effective System of Government	48
c. Independence of the Judiciary	49
The African Conference on the Rule of Law	50
The Rule of Law in Nigeria	52
Law and Morality	55
Conclusion	60

Chapter Three

BACKGROUND TO UNDERSTANDING INTERNATIONAL LAW

Introduction	63
International Law	64
International Law and other International Values	67
Law or International Positive Morality	70
Evidence that International Law is Law	74
Related Aspects of International Law and their General Interconnectedness	75
a. International Human Rights Law	76
b. International Humanitarian Law	82
c. International Criminal Law	87
d. The Wider Interrelatedness	89
Conclusion	91

Chapter Four

HUMAN RIGHTS

Introduction	93
Definition and Content of Human Rights	93
Classification of Human Rights	96
The Minimum Content of Fundamental Human Rights	97

(a) Right to Life	99
(b) Right to Dignity of Human Person	101
(c) Right to Personal Liberty	104
(d) Right to Fair Hearing	106
(i) Fair Hearing of Civil Rights and Obligations	108
(ii) Fair Hearing in Criminal Trials	109
(iii) Presumption of Innocence	110
(iv) Fair Trial	111
(e) Right to Private and Family Life	119
(f) Right to Freedom of Thought, Conscience and Religion	121
(g) Right to Freedom of Expression and the Press	124
(h) Right to Peaceful Assembly and Association	130
(i) Rights to Freedom of Movement	133
(j) Right to Freedom from Discrimination	136
(k) Right to Freedom to Own Property	138
(l) Compulsory Acquisition of Property	139
Absoluteness of the Fundamental Human Rights	141
Conclusion	144

Chapter Five

ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Introduction	147
Enforcement Institutions	147
The National Human Rights Commission	154
Legal Aid Council	158
Procedure for the Enforcement of Human Rights in Nigeria	162
Courts with Jurisdiction over Fundamental Human Rights in Nigeria	167
Human Rights Enforcement and Limitation Law	170
Remedies Available in an Action for Enforcement of Human Rights	174
(a) Habeas Corpus	174
(b) Mandamus	175
(c) Prohibition and <i>Certiorari</i>	175
(d) Injunction	176

(e) Declaration	...	...	...	...	...	...	...	176
(f) <i>Quo Warranto</i>	...	...	...	...	...	...	...	177
Conclusion	...	...	...	...	...	...	...	177

Chapter Six

EMERGENCE OF INTERNATIONAL CRIMINAL LEGAL SYSTEM

Introduction	...	...	...	...	...	...	...	181
The Metamorphosis of Sanctions in International Law	...	...	...	...	...	...	...	183
The Nuremberg and Tokyo Tribunals	...	...	...	...	...	...	...	185
The International Criminal Tribunal for the former Yugoslavia (ICTY)	...	...	...	...	...	...	...	188
The International Criminal Tribunal for Rwanda (ICTR)	...	...	...	...	...	...	...	189
The International Criminal Court (ICC) Statute	...	...	...	...	...	...	...	191
a. Genocide	...	...	...	...	...	...	...	192
b. Crimes Against Humanity	...	...	...	...	...	...	...	192
c. War Crimes	...	...	...	...	...	...	...	193
Exercise of the Court's Jurisdiction	...	...	...	...	...	...	...	198
Powers and Functions of the Prosecutor	...	...	...	...	...	...	...	198
Conclusion	...	...	...	...	...	...	...	199

Chapter Seven

COMMENCEMENT OF PROCEEDINGS AND INTERNATIONAL COOPERATION

Introduction	...	...	...	...	...	...	...	201
National System	...	...	...	...	...	...	...	202
The Systems at the ICTY and ICTR	...	...	...	...	...	...	...	212
Proposal for the ICC	...	...	...	...	...	...	...	214
International Cooperation	...	...	...	...	...	...	...	226
Conclusion	...	...	...	...	...	...	...	233

Chapter Eight

SEPARATION OF POWERS AND PRE-TRIAL INQUIRY

Introduction	235
--------------	-----	-----	-----	-----	-----	-----	-----	-----

Separation of Powers	...	...	...	...	...	...	...	236
Pre-Trial Inquiry	...	...	...	...	...	...	...	237
The Various Institutions	...	...	...	...	...	...	...	237
The Investigating Bodies	...	...	...	...	...	...	...	238
The Prosecution	...	...	...	...	...	...	...	239
a. Relationship between Investigating Bodies and Prosecution	...	...	...	...	...	...	...	240
b. Independence of Prosecution from the Executive	...	...	...	...	...	...	...	243
c. Appointment of the Prosecutor	...	...	...	...	...	...	...	245
d. Application at the ICC	...	...	...	...	...	...	...	246
The Court	...	...	...	...	...	...	...	251
a. Independence of the Court	...	...	...	...	...	...	...	252
b. Impartiality of the Court	...	...	...	...	...	...	...	252
c. Application at the ICC	...	...	...	...	...	...	...	254
Conclusion	...	...	...	...	...	...	...	255

Chapter Nine

PRINCIPLES OF TRIAL

Introduction	...	...	...	...	...	...	...	259
The Principle of Publicity of Proceedings	...	...	...	...	...	...	...	260
The Principle of Oral Trial	...	...	...	...	...	...	...	268
The Right to be Present During Trial	...	...	...	...	...	...	...	270
The Principle of Speedy Trial	...	...	...	...	...	...	...	274
The Presumption of Innocence	...	...	...	...	...	...	...	276
The Principle of Equality of Arms	...	...	...	...	...	...	...	280
Conclusion	...	...	...	...	...	...	...	282

Chapter Ten

POST CONVICTION EXIGENCIES

Introduction	...	...	...	...	...	...	...	285
Double Jeopardy	...	...	...	...	...	...	...	290
Right to Appeal	...	...	...	...	...	...	...	295
Sentencing	...	...	...	...	...	...	...	296
Compensation for Victims	...	...	...	...	...	...	...	300

Conclusion	302
------------	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Chapter Eleven
RESTORATIVE CRIMINAL JUSTICE

Introduction	...	...	...	...	...	...	...	...	...	305
Crime	...	...	...	...	...	...	...	...	...	306
Criminal Justice	...	...	...	...	...	...	...	...	...	307
Retribution in the Criminal Justice System	...	...	...	...	...	...	...	...	...	307
A Viable Alternative to Retributive Criminal Justice System	...	...	...	...	...	...	...	...	...	309
Restorative Criminal Justice as an Alternative to Penal Sentencing	...	...	...	...	...	...	...	...	...	311
Restorative Justice	...	...	...	...	...	...	...	...	...	313
A Historical Survey of Restorative Justice	...	...	...	...	...	...	...	...	...	316
Anachronism of Justice	...	...	...	...	...	...	...	...	...	323
Conclusion	...	...	...	...	...	...	...	...	...	326

Chapter Twelve
THEORETICAL FOUNDATIONS AND METHODS
OF RESTORATIVE JUSTICE

Introduction	...	...	...	...	...	...	...	...	...	333
Theoretical Argument in Support of Restorative Justice	...	...	...	...	...	...	...	...	...	334
a. Victims' Participation in the Criminal Justice Process	...	...	...	...	...	...	...	...	...	334
b. Failures of the Criminal Justice Process	...	...	...	...	...	...	...	...	...	337
c. The Need for Recognition of Indigenous Law..	...	...	...	...	...	...	...	...	...	341
d. The Arbitrary Definition of Crime	...	...	...	...	...	...	...	...	...	341
e. The Theory of Re-integrative Shaming	...	...	...	...	...	...	...	...	...	342
f. Matza's Theory of Neutralisation	...	...	...	...	...	...	...	...	...	344
g. Private Sector Participation in Reducing Recidivism...	...	...	...	...	...	...	...	...	...	344
h. The Economic Importance of Restoration to State	...	...	...	...	...	...	...	...	...	345
Methods of Restorative Justice	...	...	...	...	...	...	...	...	...	346
a. Victim Offender Meditation	...	...	...	...	...	...	...	...	...	347
b. Family Group Conferencing	...	...	...	...	...	...	...	...	...	349
c. Circles...	...	...	...	...	...	...	...	...	...	350

d. Panels	...	...	...	...	...	...	...	...	...	351
Benefits of Restorative Justice	...	...	...	...	...	...	...	...	...	353
Guilt/Intention in Restorative Justice	...	...	...	...	...	...	...	...	...	354
The Likely Negative Effects of Restorative Justice	...	...	...	...	...	...	...	...	...	356
Conclusion	...	...	...	...	...	...	...	...	...	357

Chapter Thirteen
SUMMARY OF FINDINGS AND RECOMMENDATIONS

Summary of Findings	...	...	...	...	...	...	...	...	...	363
Recommendations	...	...	...	...	...	...	...	...	...	368
Appendixes	...	...	...	...	...	...	...	...	...	373
Bibliography	...	...	...	...	...	...	...	...	...	529
Epilogue	...	...	...	...	...	...	...	...	...	551
Index	...	...	...	...	...	...	...	...	...	557