EDO UNIVERSITY IYAMHO

Faculty of Law

Legal Methods I (PUL 111)

• Contributor: DR. OLUFEMI ABIFARIN, simon.abifarin@edouniversity.edu.ng
• Contributor: MISS HAUWA ABIRI, hauwa.abiri@edouniversity.edu.ng

Description: This course is designed to expose students to legal methods and the workings of law in the society. It will examine such issues as the meaning of law; the functions of law; the law and allied concepts i.e. law and morality, law and freedom, law and justice, law and order, law and the state, law and legitimacy, as well as law and sovereignty; the types, theories, sources and classification of law; the methods of social control through law; comparative adjudicatory methods and customary methods of adjudication; the nature of orthodox legal process; legal reasoning, legal language, legal logic, legal rhetoric and justification; legal reasoning in legislative process, legal reasoning in judicial decision and interpretation of statutes.

Objectives: At the completion of this course, students are expected to know the meaning, scope and importance of legal method; know the meaning, features and functions of the law; understand the different aspects, types, theories, sources and classification of law; show sufficient knowledge of law as an instrument of social control; understand and apply the different adjudicatory methods; understand the concepts of legal reasoning, legal language, legal logic, legal rhetoric and justification; appreciate the basic principles of legislative drafting; understand legal reasoning in legislative process, legal reasoning in judicial decisions and the interpretation of statutes.

Assessments: Students must attain a minimum class attendance of seventy-five percent (75%) class attendance to qualify to write the examinations at the end of the semester. Note: A list of students' class attendance will be published not later than two weeks to the end of the semester examinations. Note also that late submission of term papers, assignments and lecture notes, as well as failure to write tests and examinations without a cogent reason will attract zero mark.

Grading:

• Continuous Assessment:	30%
• Examination:	70%
• Total:	100%

Recommended Textbooks:

• Introduction to Nigerian Legal Method
Abiola Sanni
2nd Edition, 2006
ISBN: 9781361547

• The Nigerian Legal Method
Ese Malami,
2nd Edition, 2012.
ISBN: 9789789060467

INTRODUCTION

Legal Method is an introductory course for fresh students who are just starting law programme. It is a unique course. It is not about learning specific rules or branches of law as it is in Law of Contract, Company Law, International Law, Law of Evidence, etc. It introduces students to the nature, language, techniques and dynamics of law in the early stage of their academic life. This will help the students to lay a good foundation for proper understanding and application of the various substantive rules and principles which they will come across as they progress in their legal education.

The Definition of Legal Method

The phrase 'Legal Method' consists of two words, which are 'legal' and 'method'. The word 'legal' implies things relating or pertaining to law while 'method' means a way or procedure of doing something in an organized and planned manner. Legal method can therefore be defined as the way and manner of doing things relating to law in the society. It is also the study of how lawyers, judges act according to law so as to achieve its objectives in the society. Thus, legal method is the study of law and the various methods, processes, and procedure the law can be effectively used to meet the need of the individual and the state.

The Importance of Legal Method

As discussed earlier there are organized ways, manners, language and processes for doing things in law which a layman may not understand. Legal method is an introductory course for the aspiring lawyer to get him indoctrinated into legal studies. The aims and objectives of legal method can be summarized as follows:

- To enable students to have a proper understanding of the nature, functions, breadth and diversity of law.
- To lay a foundation upon which other law subjects will be built.
- To enhance the students' understanding of the reason for law in a society, how it operates and what it seeks to achieve.
- To expose students to the reasoning of lawyers and judges in the interpretation and application of law.
- To enhance students' knowledge and appreciation of the various methods or techniques which involve the law.
- To introduce students to certain functional processes and concepts which they are bound to come across in the study of law.
- To enhance students' ability to construct arguments about the facts of a given case and why a particular precedent or authority should be applied or not.
- To deepen the student's knowledge, understanding and application of various legal rules.

The Scope of Legal Method

As an introductory course for legal studies, the study of legal method includes the following areas:

- The role of law in the society
- Nature and functions of law in the society
- Types and theories of law
- Classification of law
- Sources of law

- Methods of social control through law
- Legal reasoning and approach to problems
- Legal reasoning in legislation
- Legal reasoning in judicial process
- Interpretation of statutes
- Legal research and use of source materials
- The process of legal writing and the approaches in essay writing.

WHAT IS LAW?

The question 'What is law?' is very important to a fresh law student because it is important for him or her to know the profession he or she is about to study. The aspiring student has to know what law entails because there are different ideas of law, many of which are inadequate to give accurate account of law. 'Law' can be understood and used in general or technical sense (i.e. wider or strict sense of law). It is in the general sense of law that we can talk about the law of God, law of demand and supply, Newton's law of motion, etc. On the other hand, the technical sense of law which simply means a rule of action or a rule to which action must conform, is the subject of study by law students. In this sense, law will be defined without any philosophical problems. Thus, law can be defined 'as a rule or a body of rules made by Institutions, bodies and persons vested with the power to make such rules which are binding and enforced among members of a given state'. It is the law that is legally created that can bind individuals and even the state itself.

FEATURES OF LAW

As a result of the apparent impasse of giving a precise definition for 'law', philosophers, jurists and legal scholars have adopted a more viable method of describing what law does in a society rather than embarking on a fruitless unending exercise for an outright definition of law. There are some observable features that are unique to law. These are discussed as follows:

1. Law is a body of rules

To a layman, law is contained in a big book where all the rules regulating the society are found to which the lawyers have access. To the lawyer on the other hand, law in a technical sense is a body of rules regulating society, some of which are contained in some documents such as the Constitution, numerous rules contained in statute or statutory provisions and numerous rules contained in Judges' decisions. All these are referred to as the law. It is a collection of do's, don'ts or norms in a society.

2. Law is human-made

This is another unique feature of law. Nowadays, laws are made by the legislature or other authorized law maker according to the system of government or legal system put in place in a given society or country, unlike in the olden days when laws evolved over a period of time from customs.

3. Law is dynamic in nature

Law is dynamic in the sense that, it can be amended and reformed. It is not static. Also new laws can be enacted. This is in a view to meet the ever changing needs of the people as changes occur and society grows daily. It evolves over time. It changes and gets better with

time in order to better secure and achieve its objectives in a society. A change can be caused by social, political and economic situation in a country.

4. Law is normative in character

This is also another unique feature of law. The rules of law consist of norms for the regulation of human conduct in a society. It is a reflection of social beliefs and attitudes in a society. Law is fundamental and pervasive. It regulates all spheres of life and human endeavour. It prescribes what should be done and consists of rules that are normative.

5. Law has element of coercion

Law is forceful. A breach of law attracts sanctions and these are enforced through organized means such as the Police, Court, Prisons. The law is a rule of action backed by sanctions. It compels people to act according to form. If there is no sanction attached, then it is no more a law but a mere moral advice.

6. Law has territorial limitation

Laws are usually made to regulate the conduct or interpersonal relationships of people in a particular society. For example, the Provisions of the 1999 Constitution of Nigeria cannot bind the citizens of Niger Republic or Cameroun and also a particular country cannot look into the revenue laws of another country.

FUNCTIONS OF LAW IN A SOCIETY

In every society, there is the need to regulate the activities of the individuals within it. This is more so in societies where there are developments in commerce, information and technology, as well as other spheres of life. It is necessity for laws to be made to regulate interpersonal relationships and business activities. Thus the importance of law in a society cannot be overemphasized. In Nigeria, laws are used to regulate the activities of private individuals and governmental bodies.

- Law fosters public and social order. It makes human behaviour orderly and predictable because one will be relatively sure of what ought to be done and what ought not to be done under the law.
- Law ensures societal order, peace, stability by providing a means of settling disputes, providing reparation and correcting wrongs such as that exercised by the Courts under the administration of justice system.
- It is an instrument of political, social, economic change and stability; it can be used to restructure any sector of society.
- Law fosters social order by facilitating and regulating cooperative action. It guarantees and regulates peoples' mutual rights, freedoms, duties, and obligations.
- It also creates institutions, constitutes and regulates the principal organs of government. communicates and reinforces social values in the society.
- It assures progress and advancement of society. It provides a framework for individual self-actualization and for society to achieve its goals.

If there are no human made laws people will be guided by the dictates of their mind and principles of morality; thereby choosing to live and act according to the norms and customs of the community, into which they were born and according to their conscience. In other words, the existence of law and law enforcement agency is very important in a society to

protect persons, properties, rights, freedoms and also to avoid chaos, lawlessness and disintegration. That is to say that law ensures an orderly, safe, progressive and free society.

Why do People obey the Law?
There are many reasons why people obey the law. Some people obey the law simply because it is good to do so or it is necessary to act in conformity with the law. Law has elements of coercion. In this case people who chose to disobey the law are usually sanctioned. Such people therefore obey the law for the fear of sanction.

OBJECTIVES OF LAW

The objectives of law are the main purpose for which law is directed in a society. From the functions of law discussed before, the objectives of law are as follows:

Law and Morality
Morality can be defined as the principle concerning right and wrong, good or bad behaviours in the society. Moral principles are usually used to evaluate the degree to which something is right or wrong, good or bad. Moral standards are usually higher than legal standards.

Law and Order
One of the main objectives of law in a society is the maintenance of order. Law is a body of rules put together by a constituted authority to regulate conducts in a given society, backed by sanctions while order means the proper arrangement of people and things so that they will work harmoniously according to law for the benefit of the society. The main purpose of law is the maintenance of order. Without law, the maintenance of order may not be realistic. Thus the purpose of law is to organize and put the society in order or bring order to the society so that everything will function properly. It is therefore the duty of government to put law in place to maintain order through law enforcement agencies such as the Police, Court, Prisons, etc. However, the presence of law is not enough to guarantee order in a society. Much has to depend on the attitude of the people and the effectiveness of law enforcement mechanisms.

Law and Freedom
Freedom is the ability to do what a person wants to do or not to do what a person doesn't want to do. It is liberty from restriction or limitation. However, there is no absolute freedom in the world. The freedom of a person is limited by his duties to the state and other persons. Freedom of man is one of the main objectives of law. The quest for freedom is innate in man. The law is said to ensure and guarantee freedom for members of the society, for example.

Freedom of Contract
This is the desire for a man to have ability to make a free bargain and enter into enforceable agreement as he desires. This quest for freedom of contract has led to the free enterprise philosophy which is a way of allowing a man to actualize his dreams and potentials.

Political Freedom
This is understood in terms of the right to vote and be voted for. This has generated democratic principles and it's believed that it is the aim of the law to institutionalize democratic procedures.
Political freedom is another way of man actualizing his right of participation in governance or in issues that concern or affect him. Political freedom has also led to different agitations especially the struggle for independence in a modern state. One of the results of the quest for

political freedom is the Universal Declaration of Human Rights (UDHR) which is one of the most important documents of the United Nations. This has been transcribed into Constitutional provisions guaranteeing human rights in many nations of the world, including Nigeria. Some of the rights include:

- Right to life
- Personal liberty
- Ownership of property
- Freedom of speech and the press
- Right against discrimination on grounds of sex, race, religion, etc.
- Freedom from oppression
- Tyranny
- Subjugation
- Racial & cultural inhibitions/discrimination

There are many aspects of freedom that are being sought in the society i.e.

- Political freedom
- Social freedom
- Racial freedom
- Religion freedom
- Cultural freedom
- Freedom from arrest
- Academic freedom
- Freedom of assembly/association, etc.

It should be noted that these rights are not absolute; there are limitations which are contained in the constitutional provisions themselves. See for instance, Section 33 of the Constitution which guarantees and limits the right to life.

Law and Justice

The idea of law has always been associated with justice. Law is a means for the attainment of justice. In ordinary terms, law and justice are synonymous. Justice means fairness, right, just or good. It is the correct application of law as opposed to arbitrariness. The purpose of the law courts and the legal system is to do justice. There will be peace and progress where there is justice. Thomas Acquinas defined justice as the firm and constant will to give each person his due. Justice is a moral value. It is one of the aims and purpose which humans set for them in order to attain good life. In civil law, the law aims to compensate, restore or do reparation to an injured person in proportion to the wrong caused by the defendant. Justice can be done in three ways. That is Justice to the

- complainant/Injured
- Wrong doer/Accused
- The State

The lawmakers are therefore enjoined to make just laws while the courts are expected to do justice by ensuring fair hearing. In Plato famous dialogue, in his book titled 'The Republic' he described justice to be a just society which he conceived as ideal whether attainable on this planet earth or not. There are different theories of justice:

a) Formal Justice
b) Substantive Justice

a) Formal Justice
This is the strict application of the law by a judge without fear or favour i.e. to say justice according to law. In this case, a judge is bound to give effect to the law as it is. He has no discretionary power to mitigate his harshness. It is a mechanical application of law. This mechanical approach to the exercise of judicial power is said to ensure clarity and certainty of the law. Justification of formal justice is also predicated on the ground that it makes for impartiality and independence in adjudication since a judge is denied wide discretionary powers or favour to any of the parties.

b) Substantive Justice
On the other hand, substantive Justice is the liberal and purposive interpretation of law so as to do justice, especially where a formal strict and narrow application of law will lead to hardship, absurdity or injustice. Thus substantive justice is the application of law to do justice as it ought to be done in any case. This theory encourages judicial activism.

Law and the State
A state is a political entity defined by law. One of the aims of law is to define the territorial boundaries of a state and prescribes the organs within it. The law also sets up governmental structures, prescribing their functions and their relationship with one another.

Law and Legitimacy
Legitimacy is the bedrock for legality and law prescribes the operation of powers including legal relations in a society. For instance, legitimacy in Nigeria finds its expression in section 1(2) of the 1999 Constitution.

Law and Sovereignty
Sovereignty describes the centre of power and the hub of power relations within society. It is the law that identifies and prescribes sovereignty within a given state or society. This is also well anchored in the Constitution. See 14 (2) (a) of the 1999 Constitution.

THEORIES OF THE FUNCTIONS OF LAW

Different people have suggested different functions of the law in the society. But these various functions of law can be categorized according to the following theories:

1. Consensus Model
2. Conflict or Pluralist Model
3. Open Model
4. Marxist Theory

1. **The Consensus Model**

This theory perceives law as protecting the society's shared beliefs or social values to which everyone in the society subscribes. According to this theory, the society is unitary having a monolithic and universally shared value system. Therefore, conflicts that may be in such society are on a personal level.

2. **Conflict or Pluralist Model – the law operates to harmonise conflicting**

This theory denies that there is a shared value system in the society. Rather it contends that there exists conflicting groups, all of which are assumed to have equal bargaining powers such that the constant interaction between them helps to attain social stability and equilibrium. Under this theory, the state is a neutral arbiter providing only the machinery for conflict settlement either through political debate or policy making. So, the law is used as a tool for harmonising conflicting groups.

3. **Open Model**

According to this model, conflicts in society are between interest groups and can be resolved through

- Negotiation
- Arbitration
- Litigation
- Electoral process, etc. without necessarily resulting to revolution.

4. **The Marxist Theory**

According to Karl Marx, primitive societies were free from antithesis or conflicts. That the law was introduced as a tool of exploitation by the ruling class over the working class. This status quo will continue as long as confrontation is avoided. Revolution is however the only effective way of dethroning the ruling class and enthroning the working class. It is believed that only then will equality be restored in the society.

THEORIES OF LAW

In order to satisfactorily answer the question 'what is law?' one needs to delve into the realm of Jurisprudence. Jurisprudence, which is also known as the theory of law, philosophy of law or legal philosophy is the examination of what different scholars have said about law over the years. It is the total study of law as a whole, which include the concept, principles and purpose of law in the society. Jurisprudence, as a field of study of the foundation of law seeks to ask several questions such as:

- What is the purpose of law in the society?
- What is a legal system?
- What is the relationship between law, morality and power?
- What sort of acts should be subjected to punishment and what sort of punishment should be permitted?

The attempt to answer these questions and many more has led to the development of many theories about law. These divergent views of what the eminent scholars have said concerning the nature of law have been classified into groups according to what they said. These groups are usually referred to as schools of law or schools of jurisprudence or theories of law. The main schools or theories of law are as follows:

1. The Natural Law Theory
2. The Positive Theory of Law
3. The Sociological Theory of law
4. The Historical Theory of Law
5. The Realist Theory of Law
6. The Utilitarian Theory of Law

7. The Marxist Theory of Law

The Natural Law Theory

This is the first theory of law. It refers to a body of moral rules and principles of human conduct which can be universally deduced from nature. It is perceived by humans through reason and it comprises those laws which humans in their wisdom readily agree to be just and necessary for society. The promoters of this theory of law believe that law has a divine or supernatural origin, and for human law to be legally valid, it must conform to certain objective moral principles based on the nature of humans and dictates of right reasoning. This theory associates law with morality. It equally recognizes the interplay of spiritual forces in the physical organization of human society. There are different ideas propounded by several scholars and writers concerning the concept of natural law. It was originally taken to be an ideal moral code by Aristotle and the Greeks.

Some of the advantages of this theory are that it is the basis of natural rights or fundamental human rights - as they are now called - in our Constitution. It is usually linked with the notions of security, freedom, equality, justice and also serves as a basis for law. Some of the weaknesses of this school is that it involves considering the law as it ought to be rather than considering the law as it is. The leading exponents of this natural law of Jurisprudence are Plato, Aristotle, Saint Thomas Acquinas, John Lock, Zeno, Marcus Tullius Cicero, Thomas Hobbes, Jean Jacques Rousseau, John Finnis, Lord Patrick Devlin, etc. Natural law has major influence on the law worldwide. Under the Natural law theory, any law that does not have moral content is an unjust law and should not be enforced but abolished.

The Positive Theory of Law

This theory developed at a time when scholars were beginning to realize the need for the study of philosophy based on experiments and experience rather than ideas or theories. The positivists believed that law is law as made by the Sovereign or his agents (such as the parliament or a delegated legislator with delegated powers) and should be applied as such or as it is; and that extraneous factors and considerations should not be mixed with law. These theorists submit that, if the law as made is not good, then the concerned people should seek for its amendment. The law remains the law as made until amended. There are two schools of positive law theory namely:

a) The Command Theory of Law and
b) The Pure theory of Law

The command theory of law was propounded by John Austin (1790-1859) who was a jurist and a Professor of law. Austin submitted in his book 'The Province of Jurisprudence Determined' that 'law is a command made by a sovereign for an inferior being, and which the inferior being has a duty to obey or suffer penalty'. The features of this definition include the law giver or sovereign, command, duty, sanction or punishment. In this case, a sovereign may be a person such as an absolute king, parliament or other people who are vested with authority to make law.

The pure theory of law on the other hand was propounded by Prof. Hans Kelsen (1881-1973), who was also a justice of the Supreme Court. He stated that the law is a norm, rule, code or standard that tells us what to do and what not to do. And that law is valid because it derives its validity from a higher norm. He submitted that there is a hierarchy of norms, whereby

inferior norms derive their validity from a higher norm until we get to a grundnorm which is the final authority in a given legal system.

The positivist school has been criticized on the ground that law is not always enacted in the form of command nor can it be separated from other issues in the society it regulates. The theory has also been criticized for encouraging dictatorship. The Philosophers of this school of law include Prof. John Austin, Prof. H.L.A. Hart and Prof. Hans Kelsen.

The Sociological Theory of Law

This school of thought believes that law originates from social norms, ethics, values, acceptable conducts, facts and social compulsion among the people and that the law does not depend on the state for authority but on social compulsion among the people. In addition, law is an instrument for social engineering, change or social development to reconcile competing interests in society with minimum frictions. Eugene Ehrlich (1862-1922) and Dean Roscoe Pound (1870-1964) are the leading exponent of this school of thought. They argued that in modern time, one could not understand what a thing is until one examined its functions in the society and that law is involved in the process of social control which is a kind of social engineering, aimed at the fair distribution of duties and benefits to satisfy the demands of the people with minimum or reduced frictions. Law must therefore appreciate the needs and prevailing values of the people living in a society with a view to balance the conflicting interests. The proponents of this theory have been criticized for saying that positive laws or statutes have no real force of law, except norms, values or ethics.

The Historical Theory of Law

According to this theory, law must develop organically from the spirit of the people i.e. the history of the people, which is the 'volkgeist'. The historical theory of law asserts that each community, society or group of people are bound together as one people by a spirit of the people - volkgeist - as an identity and which makes them distinct from other groups of people. Therefore, for law to be valid, the law maker must take into consideration the history or tradition in finding the way of life of a people. The promoters of this theory regard customary law as a primary source of law. This theory has been criticized for allowing the past to determine the future, instead of allowing the law made by parliament to regulate the society. Fredrick Karl Von Savigny (1779-1861) and Sir Henry Maine (1882-1888) are the chief proponents of this school.

The Realist Theory of Law

This theory developed as a result of the reaction against positivists view on law which became popular in the wake of renewed pragmatism after the First World War. This theory is of American origin and the greatest advocate of this school of jurisprudence is a United States Supreme Court Judge, Justice Oliver Wendell Holmes. It emphasized the element of uncertainty in law and the function of a judge when it comes to law making. It looked at law as an expression of the state through the court which occupies sovereign position. Justice Oliver Wendell Holmes reiterated that one should look up to the law courts and not into statute books for a proper understanding of law. In other words, he believes that the law is what the courts will do in the particular case before it and not what the book or statute says and that no legal rules or law will exist until a court has made a pronouncement in a specific case. This submission may not be applicable to developing countries like Nigeria whose law either statutory or customary may not have been tested in court. This theory has been criticized on the grounds that the claim that what the judge says is the law is not totally true in the sense that it presupposes that there is no law in place, guiding the people and the court,

forming the basis of judicial decisions. If there is no law to guide the judge in the administration of justice, then there will be likelihood of dictatorship and anarchy. So there must be law as made by the authorized unit to guide the Judges as to what to do in a particular case. The proponents of this theory of law include Axel Hagerstrom, Oliver Crona, Justice Oliver Wendell Holmes and Karl Llewellyn.

The Marxist Theory of Law

This theory of law considers law as an instrument of oppression in the hands of the privileged class (the bourgeoisie) against the less privileged (the proletariat). They ascertained the fact that law is usually abused by the people saddled with the enforcement of the law. For example, in Nigeria the 1999 Constitution of the Federal Republic of Nigeria conferred the power of enforcing the law on the Executive arm of government. The Nigerian Police happens to be an agency of government responsible for securing life and property of citizens. News of men of the Nigerian Police dealing brutally with innocent Nigerian citizens without lawful justification is common in the media.

Which of These Theories Do You Consider to Be the Best?

The scholars who gave different submissions concerning the theories of law came from different diverse backgrounds and orientations and this informed their individual conceptions of the law. Consequently, the theories all have their strengths and weaknesses. There is no better view because none of them is entirely right nor wrong. All the theories have been applied and will continue to be applied by different legal systems.

Against the background of these divergent views, it is better to describe law than define it. Law can therefore be described as a body of rules and regulations that guide human conduct which is accepted as binding by the society. This is enforced by the state and any person who breaches the law will be punished. The punishment includes fine, imprisonment, caning, warning, redressing any wrong done to another by way of damages or other appropriate remedies.

CLASSIFICATION OF LAW

Law can be classified into different categories based on their shared features. The classification of law helps us to know the features of the law, the relationship between the different categories of law and simplify the understanding of the study of law. Law may be classified into common law and equity, civil and criminal law, public and private law, substantive and procedural law as well as written and unwritten. These different classes of the law have their unique features yet they overlap.

1. Common Law and Equity

Common law usage is not definite. It could be used to mean the general customs and practices of the English people. In another sense, it is the legal tradition of developing law by judicial decision. For our purpose, common law are rules based on the immemorial customs of the English people enforced by the old common law courts of England in cases where there were no applicable laws. They are judge made laws which may be followed in subsequent similar cases until altered by legislation. The doctrine of judicial precedence or stare decisis which postulates that decisions of superior courts are binding and must be followed by inferior courts in appropriate cases is of common law origin. This doctrine is tied to the hierarchy of courts and practiced by many legal systems that operate the common law

system including Nigeria. In Nigeria, the decision of the Supreme Court binds the Supreme Court itself and all other lower courts.

The common law was rigid and defective in a number of ways. For instance, it adhered strictly to privity of contract and did not recognize the concept of trust. Also, it relied solely on documentary evidence and had no means of eliciting the truth from oral evidence of parties. It was thus rigid and limited in the redress it gave. People who were dissatisfied with the decision of the common law courts or entirely denied redress petitioned the King or the Royal Council for redress. These petitions were handled by the Chancellor (a cleric) who was regarded as the keeper of the King's conscience. The Chancellor granted redress on behalf of the King or the Royal Council on the basis of what his conscience deemed right in the circumstance. This system gradually became institutionalized into the Court of Chancery and the principles formalized in what is now known as Equity. Equity enforced rights not recognized at Common Law. For instance, Equity recognized and enforced the rights of beneficiaries to trust agreements. Also, it admitted oral evidence to confirm or discredit written documents. It developed special and more flexible remedies which were later extended by statute to the Common Law Courts. The 1873 and 1875 Judicature Acts merged the Common Law courts and the Courts of Chancery into a single court whose task was to administer both Common Law rules and the doctrines of Equity. However, whenever there was a conflict between the two systems on the same matter, the doctrines of Equity prevailed. But where there was no conflict between them, they continued to exist separately. Thus, an equitable owner of property may bring an action against a legal owner to enforce his equitable right.

2. Civil and Criminal Law

In Knuller v Director of Public Prosecution (1962) 2 All E.R. 898, Lord Diplock stated that:

> "Civil liability is concerned with the relationship of one citizen to another; criminal liability is concerned with the relationship of citizens to society as a state."

Civil law defines the rights and duties of one person to the other and it provides a system of remedies. It recognizes that a person adversely affected by the commission of certain acts should be able to obtain compensation or redress from the person responsible by making good the loss caused or injury suffered and or restraining the cause of the loss. In the case of a breach of contract, for example, the party in default may be ordered to perform his or her obligation under the contract or compensate the other party in the form of damages. It mainly occurs in cases of breach of contract where a party to the contract violates an agreement and tort where a legal right is violated. The law of contract, tort and land law are examples of civil law. Note that civil law consists of private and public law except criminal law, military law, martial law or emergency law. Also, when contrasted with common law, civil law refers to the continental legal tradition of written codes based on Roman Law.

Criminal law defines the acts or omissions which are against or contrary to public order and the society as a whole and which renders the guilty person liable to punishment. Criminal law defines what a crime is, states the elements of the crime, prohibits the crime and provides the penalty for the breach of the crime. Criminal acts or crimes are classified into felonies or capital offences, misdemeanours and simple offences or summary offences, indictable offences and offences triable either way. Criminal law proceedings are taken by the state to punish criminals, suppress crimes and protect individuals, their property and the society at large.

Usually, criminal law requires proof of intention but there are offences of strict liability like traffic offences that do not require proof of guilt. Strict liability offences are public welfare or safety offences tailored to secure the life and property of the public. Food poisoning and sale of intoxicants to children are also examples of strict liability offences. Criminal acts are not easy to identify because an act can be both a civil wrong and a crime. For instance, stealing is a civil wrong and a crime. Therefore, the only way to know whether an act is a crime is to determine whether it is punishable. Punishment is usually imposed by death, imprisonment, fine or both fine and imprisonment. Terms of imprisonment may run concurrently or consecutively. It is the practice that where the terms of imprisonment are not specified by the court, they run concurrently. A sentence may be suspended (suspended sentence). However, such a suspended sentence may be reversed where the convict breaches the terms of the suspension.

Note that by virtue of Section 36(12) of the CFRN, 1999 a crime must be defined in a written law to be enforceable. Therefore, the Nigerian criminal law is codified in the Criminal Code applicable to the Southern States and the Penal Code applicable to the Northern States.

3. Public and Private Law

Public law is concerned with the preservation of the good order of society. It deals with the rights and duties of the individual to the state and vice versa like the administration of government, public revenue and public security. Constitutional law, criminal law and administrative law are examples of public law. Private law is concerned with regulating the rights and duties between private individuals to one another. Family law and trust are examples of private law.

4. Substantive and Procedural Law

Substantive laws define the rights, privileges and powers possessed by persons and institutions whose status are recognized by the law and their corresponding duties, liabilities and disabilities. It states what conducts are lawful/permissible or unlawful/prohibited. It deals with all laws except for procedural laws. Constitutional law and criminal law are examples of substantive law.

Procedural law, sometimes called adjectival or remedial law, governs the application or administration of substantive law. It is the rules of practice and procedure which stipulates how a right or duty prescribed in a substantive law should be enforced. For instance, with reference to the enforcement of criminal law, procedural law specifies the courts vested with criminal jurisdiction, the procedure for the initiation of criminal actions, proof and admissibility of evidence, punishment, and rights of appeal. Procedural laws are civil and criminal. The Recovery of Property Laws and the High Court (Civil Procedure) Rules of the various State High Courts, the Administration of Criminal Justice Act, 2015 and the Evidence Act, 2011 are examples of procedural laws.

5. Written and Unwritten Law

Laws may be written (enacted) or unwritten (unenacted). Written laws are statutes or legislations passed by a group of people empowered to pass them. Under a democratic government, elected representatives of the people, the Legislature (which may be mono or bi camera), are empowered to pass the laws in the manner prescribed by an enabling law. For example, the CFRN, 1999 and the UDHR, 1948 are written laws. Unwritten laws are binding

rules of conduct which the society and the court will enforce. They maybe unenacted (i.e. not passed like statutes), unwritten, both unwritten and unenacted or partly written. Under the Nigerian legal system, our Customary laws and the Received English laws are unwritten and unenacted laws.

LAW AS A MEANS OF SOCIAL CONTROL

Law is one of the instruments by which Social Control is maintained in a society. In this role, it is assisted by other means of social control such as:

- Public Opinion
- Education
- Custom
- Religion
- Parental control
- Peer group

However, law remains the most formal and deliberate means of social control. In its duty to control the society, it applies certain accepted techniques and or methods. These methods include:

1. The Penal technique
2. The Grievance-Remedial technique
3. The Private Arranging technique
4. The Administrative Regulatory technique
5. The Constitutive technique
6. The Conferral of social benefit technique
7. The Fiscal technique.

Penal technique

This technique is used under criminal law. It spells out prohibitive conducts, the penalty for their breach, the procedure for determining the guilt and innocence of alleged criminals and the appropriate sanctions in the form of punishment for a breach of the law. In other words, the technique puts in place machinery for the detection, maintenance and enforcement of the law. In this regard, we have the Police, other law enforcement agencies like the National Agency for Food and Drug Administration and Control - NAFDAC, Nigerian Drug Law Enforcement Agency - NDLEA, the Judiciary, (i.e. the bar & the bench), and the Prisons, all of which are part of the criminal justice system for applying the penal technique. The penal technique brings about social control by a report to the Police and thereafter an arrest is made, investigation conducted by the Police and then the eventual prosecution or arraignment before Court based on the available evidence, before defence. In other words, the use of the penal technique is beneficial to the society because it prevents people from committing crime and rids the society of people with criminal behaviour. It should be noted that criminal case is not statute barred, unlike civil case which is statute barred. Note also that this technique must be strictly and scrupulously applied with all use of fairness & justice.

The arising question is 'how far has the penal technique achieved its desired aims and objectives of stemming the tide of crime in Nigeria?' The answer is that the penal technique has not been very efficient in curbing crimes. Consequently, other techniques and alternatives should be employed to arrest or curb deviant social behaviours. Some of these alternatives are discussed as follows.

- The Non-Intervention Theory

The law ought not to employ its full wrath in all cases of breach of the law. Sometimes, a mere warning or reprimand would do.

- Compounding or Compromise

This is a situation whereby the victim reached an agreement with the accused not to press criminal charges against the accused. This agreement may sometimes involve both families. It involves the receipt of a consideration in return for an agreement not to prosecute someone who has committed a crime. For instance, a situation where a neighbour driver reached an agreement with the victim to pay adequate compensation and for the victim not to go on with the prosecution of the case.

- Reciprocity or Self-help

This is another alternative to the penal technique. It simply means resort to vengeance on the basis of the Mosaic law of 'an eye for an eye and a tooth for a tooth'. This is very dangerous, uncivilized and unfit for modern time because it can cause total breakdown of law and order. It is the resort to jungle-justice which does not rely on the law for redress. This can also lead to the punishment of innocent persons.

Grievance-Remedial Technique

This method is applicable in the area of civil law. It establishes some substantive rules of law and standards of legal rights and duties. It also defines the appropriate remedies in case of the breach of the law. It employs remedies such as damages, specific performance, restitution and injunction. This is unlike the penal technique which relates to public order or decency of the society at large. The government uses this method to regulate society by enacting civil laws that attract civil sanctions and also provide remedies for those who have been wronged one way or the other through the civil justice system. In other words, the technique involves the existence and usage of civil courts to process claims and establish remedies to back up those claims or rights. Parties may in the alternative, provide their own private systems to deal with disputes such as unliquidated damages, which is an agreement to pay some specific amount of money should a right be breached. The essence of this technique is that the victim or aggrieved person is likely to be pacified if adequate remedy is granted to him/her. This would in a way discouraged people or victims from taking the law into their hand. Other alternatives to this technique are:

- Penal technique
- Private settlement
- Insurances
- Arbitration

Private Arranging Technique

This is another technique by which government regulates activities in society. By this method, the law leaves individuals with the option to arrange their private life and affairs the way they like, but within the confines of the legal safeguard already established by law. For

example, we have the Wills Act, the Marriage Act, Higher Purchase Act, Law of Agency, etc. Note however, that in our contemporary time, the government and the law has intervened in the private arrangement of individual rights as of right. Examples are in the area of child care - the Child's Right Act; child trafficking - Trafficking in Persons Prohibition, Enforcement and Administration Act; and the National Agency for the Prohibition of Trafficking in Persons; and the intervention of the Land Use Act 1978.

The Constitutive Technique

This method closely resembles private arranging technique. Under this technique the law recognizes a group of people as constituting a legal person, separate and distinct from its members called corporation. This is advantageous in a number of ways. The corporation has perpetual succession and it enables ownership to be separated from management. Also, members can escape bankruptcy, just in case that the company fails or goes bankrupt. This is possible because of the corporate legal personalities of the constituted body which is distinct from that of the individual members. See the case of Salomon v. Salomon [1897] AC 22. The creation of separate legal personality is a feature of this technique. It is a point to note that the law has taken further steps to provide legal framework to protect group interest, under partnership, registered union professional bodies, etc. The most common forms of businesses today are the limited liability companies constituted by the Companies and Allied Matters Act. Governments also set up some corporations by law like the Nigeria Ports Authority, the Asset Management Corporation of Nigeria, etc. These laws and a complex system of case laws regulate and govern constituted bodies.

Administrative Regulatory Technique

This system regulates activities rather than prohibit anti-social behaviour which the Penal technique takes care of. Its aim is not to punish offenders but to regulate services and distribution of scarce resources. Under this technique, officials adopt regulatory standard and communicate these standards to those subject to them and take steps to ensure compliance. The steps may include a system of licensing, inspection and warning letters, revocation of licenses, disqualifications or suspensions and the bringing of administrative proceedings, litigation or criminal prosecutions as a last resort. Examples of regulatory bodies are the Joint Admissions and Matriculation Board, National Universities Commission, Securities and Exchange Commission, and the Standards Organization of Nigeria.

This technique is different from the grievance-remedial in three ways. First, it operates preventively and not curatively. Second, its enforcement is made by government and not on the initiative of the aggrieved. Third, there is no need to identify victim because the rules are applied without waiting for a complaint.

The Fiscal Technique

The Federal and State Government use the fiscal technique to discourage certain anti-social behaviour. In this case, the government comes up with certain laws to regulate the fiscal admiralty interest of the government. The government needs money to finance its spending and therefore adopts the fiscal technique in order to raise the money. This technique means the use of law to impose a variety of taxes, and levies and to establish tax assessment, collection and management bodies. Examples of some of these taxes are Pay as You Earn - PAYE or personal income tax and company tax. The bodies set up by law to enforce the taxes include the Income Tax Board, Custom Service and the Federal Inland Revenue Service.

Conferral of Social Benefit Technique

In modern times, the government has stepped up its efforts to provide social amenities, infrastructures and social security programmes through enabling laws to better the lots of the lives of the people, including their welfare. Modern government spend money realized by the application of the fiscal technique on a wide range of benefits and services which were left to individual before. These services include roads, education, health, etc. These beneficial services are regulated by law through this technique. The law provides for issues like who administers the scheme; how and who benefits; what are the criteria to determine if a person qualifies to benefit; etc. This technique is clearly seen in such laws as those setting up public universities and the Legal Aid Council. It is different from the administrative regulatory technique only in the nature of the business of the body. If it benefits the people, it is conferral of social benefits technique, but if it regulates an activity, it is then the administrative regulatory technique. It is clear from the foregoing that it is possible to use more than one technique in an area. Also, the techniques may overlap. When a problem arises, the government chooses which technique is best suited in achieving the legislative purpose.

LEGAL REASONING AND APPROACH TO PROBLEMS

Ordinarily, reasoning is a philosophical word which means 'to reason' or 'the process of analytical thinking in a logical way'. 'Legal' on its part has to do with anything connected to law. Legal reasoning can therefore be defined as a process of critical thinking in a logical way
about law or in relation to law. It can also be said to be a systematic, logical or persuasive presentation of issues relating to law. It is also the reasoning method of lawyers on how to resolve disputes, improve the law, individual and the society in general. There are many techniques of Legal Reasoning and Approach to Legal Problems.

The Language of the Law

Language here does not mean 'Lingua' - tongue. It means the combination of words or phrases for communication purposes either orally or in written form. It is a tool of lawyers as well as the vehicle of conveying legal thoughts and reasoning. Words can be referred to as components and spare parts of language. It can be manipulated at will, but reasonably. Language is not fixed but changes with time. In the case of Seaford Court Estates Ltd v Asher [1949] 2 KB 481, Lord Denning warned that language is not supposed to be measured by way of mathematical precision.

Characteristics of Legal Language

1. Expression in a general term

Law is usually expressed in general terms. This is so because any law made will apply to a wide spectrum of people in diverse situations. To formulate a law that would be so specific and restricted in application without a wide coverage will be somehow difficult, unpalatable and may be a waste. On this point see Section 316 of the Criminal Code Act which provides in part as follows:

> 'any person who unlawfully kills another under any of the following circumstances is guilty of murder...'

See also Section 311 of the Criminal Code Act on acceleration of death. It provides thus:

> 'any person who does any act or makes any omission'

It is a point to note that the same characteristics apply in case law. See Section 6(1) of the Constitution which provides that judicial powers shall be vested in the Judiciary. In essence, it is legal reasoning that guides a person on how to achieve the desired intentions and whether the law should apply to specific circumstances or accommodate varied circumstances without being too fluid as to lack direction or focus.

2. Use of Abstract Concepts

It is a point to note that lawyers are not allowed to use words anyhow. Lawyers are known to use technical words or concepts which are already in vogue. But where appropriate, a lawyer can coin another concept of words. These words can have varying degree of meanings. Examples of words that have legal meanings quite different from their day to day usage outside law are: Estate; Legal Personality; Contract; Nuisance; Possession; Rule of Law; Company Law; Ownership; etc. These are legal words which have special technical meanings in law. They are used to achieve economy of words so as to avoid detail or verbose explanation. For example, the words 'Rule of Law' mean the Supremacy of the Law, Equality before the Law and Fundamental Human Rights.

Aside these, the language of the law affords the frequent use of

- Common Words with Uncommon Meanings. For example, a layman can say that he has a case in court while a lawyer will say that I have a matter or lawsuit. Also, a lawyer will say 'it is submitted that' while the layman will say that the 'court should hold that'.

- Frequent use of Latin phrases and jargons e.g 'ultra vires', audi atterem paterm - hear from both sides, nemo dat quod non habet - you cannot give what you don't have, Consensus ad idem - agreement or meeting of the minds, etc. These are words with special or technical meanings.

- Lawyers do make use of jargons, slangs or words with technical, special, uncommon, particular or peculiar meanings, which may not be understood by lay people. E.g. My brief has not been perfected which means 'I have not been paid my professional fee' or I am speaking from the bar which means 'I am speaking with due sense of honesty and responsibility as an officer of the court'.

- The use of resonant words like 'the whole truth and nothing but the truth'.

- Frequent use of archaic English words. For example, aforementioned, hereinafter, hereinbefore, etc. The use of the archaic words is the result of the development of common law in which English law was based. The unwillingness of lawyers to improve and modernize the old archaic English words has made the language to remain old and archaic. This has exposed it to criticism and severe setback.

- In addition, lawyers and judges wear dark robes, wigs and behave formally at public hearings under the protection of the Police. Although this formality is necessary to give the courtroom proceedings a degree of orderliness, it has nevertheless mystified the legal profession and the administration of justice. A very simple outlook or forms of dressing will remove the mystery such that ordinary people will not be mystified by lawyers' outward appearances.

As a result, some writers are of the view that the legal profession should drop its humpty dumpty expressions of the use of archaic words and phrases and put on the garment of modernity.

METHODS OF REASONING IN THE LEGAL PROFESSION

The discipline of law is so peculiar that lawyers are thought to be probing, inquisitive and argumentative. These attitudes stem from a sensible unwillingness to accept a point without convincing proof. These perceived traits have raised issues about the reasoning method of lawyers and those connected with the formulation and implementation of the law. Legal reasoning can therefore be defined as persuasive thinking, coordinated, systematic, logical, argument or presentation of points or issues relating to law. The discipline of law is so peculiar and multi-perspective that issues have been raised about the reasoning method of lawyers or those connected with the formulation and implementation of law. At times, it tends towards derogation when people quibble that others should not be legalistic about issues.

The Judiciary is the arm of government saddled with the responsibility of interpreting the laws made by the Legislature. The laws which are usually expressed in general language by the Legislature needs proper interpretation and application to cases brought before the Court. The Lawyers of the parties and the Judges are therefore saddled with the responsibility to determine through practical reasoning whether the law applies to particular facts in cases brought before the Court. This necessitates the study of the different methods of reasoning which are usually adopted in the legal profession when settling disputes between parties in Court. These methods are discussed as follows:

Principles and Rules

A principle of law can be defined as an established legal truth or proposition that is so clear and cannot be contradicted unless by a preposition which is clearer. Because of the timeliness of the truth or proposition, it serves as a standard guide in the process of law making, execution and interpretation. It is an established ideal, value or guide post by which the quality of legislation, decisions and arguments may be judged and evaluated as either valid or not notwithstanding any good result that such a legislation, decision or arguments may produce.

Some of the well-established principles in constitutional law are principles of the rule of law, natural justice, etc. If a particular line of reasoning or argument is contrary to any of the established principles, such a reasoning or argument immediately becomes suspect and open to legal attack or criticism. A principle is therefore a comprehensive legal proposition or truth which furnishes a basis or origin for the development of legal rules.

Legal rules on the other hand are instances of specific application of a legal principle. For instance, the principle of natural justice has two components:

(i.) A party must not be condemned unheard (audi alterem patem) and
(ii.) One should not be a judge in his own cause (nemo judex in causa sua). These rules have been developed from the principles.

Legal Rhetoric

Rhetoric is the act of seeking to convince or persuade another, either through the medium of writing or speech, to accept one's position or point of view. Plato defined Rhetorics as "the art
of winning men's minds with words". This is why any serious minded law student or lawyer must continuously seek to improve his mastery of language and use of words. In the words of an erudite scholar:

> "For the lawyer, language has a special interest. Words are central importance to him because they are in a very particular way one tool of his trade... other professionals are also concerned in parts with words but certainly not to the extent that lawyers are".

A notable ancient Greek Philosopher, Aristotle, identified and distinguished between forensic rhetoric and deliberative rhetoric and thought that the pursuit of the latter was more noble and More worthy of the statesman. Broadly speaking, lawyers make use of forensic rhetoric, while judges use deliberative rhetoric. The lawyers interest is to persuade the court to accept their clients' legal position, while the judge is seeking to arrive or reach a rational decision that is justifiable in the overall interest of the parties and society. The use of legal rhetoric therefore requires the sound knowledge and use of law and skill in the application of legal principles.

Consequently, strong know-how of the legal profession is essential for the effective use of legal rhetoric. Such know-how is not acquired naturally at birth. The skills are acquired through conscience regimented academic and professional training experience obtained on the field of legal practice.

In stressing the hard work required of a legal practitioner to become adept in the use of legal rhetoric, Alexander captured the following words adapted from Glanville Williams text 'Learning the Law' as follows:

> 'Few people realise under what pressure successful barristers live ….. the busy barrister is on the watch all the time. In court, he has to be alert every moment and he is watched by a highly trained expert on the other side who pounces on his slightest mistake. Out of court, he has to work far into the night, consecutively, working hard and continuously at mass of detail. He cannot like the head of a big business, delegate to subordinates the actual carrying out of his work. His 'perils' prepare for him the note of his material but once he has gone to court, he has to take responsibility on his own shoulders.'

Legal Logic

Logic helps to reason clearly. Logic also helps a lawyer to express himself precisely and put across his thoughts firmly. Logic teaches a lawyer how to detect bad argument and identify the flaws in it. It is not enough for a lawyer to master the facts of his case and ascertain the applicable authority. It is important for him to present his position or argument in a logical manner. This can be achieved through logic through syllogism or deductive logic.

Logic is what readily comes to mind when reference is made to syllogism. Syllogism is a deductive form of argument. It starts from a major premise to a minor premise. From the two premises, one makes or deduces the logical conclusion. In encapsulating the salient features of syllogism, a working definition of it has been given as "a thread of connected positions, so

related that one of them called 'the conclusion', necessarily follows from the other two, which are called the premise." The following is an example of syllogism:

- Any man who rapes a woman will be imprisoned - Major premise emanating from the provisions of the Criminal Code Act.
- Mr. Showboy has raped Miss Kilanko - Minor premise based on facts of the case
- Mr. Showboy must be imprisoned - Conclusion

Inductive Logic

It should be noted that deductive logic or reasoning is only applicable once a clear major premise has been established. If the source on which the lawyer wants to base the case or his advice to clients, is not a statute, but case law (Judicial precedent or court decision), no major premise may emerge from just one court decision. Rather, it would be necessary for the lawyer
to examine other cases to conclude or discover that an all-embracing legal principle (case law) has been established by the court in various decisions, over a period of time. This established legal principle will then constitute the major premise. In essence, the lawyer in this situation reasons from particular court decisions to a general proposition.

Criticisms or Limitations

Some shortcomings have been associated with these and other reasoning approaches. There are certain limitations to syllogism as a method of legal reasoning. In logic, 'truth' would mean that a certain fact or situation exists. Validity on its part, in this context, means that the conclusion necessarily follows from the major and minor premises. Another limitation is that once a wrong premise is allowed to be established as "true or right", then it is inevitable that a wrong conclusion will be reached. This can be illustrated by considering a syllogism to the effect that

- Every good man goes to heaven - Major Premise
- John died a good man - Minor Premise
- Therefore, John is in heaven - Conclusion

The above statement forms a valid syllogism which satisfies logic. But how are we sure that John died a good man or that there is indeed a heaven? These are matters that belong to the realm of 'truth' rather than 'validity'. At times it does not concern itself with the truth, but the validity of the statement. Once a wrong premise is allowed to be established, it will lead to a wrong conclusion. A statement may be logical in a given context and illogical in another context. The person analysing must have some ideas about what he is looking for. Though legal logic has its usefulness, what is often used in practice is not so much legal logic but practical reasoning, unlike syllogism. Apart from practical reasoning, the court is concerned with weighing various considerations before coming to a justifiable conclusion. Some of the factors which are considered by judges are:

- Coherence with existing legal principles and authorities
- Justice
- Public Policy.

It is against this background that several factors apart from logic usually come into play to determine what the law or what the decision of the court will be. It is these various shortcomings that made judges to adapt practical reasoning approach in deciding cases that

come before them. The various factors which judges can advance to justify their decisions include appeal to authority.

Until about the last two and a half decades, appeal to authority could be said to be about the strongest justification that a judge could advance in support of his decision. Therefore, once applicable judicial or statutory authorities are cited, the judge will be bound to adopt the position of the parties citing the authorities. However, nowadays, judges are more willing to recognize other prevailing factors that can be used to justify their decision. Apart from appeal to authority, other factors usually considered by the judges are:

- The extent to which a proposed decision will cohere with the existing principles and authorities. The greater the inconsistency with the existing principles and authorities, the less likely it is to be adopted.
- The consideration of the question whether the consequences of the decision will be acceptable in terms of justice.
- Judges may refer to common sense and the supposed view of a reasonable man.
- Public Policy: this involves justification in the large context of the public good.

The Relevance of Logical Reasoning to Legal Method

When a case comes before the court, the judge will have to resolve the conflicting interests of the parties and that of the society by coming to a decision in the form of a judgment or ruling. In making decisions, the judge will obviously be influenced in various degrees by such factors such as the probative value of the evidence adduced, the rhetoric and logicality of the argument of the counsel to the parties and how compatible those positions are with established legal standard and principles. In the final analysis, the Judge will have to justify his decision in a reasoned judgment.

TOOLS FOR LEGAL REASONING

Every profession like every human endeavour requires certain tools for effective performance. The legal profession also requires certain tools for the lawyer to use for legal reasoning. These tools include:

- Knowledge of the law, rules and legal principles
- General knowledge
- Facts
- Spoken and written language
- Persuasion
- Logic
- Common sense
- Experience, etc.

LEGAL REASONING IN LEGISLATION

Law making exercise is a deliberate or conscious effort by the relevant law making body in order to meet the ever increasing demands of the society. There are many agencies saddled with legislative functions such as the Legislature, Ministries, Local Governments, Universities, etc. However, our objective is to study the motivation behind Legislation as a source of law. Section 4 of the Constitution vests the power to make laws for the federation on the legislative arm of government i.e. the National Assembly which is comprised of the

Senate and the House of Representatives at the federal level and the various Houses of Assembly at the state level. A Legislation is usually instigated by pressure or interest groups who are clamouring for a change in the existing law or for a complete new one.

Reasons for Legislation

There are various reasons why a new legislation is necessary in the society.

1. The Dynamic Nature of the Society: Human beings and the society they live in are dynamic and they are both regulated by the law. If the law will be relevant in the society, it must also change to meet the aspirations and yearnings of the people in the society. For example, if witchcraft belief has been affected by development in the society, to the extent that such barbaric beliefs have been declared unreasonable, the law should reflect the change in belief. On the contrary, some of our customs are compatible with the principles of natural justice, equity and good conscience have been enacted into laws. A good example are the laws regulating the dumping of refuse in public places.

2. Global Shift in Value: Another factor which necessitates the call for specific legislation is the change in global international value system. A new legislation is inevitable in order to incorporate international standard and values into domestic law. An example is the African Charter on Human and Peoples' Rights which was specifically ratified and enacted as a national legislation in CAP 10, laws of the Federation 1990, in order to give respect to fundamental human and people's rights like children and women's rights which it contains. The ratification and enactments of these laws in Nigeria became necessary because of the impetus of observance of human rights currently being enjoyed all over the world. New legislations are coming up in areas such as protection
of the environment. There is a shift of policies in these areas because of Nigeria's membership of international organizations which require compliance.

3. Arrest of Anti-Social Behaviours: Perhaps the most important reason for new legislation is the increasing propensity of the population for anti-social behaviours which is not only harmful to the society but also damaging to its image. Example of this is the Advanced Free Fraud Decree which was enacted to reduce or minimize the activities of fraudsters.

4. Scientific/Technological Breakthrough may also demand that a new legislation be made to regulate its copy rights and trade practices.

5. Change in Political and Economic Ideologies of Government: Law is an instrument of change either politically, socially or economically. The Political and Ideological goal of a government may change whenever there is change in government. The new government may want to chart a different direction and this will necessitate a new legal order or policies.

The importance of legal reasoning and the use of logic in the life of a legal practitioner cannot be over - emphasized. It is the basic tool required for the discharge of legal duties in the legal profession. For a lawyer to convince the judge in a case he is conducting, such legal argument must be the product of logic and proper legal reasoning. Therefore, the knowledge of this topic is very apt for the student.

LEGISLATIVE DRAFTING

Legislative drafting is a product of what started as a proposal that is transformed into bills which is carefully prepared by the draftsman. Drafting of a bill requires serious technical expertise so as to project the express objective of the legislation.

Qualities of a Draftsman

A draftsman must be patient and very careful. He must have a good retentive memory. He must also be a lover of English Language with immense capacity to reduce the volume of facts into concise and reasonable form. A draftsman begins his work by getting detailed instructions from his client. The instructions must contain the objects of the legislation, the background information on what mischief the law is required to correct. It is imperative that the options must be clear. The draftsman should not hesitate to embark on further consultation with his client to clear areas of ambiguity. He must have a high mastery of language. He must be amenable and familiar with the socio-cultural and political peculiarities.

The Language of Legislation

We must note that legislation is written in peculiar English language which must pass some test in order to avoid the problems imposed by the imperfection inherent in language. However, the peculiarity of wealth used in drafting legislation is not in the list meant to make it unreadable by the layman. For an elegant legislation, it is important to emphasize the following:

1. Familiarity of Language: Since English language is the official language in Nigeria with national spread, it is logical that debates on any legislation are carried out in the official language. This will enable contribution from the wild spectrum of the society. Note that Section 55 of the Constitution provides that the business of the National Assembly shall be conducted in English, Hausa, Igbo and Yoruba when adequate arrangement has been made.

2. Direct Expression: In order to avoid problems of interpretation, the legislation must be drafted in a direct and exquisite language. A complex legislation is never a delight of judges because of the burden of interpretation which the constitution places on the court.

3. Brevity of Language: It is not how long a sentence is or the number of synonyms used in a legislation that makes it elegant. On the contrary, the brevity of language with punctuation where appropriate and non-repetition of words are the attributes of good legislation.

4. Consistency of Terms: A draftsman must also stick to the use of a particular word once it is adopted from the beginning. Legislative drafting is not an avenue to demonstrate a gymnastic use of English words or the knowledge of English literature.

5. The draftsman must know the implication of using words like ‘shall’, ‘will’, ‘may’, etc. in drafting. This is because, depending on their context, it may indicate a command, an obligation or a discretion.

As far as the external structure of a bill is concerned, punctuations, marginal notes, schedules are important. These points mentioned above form the main external structure of a bill. The internal structure of a bill is made up of:

- The Long Title
- The Preamble
- The Short Title
- Definitions
- The Principal Provisions
- The Commencement Date

Legislative Process

The process of passing a Bill into law is a function of the type of government that is in power since Nigeria has been governed by civilians and military government at different times. The topic shall be discussed under the two respective periods. Under the 1979 and 1999 Constitutions, the country has a bi-cameral legislature at the centre, i.e. the Senate and House of Representatives. Each state of the federation adopts a unicameral system, i.e. one legislative house. At the federal level, a bill can be introduced in either of the chambers of the national legislature – the National Assembly. The first stage of passing a bill into law starts with the first reading in the house where the bill originated from. On the first reading, copies of the bill are also shared to the members of the house to study in greater detail. The objective of the first reading is to intimate the legislatures of the subject matter of the proposed law. It is not subjected to any debate or questioning at this stage. After the bill has been read and copies given to members to study, the bill is set for the second stage. At this stage, the general principles and main objectives of the proposed law are debated. At the end of the day, punctuations, and any other addition or amendment are made to the bill. The bill is afterwards sent to the standing committees comprising members with knowledge of the areas touched by the proposed bill. The most debatable or stormiest section in the process of passing a bill is the third and final reading when the success or failure of the bill is evident. A vote is called for members to pass the bill into law with the constitutionally required number of votes depending on the subject matter of the bill. If the bill is passed in the house where it originated, the same process is repeated in the other house. After the bill has been passed in the second legislative house, it requires the assent of the President for the bill to be called law.

However, it is possible that the President may withhold his assent i.e. he vetoes the bill. In this situation, the bill automatically becomes law if it is passed by 2/3 majority votes of the two chambers of the National Assembly. The Niger Delta Development Commission Act is a good example of such a bill. The bill was passed into law by 2/3 majority votes of members in the Senate and House of Representatives after the President had withheld his assent. It should be noted that legislative process under civilian regimes is cumbersome. It takes time, patience and painstaking consultations before a bill is passed into law. The advantage of this method is that various segment of the society are carried along in the process of passing bills into law. The prospect of passing retroactive Acts or Laws under civilian regime is highly remote or unlikely.

Law making process under military rule is very easy. This is because there is the unity or fusion of legislative and executive function. As a result, there are no input from the relevant segment of the society and endless debates. All that is required is the signature of the Head of

State. The exigencies of the situation under military rule and the supposed short term stay of military regimes, make military regimes correct perceived wrong doings of the past regime immediately. It does not suit their prejudices therefore to subject law making process to time consuming rigorous debates. However, the relative ease with which Decrees are made has many dangers. The lack of rigorous debate and input from the society portrays the military as having a monopoly of knowledge or at least superior to all other professionals in the society. This, in no small measure, accounts for the previous shortcomings associated with Decrees and Edicts. This invariably necessitates constant amendment to the Decrees. Another peculiar negative picture of military Decrees is their penchant for retroactive laws which conflicts with principles of justice, especially criminal justice, which is to the effect that before a person can be convicted of an offence, the offence must have been defined and punishment prescribed.

CONCLUSION

The application of the law in regulating human activities is very important. Otherwise man will operate in a disorganized environment. The relationship between law and social order is like that of Siamese twins. They are inseparable. The regulatory effect of law on human activities in our society today is understandable. This is because the law makes human behaviour orderly and predictable at any given time. Thus, the presence of law in any society will ensure peace, order, progress and stability, while the absence of law will revert the society to the chaotic state of nature which according to Thomas Hobbs was solitary, poor, nasty, brutish and short.

STUDY QUESTIONS

1. What is law?
2. The Lawyer employs different tools in the discharge of his duties. Discuss.
3. What are the functions of law in a Society?
4. Various theories have been advanced in law. Discuss.
5. List and explain two classes of law with examples.
6. What are the various methods of social control through law?
7. What do you understand by Legal Reasoning, Legal Logic, Legal Language, Legal Rhetoric and Justification?
8. What is Legislation?
9. Briefly discuss the three main stages in the legislative process.
10. It is argued that the National Assembly legislative process is cumbersome. Do you agree?

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