

## THE GRASP OF LEGAL METHOD AS A FOUNDATIONAL COURSE FOR LEGAL MENTORSHIP: AN APPRAISAL

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### **Abstract**

*The study of Legal Method is a compulsory foundational course that is first introduced to Year-One law students upon being admitted into Bachelor of Laws (LL.B) Programme in Nigeria Universities. The study of law is a prerequisite ladder that one must climb as a process of becoming a legal practitioner. Law as an instrument of social-control determines restriction, freedom, order, peace and justice in every society. The authors argues that improper grasp of the knowledge of law can lead to wrong interpretation and application of law by legal practitioners, especially when it is not comprehensively well taught at the foundational level. The authors takes the stance that the curriculum of Legal Method as a foundational course must be structured to widen its scope from the sociological perspective in relation to logic, legal reasoning and approach to problems at the grass root strata of the society. Lack of this has often increased the level of ignorance and chaos in the society. This has informed this research as an appraisal on the grasp of Legal Method as a foundational course for legal mentorship. The authors adopted the doctrinal legal research method. On this premise, this research recommends a wider curriculum of legal method as a foundational course correlating with law in social context, legal logic, legal reasoning and approach to problems. This will no doubt broaden the jurisprudence of the law students and legal researchers on the knowledge of law relating to legal reasoning and approach to problems in the society so as to meet global best practices.*

**Keywords:** Grasp, Legal Method, Foundational Course, Society.

### **1. Introduction**

In the order of academic priority for the undergraduate law student who has just been admitted to study law, is his eagerness to know the meaning of law. Every attempt to know law seems interesting and correlates with societal norms and values. This is why law is used as a means of social control fostering social order in modern society. Law, in its truism involves norms, processes, actions, restrictions, directions and maintenance of social values. Historically, law has evolved as an alternative to private feud and vengeance and as a supplement to the informal social processes by which men and groups deal with disputes.<sup>1</sup>

There is no universally accepted definition of law. This is due to the fact that each definition offered is premised or based on the particular school of thought the proponent belongs to. According to Elias,<sup>2</sup> the law of a given community is the body of rules which are recognised as obligatory by its members.

Law has also been defined as a rule or body of rules which are binding and enforced among the members of a given state or society.<sup>3</sup> According to John W. Salmond, law means the body of principles recognised and applied by the State in the administration of justice.<sup>4</sup> Law, also means the regime that orders human activities and relations through systemic application of the force of politically organised society or through social pressure backed by force in such a society.<sup>5</sup> Law therefore is a body of rules backed with sanctions that govern human activities in maintaining peace and order in the society.

Law as a regulatory instrument of social control has the following functions in the society:

- i. Maintenance of peace and order through public order law
- ii. Enables citizens to assert and lay claim to their fundamental rights such as right to life, freedom of association et cetera.
- iii. It is a code of conduct
- iv. It is a means of resolving dispute peacefully
- v. It serves as an instrument of political, economic and social change and stability.
- vi. Sustenance of the Country's sovereignty with laws prohibiting treason and sedition.

The function of law as a means to an end in resolving disputes and as an instrument of social control cannot be appreciated where there is ignorance and lack of core values for societal norms. The sociological feedback could be state of anarchy in the society. In the literature of jurisprudence, Legal Method as a foundational course is taught on the knowledge of law, its functions, legal logic, rhetoric, legal reasoning and its applicability in the societal spheres of influence.

The grasp of Legal Method as a foundational course for legal mentorship poses a serious concern of purpose and intent in this research. Therefore, this research is carried out on the need for proper grasp of the study of Legal Method from the foundational level with a special focus on the societal norms and values. To achieve this purpose, this research is divided into five head-topics including this Introduction as the first. The second head-

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<sup>1</sup> J. H. Farrar and A. M. Dugdale, *Introduction to Legal Method*, 3<sup>rd</sup> edn. (Sweet and Maxwell, 1990) 6.

<sup>2</sup> T. O. S. Elias, *The Nature of African Customary Law* (Manchester University Press, 1956).

<sup>3</sup> E. Malemi, *The Nigerian Legal Method* (2<sup>nd</sup> edn Priceton Publishing Co., 2012) 9.

<sup>4</sup> *Ibid.*, 11.

<sup>5</sup> B. A. Garner et al, *Black's Law Dictionary* (11<sup>th</sup> edn Thomson Reuters, 2019) 1056.

topic examines law in social context. The third head-topic discusses legal reasoning and approach to legal problems. The fourth head-topic in the same vein examines the methods of legal reasoning. Finally, the fifth head-topic concludes the research.

## **2. Law in Social Context**

The research herein evaluates the meaning of principles, standards and issues in law. It further evaluates law, order and justice; law and freedom; law and the State, legitimacy and sovereignty *vis-a-vis* the sociological correlation.

### **2.1 Meaning of Principles, Standards and Issue in Law**

- i. Principle means a basic rule, law, or doctrine especially one of the fundamental tenets of a system.<sup>6</sup>
- ii. Standard means a model, accepted as correct by custom, consent, or authority. It is a criterion for measuring acceptability, quality or accuracy.<sup>7</sup>
- iii. Issue in legal matter refers to the point in dispute between two or more parties. In an appeal, an issue may take the form of a separate and discrete question of law or fact, or a combination of both.<sup>8</sup>
- iv. Legal Issue refers to a legal question usually at the foundation of a case and requiring a court's decision. This is also termed, issue of law or question of law.<sup>9</sup>
- v. Issue of fact on the other hand refers to a point supported by one party's evidence and controverted by another's evidence.<sup>10</sup>

### **2.2 Law, Order and Justice**

Law as an instrument of social control is used as a mechanism in restraint, predictability, consistency, reciprocity and persistence in human behavior. The correlation of law, order and justice explain a situation of achieving and maintaining peace and orderliness of behaviours in the society through the mechanism of law. Every society needs orderliness, peace and justice for good governance and that any law which does not promote peace and order will eventually create chaos and destroy the society as there will be insecurity.<sup>11</sup> In primitive societies, when rules are broken and the breach is not the subject matter of feud, social order is often maintained by a series of unorganised sanctions such as ostracism, ridicule, avoidance and denial of favours.<sup>12</sup> Law as an instrument of social control is used to maintain peace and order and as well promote justice in the society. Law maintains public order by suppressing deviant behaviours and thereby curtails a state of anarchy. It should be noted however that some laws are perpetually disobeyed. For example, corruption offences are perpetually disobeyed in Nigeria.

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<sup>6</sup> *Ibid.*, 1444.

<sup>7</sup> *Ibid.*, 1694.

<sup>8</sup> *Ibid.*, 995

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> P. J. Fitzgerald, *Salmond on Jurisprudence* (20<sup>th</sup> edn Sweet and Maxwell, 1966) 60.

<sup>12</sup> *Ibid.*, 5.

When social order and peace are facilitated, justice will be reached and sustained. Thus, law fosters social order by facilitating cooperative action; recognises certain basic underlying interests and provides a framework of rules for giving effect to them.<sup>13</sup> For instance, it recognizes a person's right to freedom from physical injury and protects property, provides systems for transfer and inheritance of property, constitutes and regulates the principal organs of power.<sup>14</sup>

### 2.3 Law and Freedom

Law as a body of rules guarantees the freedom, rights and duties of the citizens. Law regulates the various organs of government to ensure a functional and free society. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended provides for the right to freedom of thought, conscience and religion;<sup>15</sup> right to freedom of expression and the press;<sup>16</sup> right to freedom of movement;<sup>17</sup> and right to freedom from discrimination.<sup>18</sup>

One of the functions of law in every society is to guarantee freedom as well as regulating freedom itself. Freedom is abused when it is exercised against the right of another and when this happens, such freedom can be withdrawn with consequential sanctions in form of punishment or payment of damages.

### 2.4 Law and the State, Legitimacy and Sovereignty

The word State as used in this context means a Country. It also means a part of a Country with limited powers, not being a local government council. A State or Country may be made up of one nation, that is, a State made up of a single race, ethnic group, or one homogeneous people with a common origin, history, language and culture, e.g, Japan, Switzerland. A State may be made up of different races, ethnic groups or people.<sup>19</sup> In other words, a Country may be multi-ethnic and multi-national or multi-racial such as Nigeria, Ghana, Cameroon, South Africa, et cetera.<sup>20</sup>

Legitimacy means lawfulness, legal, valid or a state of being legal or accepted under law. Anything that is not legitimate is illegitimate or illegal.<sup>21</sup> Sovereignty on the other hand, means independence, independent power or supreme authority that is subject to no other in a given country. It is a right or power of independent rule. It also means political

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<sup>13</sup> *Ibid.*, 7.

<sup>14</sup> *Ibid.*

<sup>15</sup> The Constitution of the Federal Republic of Nigeria (CFRN) 1999, s 38.

<sup>16</sup> CFRN 1999, s 39.

<sup>17</sup> *Ibid.*, 41.

<sup>18</sup> *Ibid.*, 41.

<sup>19</sup> Malemi, (n 3) 208.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

independence or unlimited power of a given person such as a King or Queen or of an administrative authority, body, or nation.<sup>22</sup> Sovereignty is a political independence.<sup>23</sup>

Law is used as a code of conduct and also to ensure that the sovereignty of a State is recognised and respected without interference with the governing system of the State. This could be achieved and sustained through international laws, conventions, treaties and municipal laws. Governance must therefore foster the security and welfare of the citizens in the society. Thus, law is not only used as a vehicle of social control but as a means of social control backed by organised sanction of the State.<sup>24</sup> The various arms of government must operate within the legal framework and respect for the rule of law.

The CFRN 1999, for instance, provides in chapter two for the fundamental objectives and directive principles of state policy.<sup>25</sup> These objectives and principles cut across political objectives, economic objectives, social objectives, educational objectives, among others.<sup>26</sup>

## 2.5 Aspects of Law

Under this sub-heading, the various types and classification of law are considered as follows:

- i. Eternal Laws: These are the laws put in place by God which governs the universe.<sup>27</sup> They are eternal because they exist for as long as the universe remains. Example of eternal laws is the law of gravity, law of sowing and reaping, the daily rising of the sun, birth and death, youth/young and aging. Eternal law originates from God and cannot be abolished by humanity.
- ii. Divine Laws: Divine laws are the laws made by God.<sup>28</sup> It is also known as spiritual laws, for example, the 10 commandments in the Holy Bible.
- iii. Natural Laws: These are also laws made by God to govern man, nature or physical environment and the physical universe. Natural laws are part of the divine laws or spiritual laws. Examples include life and death, circle of birth, et cetera.
- iv. Human Laws or Positive Laws: These are man-made laws. Examples of these laws are legislative enactments such as Nigerian legislations which include the CFRN 1999, Administrative law, et cetera. Human law or positive law is not constant but changes occasionally depending on the type of Government and the Society changes.<sup>29</sup>

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<sup>22</sup> Malemi, (n 3) 203.

<sup>23</sup> *Duke of Brunswick v. King of Hanover* (1848) 2 HL Cas 1; 49 ER 724; *Buttes Gas & Oil Co. v. Hammer* (1975) 2 All ER 51.

<sup>24</sup> A. Ibidapo-Obe, 'The Jurisprudence of Social Justice in Nigeria: Fundamental Legal Issues' in R. Pound,

*Introduction to Cases and Reading of Law and Society* [1984] 1(1) 170.

<sup>25</sup> (CFRN) 1999, Chapter II.

<sup>26</sup> *Ibid.*, s 13-24.

<sup>27</sup> J. D. Finch, *Introduction to Legal Theory* (2<sup>nd</sup> edn Sweet and Maxwell, 1974) 17.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, 21.

- v. International Laws: These are laws or legal systems that govern the relationship between Countries.<sup>30</sup> It is the law of nations which applies to States in their mutual relationship with other States.<sup>31</sup>

### 3. Legal Reasoning and Approach to Problems

Legal reasoning is all about the thinking and reasoning on how to improve the law, betterways of resolving disputes that will improve the life of the individual, society and the world in general through the use of law. Legal reasoning is basically concerned with howlawyers reason in the legal profession on issues of law and its applicability in resolving disputes in every giving circumstance. Clients walk into a legal practitioner's office andnarrate his problems with the hope of getting legal advice or solution. Under this situation,the legal practitioner listens carefully, takes notes and applies legal reasoning whereby headvises the client in line with well established principles of law. The law student should therefore get used to answering problem questions. This is because they will assist students to discover their legal ability and prepare them for practice.<sup>32</sup>

This research argues that the study of Legal Method as a foundational course with embedded subjects relating to societal norms, values, logic, philosophical thought, introduction to psychology, Nigerian people and culture, history and philosophy of science, among others, will help to broaden the reasoning capacity of law students. Law therefore does not exist in isolation and this is the rational why jurisprudence, a compulsory final year course of law programmes in Nigeria has been described as the study of law as it relates to society.<sup>33</sup>

#### 3.1 Language of the Law, Formalities and Precision

Language of the law or legalese refers to the peculiar language of Legal- Practitioners especially the speech and writing of Legal- Practitioners usually expressed in English language. Contrary to the use of plain language, legal practitioners are fond of using antique jargons, pomposity, ponderous abstractions, unclear words *et cetera* in expressing a simple idea which supposed to be devoid of ambiguity for easy communication and understanding.

Importantly, most law institutions now emphasise the need for clarity and simplicity in legal writing. Plain and simple language is highly recommended almost in every jurisdiction for statutes, regulations, court rules, consumer contracts, insurance policies, and the like. Thus, Legal- Practitioners who serve businesses and government agencies have learned that using plain language pays dividends, understandable warranties, helps

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<sup>30</sup> B. A. Garner et al, *Black's Law Dictionary* (11<sup>th</sup> edn Thomson Reuters, 2019) 975.

<sup>31</sup> *Ibid.*

<sup>32</sup> G. Williams, *Learning the Law*, (11<sup>th</sup>edn Sweet and Maxwell, 1982) 12.

<sup>33</sup> R. W. M. Dias, *Outlines of Jurisprudence* (6<sup>th</sup> edn Cambridge University Press, 2009) 14.

in selling products and understandable government forms which require less staff time to explain and reduce the number of errors made by those who fill them out.<sup>34</sup>

Similar to other vocations or professions of human endeavours, Legal- Practitioners use words and language to enact law, express law, apply law and communicate generally in the legal profession. In this regard, Karl Olivecrona postulates that the purpose of all legal enactments and judicial pronouncements is to influence men's behavior and direct them in certain ways. The legal language must be viewed primarily as a means to an end. It is an instrument of social control and social intercourse. It could be rightly referred to as a directive language in contrast to a reporting language. The language of the law as contained in legal principles and rules; prescribed conducts and standards are interwoven and thus guide in the implementation of law. This interwoven relationship shows that law operates through four distinct categories of standards, rules, concepts and principles.<sup>35</sup> The official language of communication in the commonwealth nations, including Nigeria is English language. A good Legal- Practitioner should have a good knowledge and mastery of English language. He should be sound in both written and oral English language.

The language of law could be expressed in specific terms or in general terms. Example is presumption of innocence for anybody charged with criminal offence as contained in the CFRN 1999.<sup>36</sup> Another example is the classic case of *Donoghue v. Stevenson*.<sup>37</sup> In this case, the defendant was a manufacturer of ginger beer who negligently allowed decomposed snail got into the bottled beer. The Plaintiff bought it for consumption and discovered the decomposed snail inside the bottled beer. The principle established by the court in this case was expressed at a higher level of generality to the effect that a manufacturer of consumer goods owes a duty of care to the final consumers of its goods to ensure that the goods are free from defects that may cause health problems.

It is legal reasoning that will guide how law could be ultimately expressed in order to achieve the desired objective; whether it should apply to specific circumstance or accommodate varied circumstances without being too fluid as to lack direction, coherence or focus.<sup>38</sup>

### 3.2 Attributes of Language of Law

The language of law, like other disciplines have, among others, the following attributes:

- i. Law uses words or ordinary words in a technical, particular, uncommon, specific or special sense in order to attract special meaning.

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<sup>34</sup> G. Mills and M. Duckworth, *The Gains from Clarity* (1996) (Cost- Benefits Study of Plain Language Documents

– sponsored by the Law Foundation of New South Wales, Australia) U.S Department of Commerce, Office of Consumer Affairs.

<sup>35</sup> C. Patton and D. P. Derham, *Textbook of Jurisprudence* (4<sup>th</sup>edn 1972) 236 <<https://search.worldcat.org/title/A-textbook-of-jurisprudence-...-4th-ed.-edited-by-G.W.-Paton-and-David-P.-Derham/oclc/800879600>> accessed 1 April 2024.

<sup>36</sup> CFRN 1999, s 36(5).

<sup>37</sup> *Donoghue v. Stevenson* [1932] A.C. 562, 597.

<sup>38</sup> A. Sanni, *Introduction to Nigerian Legal Method* (Obafemi Awolowo University Press Ltd, 2017) 128.

- ii. Law uses words in their ordinary, literal or general meaning just like every other member of the public or profession.
- iii. Law often uses a lot of old or archaic words. This is because ample portion of common law was developed through the 15<sup>th</sup> century. On the basis of this, the language of law is likened to the language of King James Version of the Holy Bible which translation was done in the 16<sup>th</sup> Century.
- iv. Law has its own jargons, slangs or words with technical, uncommon, special, particular or peculiar meaning.
- v. Law uses verbose, circular, winding and long words and sentences whereas a few clear words will suffice.
- vi. Law makes use of many abstract concepts.

It is pertinent to state that in legal language, it is better to make use of short sentences and avoid long sentences. Long sentences make legal writing difficult to understand. In trying to understand a sentence, the reader's mind will first search for the subject, the verb and the object. If these three factors are closely arranged in orderly form, then the reader will easily understand the message communicated. When drafting a statute, regulation, bye-law or other documents that states rules and the writer has a choice between the singular and the plural, use the singular unless you can articulate a sound reason for using the plural.<sup>39</sup>

When drafting rules, contracts and other formal legal documents, be precise and consistent in using words of authority such as; must, shall, will, may, should and their negative forms such as; must not and will not.<sup>40</sup>

### 3.3 Distinctiveness of Legal Language

Under this sub-topic, this research examines the following rhetoric of legal language:

#### 3.3.1 Legal Rhetoric

Rhetoric is any talk, speech, or writing meant to persuade or influence a person. Legal rhetoric on the other hand means any legal argument, speech, or writing meant to persuade another person, court, or body.

Politicians, lawyers and actors are known for being skillful orators, who use oratory skills and rhetoric to thrill or persuade people. According to Plato, a Greek Philosopher, rhetoric is a means employed to achieve some end.<sup>41</sup> Another Greek Philosopher, Aristotle, classified rhetoric into three classes thus:

The hearer must of necessity be either a mere spectator, or a judge, and a judge either of things past or of things to come... Therefore,

<sup>39</sup> Texas Legislative Council Drafting Manual 100 (1996), Louisiana Senate Drafting Manual 39 (1996).

<sup>40</sup> B. A. Garner, *Dictionary of Modern Legal Usage* 939-42 (2<sup>nd</sup> edn, 1995); B. A. Garner, *Guidelines for Drafting and Editing Court Rules*, 169 F.R.D. 176, 212 (1997).

<sup>41</sup> D. Miller, 'Rhetoric in the Light of Plato's Epistemological Criticisms' *Rhetorica: A Journal of the History of Rhetoric* [2012] 30(2) 109-133.

there are necessarily three kinds of rhetorical speeches, deliberative, forensic, and epideictic.” I believe that that appearance of completeness is false.<sup>42</sup>

**a.** *Deliberative rhetoric:*

Deliberative rhetoric, as the name implies is a deliberate process in acquisition and exhibition of skill beyond mere words for winning somebody’s mind. Here the statesmen are urged to think deeply about their words and action. They should be honest and sincere in their words and action. Again, they should only embark on action that will advance the society.

To be a good lawyer requires a combination of many factors such as qualification, knowledge, hard work, patience, focus, diligence, honesty and practice of law over time. A judge on the other hand, needs deliberative rhetoric or skill so as to diligently evaluate or weigh the evidence before him on imaginary scale of justice and decide the case impartially in line with legislation without fear or favour.

**b.** *Forensic Rhetoric:*

Forensic rhetoric is the art or skill of winning a person’s mind with words. It refers to mere words meant to win somebody’s mind.

**c.** *Epideictic Rhetoric:*

Epideictic rhetoric is also known as epideictic oratory. It is a ceremonial discourse of speech or writing that praises or blames someone or something.

It is also known as demonstrative rhetoric and ceremonial discourse. Epideictic rhetoric includes funeral orations, obituaries, graduation and retirement speeches, letters of recommendation, and nominating speeches at political conventions. Interpreted more broadly, epideictic rhetoric may also include works of literature.<sup>43</sup>

### 3.3.2 Legal Logic

Logic is the art, study, or science of careful thinking and correct reasoning. It is the study of correct reasoning.<sup>44</sup> Logic involves careful thinking, reasoning, presentation of arguments and the making of conclusions using formal rules.

A logician, is therefore is a person who reasons analytically, carefully or sensibly. In other words, he is a person who uses logic or is good in logic. A conclusion reached through logic or the use of logic may be true or untrue. The possibility of this occurs in situations

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<sup>42</sup> E. Garver, ‘Aristotle on the Kinds of Rhetoric’ *Rhetorica: A Journal of the History of Rhetoric* [2009] 21(1) 1-18.

<sup>43</sup> R. Nordquist, ‘Definition and Examples of Epideictic Rhetoric’ <<https://www.thoughtco.com/epideictic-rhetoric-term-1690659>> accessed 11 April 2024.

<sup>44</sup> Logic-wikipedia, <<https://en.m.org/wiki/Logic>> accessed 9 April 2024.

where the logical conclusion may be valid and yet the conclusion is false and not true. Thus, logic and truth is not the same thing though sometimes they coincide. That is, whatis logic may be true sometimes and may not be true another time. It may not be true in that, a person may say he is something and logical evidence may point to the fact that heis what he says whereas he has lied in order to deceive his victims.

Examples of logic that may not be true are:

- a. A man hired a car, rent a compound and deceive a girl that he owns the compoundand the car in order to marry her.
- b. Lagos people are all chocolate in colour.James is from Lagos.  
James is chocolate in colour.

**4. The Methods of Legal Reasoning**

The methods of legal reasoning include the:

- a. Deductive reasoning, deductive logic or syllogism
- b. Inductive reasoning or inductive logic

**4.1 Deductive Reasoning, Deductive Logic or Syllogism**

The word ‘deductive’ is derived from the root word ‘deduct’. In legal reasoning, it meansto draw a conclusion or reach a judgment about something from the facts, information orevidence available. Deductive reasoning is a reasoning in which a reasonable or valid conclusion is naturally reached from two existing premises, propositions, assumptions, facts, evidence or information. Deductive reasoning is a reasoning that begins with a general statement or hypothesis and examines the possibilities before drawing a specific,logical conclusion.<sup>45</sup>

Deductive reasoning, deductive logic or syllogism is a reasoning or statement that has three parts in which the first two parts are facts, evidence or information known as premises which naturally lead to a conclusion which is the third part. Deductive logic or syllogism is a deductive form of argument which starts from a major premise and brings in a minor premise and from the two premises one makes or deduces their logical conclusion. Below is an example:

Any man who rapes a woman will be imprisoned -----Major premise is derived from the Criminal Code.

Mr Stone raped Miss Gelin-----Minor premise based on the facts of the case.

Mr Stone must be imprisoned -----Conclusion.

Deductive reasoning is using general information to reach a specific conclusion or judgment. It is the reasoning from general to specific. For example;

The people of Otojara town are good people.-----First premise.

Chief Otueke is from Otojara town. ----- Second premise.

So, Chief Otueke is a good man.-----Specific conclusion.

Note that even though the logical conclusion is valid, it may not be true as Chief Otueke may turn out a bad man.

#### 4.2 Inductive Reasoning or Inductive Logic

The word 'inductive' is derived from the root word 'induct'. To induct means to add or admit a particular person or thing to a general body of his/its kind. For example, admitting or calling newly qualified lawyers to the Nigerian Bar.

Inductive reasoning is reasoning with one specific fact or information and drawing general principles, conclusion or judgment from it. Inductive reasoning is reasoning with a specific fact, evidence, findings or information and drawing a general conclusion, principles, rules and judgment from the specific or particular instance. For Example; Mr. Okoro from Orokpo Community is an evil man. Therefore all people from Orokpo Community are evil people.

Thus, where there is no ready-made general principle which a judge can apply to a particular case, the Judge may discard engaging in syllogism and embark on inductive reasoning. Inductive reasoning is reasoning from the specific to the general. For instance, a lawyer may argue that the facts of his client's case is similar to the facts of several cases which have been decided in a particular way in the past and therefore his client's case should be decided in similar way. Example of this is the case of *Rylands v. Fletcher*<sup>46</sup> which established the rule that a person who brings a non-natural user into his premises is liable for the consequences of its escape with regards to the nuisance or havoc it may cause. This principle was applied by the Supreme Court in the case of *NEPA v. Alli*.<sup>47</sup>

#### 4.3 Legal Reasoning and Practical Reasoning or Common Sense:

**Comparison** Legal reasoning or logic is the use of formal rules in reasoning, recognising correct and incorrect conclusions as valid irrespective of whether or not the valid conclusions are false or true. Legal reasoning is the use of critical thinking in a way that lawyers habitually use it especially as regards the creation and enforcement of duties, rights, immunities and privileges.<sup>48</sup> Practical reasoning or common sense on the other hand, is the capability of an average individual to reason, weigh options, and draw a conclusion or makes judgment deductively or inductively. Legal reasoning or logic involves formal study. For instance, law students study logic formally as a compulsory course that every law student must pass as part of their legal education. Practical reasoning or common sense is the capability of an average individual to practically deduce meaning from situations. It needs no formal studies in any institution but an informal way of learning.

Legal reasoning or logic involves the use of formal rules for deductive and inductive reasoning, identification of similarities, dissimilarities and exceptions for reaching a valid

<sup>46</sup> *Rylands v. Fletcher* [1866] LRI Ex 265; (1868) LR 3 HL 330

<sup>47</sup> *NEPA v. Alli* [1992] 8 NWLR (Pt. 259) p. 279 SC

<sup>48</sup> B. A. Garner et al, *Black's Law Dictionary* (11<sup>th</sup> edn Thomson Reuters, 2019) 1077.

conclusion. In practical reasoning, a person relies on his experiences, what he hears or sees in identifying similarities, dissimilarities or exception and reach correct or incorrect conclusion. In legal reasoning and approach to problems, mere logic or logical consistency cannot in itself provide a sure remedy to all problems as he will need to engage in a rational scrutiny of available alternatives before settling down for viable alternatives.<sup>49</sup>

#### 4.4 Semantics in Law

Semantic is the study of the meanings of words and phrases as signs and symbols, especially when viewed historically and psychologically.<sup>50</sup> It is the study of words and their meanings. Words are used for communication whether spoken, written or oral. Every English word, like every other major language, has its ordinary meaning, or multiple ordinary meanings. Thus, when words are used in a transaction, document, law, or communication and there is a dispute, the legal meaning of the word, or words and their implication or effect becomes significant.

It is imperative that a Legal-Practitioner should be careful in his choice and use of words. He should know the ordinary meaning of an English word and the legal, special or particular meaning of a word he is using. Issuing legislation involves the transmission of a legal message from the legislators to the law-subject. Effort must be made to remove ambiguity or vagueness as these can distort the meaning or functions of the word or expression which may lead to semantic blur.

Words and their meanings are very significant issues in law. This is so because words used in a particular situation may lead to future disputes. Words and meaning are used to know the intention of parties in a contract or other form of transactions. The meaning of words communicated can go a long way to determine rights and duties of parties. Again, the meaning of word(s) may lead to a person losing his liberty and going to prison, loss of life and property, defamation, and so forth. In the case of *De Freville v. Dill*<sup>51</sup>, a medical practitioner wrongly certified a man as a person of unsound mind. The medical practitioner was sued for careless and wrong certification. The medical practitioner was held liable in damages by the court for the wrong certification and unjust detention of the plaintiff in a psychiatric hospital.

#### 4.5 Open Texture of Law

Open texture of law refers to the indeterminacy in the operation of legislations. Open texture of law stems from the problem which a draftsman faces in arranging legislative provisions emanating from competing desires.

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<sup>49</sup> D. Lloyd, *The Ideal of Law* (Penguin Books Ltd, 1979) 267.

<sup>50</sup> B. A. Garner et al, *Black's Law Dictionary* (11 edn Thomson Reuters 2019) 1634.

<sup>51</sup> *De Freville v. Dill* [1927] All ER 205.

The first interest or desire is how to regulate a particular sphere of human relations in a general way through the general rule in legislative provisions. While the second interest or desire relates to specification on the scope of the regulating legal rule in the legislative provision. In outlining the provisions of the legislations, the draftsman only has the picture of straight forward cases in his mind to which the rule entrenched in the provision will apply.

The legislative provisions remain open textured with regards to the unfamiliar matters that were never contemplated by the draftsman in relation to which it becomes doubtful whether or not the provisions should apply.<sup>52</sup> Under this situation of open texture of legislative provisions, the courts or other administrative tribunals are vested with discretionary power to frame specific rules appropriate for special circumstances. For instance, the provision of Workmen's Compensation Act 2010<sup>53</sup> provides that the dependants of a deceased workman who died of an accident in the course of his employment are entitled to claim compensation from the employers. A situation emerges in which a workman is murdered but not in the course of his employment, the issue then will be whether or not his dependents are entitled to claim compensation from the employer of the deceased as the deceased never died of an accident as contained in the provision of the law. It follows therefore that the legislative draftsman must be diligent and efficient in choice of words so as to ensure that the content of the legislation is clear and simple, devoid of any ambiguity.

#### **4.6 Procedure for Constitutional Amendment in Nigeria**

The Legislature, Executive, Judiciary and individual or group through their Legislator can propose an amendment to the Constitution. The procedure for amending the provisions of the CFRN 1999 is a rigid one. Proposal for amendment comes to the National Assembly by way of bills though it is processed in a manner different from ordinary bills because it goes through a more stringent and thorough process before becoming law.

A proposal for amendment of the constitution must principally be supported by a two-third majority of all members of each House of the National Assembly.<sup>54</sup> Again, it must also be approved by a resolution of at least two-thirds of the 36 States Houses of Assembly.

Proposals for amendment are usually considered at separate sittings of each chamber of the National Assembly. The procedure for the Constitution Amendment Bill in each chamber of the National Assembly, were highlighted by Ese Malami as follows:<sup>55</sup>

- i. First Reading: The long title of the bill is read by the Clerk of the House.

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<sup>52</sup> M. E. Ibanga, *Learning Legal Theory and Legal Method* (Associated Publishers Limited, 1996).

<sup>53</sup> Workmen's Compensation Act 2010, s 4.

<sup>54</sup> CFRN 1999, s 9 (2).

<sup>55</sup> Malemi, (n 3) 420-421.

- ii. Second Reading: After the bill is read a second time, the proposed amendments are forwarded to the Committee on the Review of the Constitution.
- iii. The Committee then reviews the bill and organizes public hearings for further consultations where necessary.
- iv. The amendment proposals are then compiled into one bill and presented to the chamber at its plenary. If the House adopts the report, it progresses to the third reading stage.
- v. Before the third reading of the bill, every legislator has to vote either in support or against each specific clause in the bill. A two-third majority of all the members of each House is needed for each clause to pass.
- vi. Where it bothers on the creation of new States, boundary adjustments, new local government areas, fundamental human rights and the mode for altering Constitution, a four-fifth majority is needed.
- vii. If two-thirds of each chamber passes the bill without amendment or differences, it is transmitted to the States Houses of Assembly for concurrence. However, if an amendment occurs at either of the chambers, a conference committee will be set up to harmonize differences on the bill before sending it to the States for concurrence. Note that if both Houses are not able to harmonize positions, the bill will be returned to the respective chambers for fresh voting.
- viii. At the State Assembly level, a simple majority vote of approval of each clause by two-thirds of the States is required for each amendment to come into effect. This is about 24 of Nigeria's 36 States.
- iv. Following the concurrence from the States, their report on the bill is forwarded to the National Assembly for adoption. Thereafter, the Clerk of the National Assembly sends a clean copy of the bill to the president for his assent.

It is worthy of note to state that the legislative processes for passing bills to laws and amendment processes to any of the provisions of the CFRN 1999 are very rigorous. This research takes the stance that a firm grip of the knowledge and workings of the law at the foundational level of study could be likened to laying a good foundational work of building a Legal Practitioner to be.

## **5. Conclusion and Recommendations**

In conclusion, this research concludes that the foundational knowledge of law could be well laid if the core curriculum of legal method is well structured and taught to the undergraduate law students. This often plays an important role of mentorship in the life of a researcher, Legal Practitioner as well as law students. Learning the law therefore require a process which involves teaching, listening and evaluating hypothesis as necessary recipes for building a law abiding Society. Thus, human beings which are fit and proper objects of legal research may be loomed in categorised form, either as individuals or as members of a particular society. This in effect may be evaluated as members of a particular class or social strata of the society and that the correlation

existing from varied echelons of the human society are controlled by a body of principles known as law.

Sequel to the above, this research recommends a wider curriculum of Legal Method as a foundational course correlating with law in social context, legal logic, legal reasoning and approach to problems. This will broaden the jurisprudence of the law students and legal researchers on the knowledge of law relating to legal reasoning and approach to problems in the society so as to meet global best practices.

The scope of the study of Legal Method as a foundational course should be widened with embedded subjects relating to societal norms, values, logic, philosophical thought, introduction to psychology, Nigerian people and culture, history and philosophy of science, among others, so as to help broaden the reasoning capacity of the law student.