# Essentials of Nigerian

# Legal Methods

EDITOR

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# Chapter Four

## *LEGAL REASONING AND APPROACH TO PROBLEMS*

***Stephen Ilesanmi***

### Introduction

There is an urgent need to meet up with societal dynamism, the lawyers, judges, legislatures and related legal stakeholders in Nigeria reason and approach legal problems with some practical techniques in order to attain laudable solutions to legal problems arising in various ways. Thus, it is expedient for a student studying the Nigerian Legal Method to understand the nitty-gritty of legal reasoning and approach to problems.

There have been different research work on legal reasoning and approach to problems, but this article takes the student learning the Nigerian Legal Method through the modern and basic principles of legal reasoning and approaches to problems. Legal scholars have a tenacious intuition or at least a strong hope that legal reasoning is distinctive, that it is not the same as logic, or scientific reasoning, or ordinary decision making, and there have been dozens of attempts to describe what it is that sets it apart from these other forms of thinking.[1] This article will consider necessary factors and principles in legal reasoning together with modern flavour.

Legal reasoning must be distinguished from scientific reasoning. Legal reasoning is a phenomenon that mostly concerns lawyers, judges, legislatures and legal stakeholders in different forms in the society.

It is pertinent as well to consider the modern trends or changes in the world that have effects on the Nigerian Legal Method.

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[1]Ellsworth, Phoebe C. "Legal Reasoning." In The Cambridge Handbook of Thinking and Reasoning, edited by K. J. Holyoak and R. G. Morrison Jr., 685-704. New York: Cambridge Univ. Press, 2005. P. 685.

For instance, the internet has drastically altered our lives.[2] As a matter of fact, new relationships in cyberspace stretch the limits of legal principles and categories.

**Definitions, Nature and Concepts of Legal Reasoning**

Reason is an expression or statement given by way of explanation or justification; a ground or cause that explains or accounts for something; and the power of comprehending and inferring.[3] While the term 'legal' is an adjective relating to or involving law generally.[4] Legal reasoning can be defined as legal expression or justification that explain laws and other related subjects. In another perspective, legal reasoning is a mode of thought typical of lawyers and judges, who in their work seek to apply legal rules to specific fact patterns to arrive at enforceable decisions.[5]

The nature of legal reasoning is, broadly speaking, practical reasoning. Practical reasoning moves from reasons for action to choices (and actions) guided by those reasons.[6]

The concept of legal reasoning and approach to problems are fundamental to learning the law, specifically, the Nigerian Legal Method. Legal reasoning, indeed, is technical reasoning, at least in large part, not moral reasoning. Like all technical reasoning, it is concerned to achieve a particular purpose, a definite state of affairs which can be achieved by efficient disposition of means to end.

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[2]Daniel Femi, 'Introduction to Computer Law in Nigeria,' (Ink-Spire Ventures Ltd, 2015). P. 8

[3]Garner, A. Bryan (ed)"Black's Law Dictionary." 10th Ed., (Thomas Reuters USA 2014.) P. 1456.

[4]Ibid. p. 1026.

[5]Ibid. p. 1458.

[6]Finnis, John M., "Natural Law and Legal Reasoning" (1990). Notre Dame Law School Journal Articles Paper 79, P. 1

The particular end here is the resolution of disputes by the provision of a directive sufficiently definite and specific to identify one party to the dispute as right (in-the-right) and the other as wrong (not-in-the-right).[7] More also, Legal reasoning goes to the root of ascertaining statutes relatively to their intents.

Thinking like a lawyer is often associated with students becoming familiar with the organizational schemata known as IRAC (Issue, Rule, Application, and Conclusion).[8] The importance of IRAC is elevated to a paradigm analysis, reasoning and writing,[9] but with caution to open-minded multidisciplinary issues which law is related with in the country. The detail about IRAC as introductory tool to learning aspect of legal writing and reasoning to resolve legal matter is summarized as questions in the followings:

1) Issue - What exactly is issue or legal matter being considered?
2) Rule - What legal rule suits the issue or legal matter at hand?
3) Application - What are the facts to analyze and to be applied?
4) Conclusion - Having applied the rule to the facts, what's the outcome?

To apply the above principle, take for example, Mr. John Ojo Okoro, a twenty year old Nigerian, who has schooled up to primary six, and has joined a registered political party to vie for the post of presidency of the Federal Republic of Nigeria in 2019 general elections.

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[7] Ibid. p. 6.
[8] Emiri, O. F. elt , 'Revisiting the Traditional IRAC Organisational Structure for Legal Analysis: Towards A Multidisciplinary Approach,' *The Nigerian Law Journal*, 2017, Vol. 2, N0.1, Nig., L.J. p. 32.
[9] Ibid.

But the *big wigs* in the political party have rejected his candidacy to vie for the precedential position under the platform of the political party based on his age. If Mr. John Ojo Okoro has decided to consult his lawyer on what he should.

In order to apply the general pattern of legal reasoning, the legal issue involved in the above example is qualification for election as president; while the rule will focus on the Sections of the1999 constitution of the Federal Republic of Nigeria[10]; the relevant fact to the legal matter is whether the person has actually met the requirement; and if the rule (Sections 130 and 131 of the Constitution) is applied, one will reach conclusion that Mr. John Ojo Okoro is not qualified to vie for the post of presidency in Nigeria.

It must be borne in mind that IRAC was conceived primarily as an analytical tool, it must not be converted into a writing formula[11] or only method of legal reasoning. There are basic principles and tools that must be learnt to acquire the skill of legal reasoning in writing or speaking persuasively. In the construction of written documents including statutes, what the court is concerned to ascertain is, not what the promulgators of the instruments meant to say, but the meaning of what they have said.[12]

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[10]Sections 130 and 131 establishes the office of president and qualification of a person for election as president respectively. Specifically, Section 131 of the Constitution provides that a person shall be qualified if is a Nigerian by birth; he has attained age of forty; he is a member of political party and sponsored by the party; and has been educated up to at least school certificate or its equivalent.

[11]Emiri, O. F., *op.cit*, 76.

[12]Per Lord Simon in Farrell v Alexander (1977) A. C. 59 at 95B, cited by Smith A. T. H (ed.), 'Glanville Williams: Learning the Law,' (London: Sweet & Maxwell, 2006): P.125.

**Language of Law**

The term 'language' is a tool used in the process of communication.[13] In legal profession and related professions, language does not mean lingua (Latin word for 'tongue'), but rather, the combination of words, phrases etc. for purposes of communication.[14] Like every other profession, vocation, or human endeavour, lawyers use words and language to express laws, apply laws, and communicate generally in the legal profession.[15] Like other fields of human activity, the language of law has several attributes,[16] which are strictly applied to achieve legal objectives. These attributes are considered as the following:

**Law Uses Expression in Ordinary Forms**

Law applies to every person and institutions in a country, it is therefore expected that every person, who is not vast with the skill of a lawyer, should be able to understand the provisions of certain laws without much ado. The main purpose of this attribute is to give a precise meaning to the intents in the provisions of laws. Note that laws could be generally stated or specifically stated depending on their applicability. For example, section 33 of the 1999 Constitution[17] provides that:

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13Campbell, E. & MacDougall, D., Legal Research Materials and Methods (The Law Book Company Ltd, Sydney, Melbourne & Brisbane, 1967). P. 170.

14Abiola Sanni,(ed.) 'Introduction to Nigerian Legal Method, (Ile-Ife: Kuntel Pub. 1999). P. 113

15Ese Malami, 'The Nigerian Legal Method,' 2nd Ed. (Lagos: Priceton Publishing. 2012). P. 250.

16Ibid.

171999 Constitution of the Federal Republic of Nigeria (as amended in 2010).

(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.

From the above provisions of section 33 of the Constitution, sub-section 1 provides for general application for every person to enjoy his or her right to life, while sub-section 2 specifically provides specific reasons why some person may not enjoy the provision of law in sub-section 1.

It should be noted that many legal systems, particularly the developed countries, have been untilising the plain language of law sequel to the reliance in information technologies and the internet which have been shaping different facets of life's activities.

**Use of Abstract Concepts**

There are certain concepts of law that lawyers use to refer to some basic principles. One should bear in mind 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 are quite different in meanings from their day to day usage outside law are:-, Legal personality, Contract, Tort, Possession, Rule of Law, Civil wrong, Separation of Powers, Company Law, Ownership, Estate etc. These are words that are used technically in the legal parlance. These words are used to achieve economy of words so as to avoid detail or verbose explanation.

The internet and information technologies have lent certain words to legal concepts which are, for instance, cybercrimes, hacking, identity theft, cyber stalking, internet matrimony, Trojan horses, spamming, etc. The word cybercrimes are computer mediated activities which are either illegal or considered illicit by parties and which can be conducted through global electronic network.[18] The words listed above are inclusive as legal concepts with general nomenclature called cybercrimes.

**Common Words with Uncommon Meanings**

The legal language and common language are at variance. For instance, lawyers prefer to use the terms like juristic person, artificial persons, adjournments, internet worms, email spoofing, terminal cloning etc., whereas, a layman will use the words in literal meanings or common meanings.

[18]Dr. Gupta and Agrawal, 'Cyber Laws'. (India: Premier Publishing Company, 2004). P.54.

**Use of Latin, French and Archaic English and Jargons**

Legal language use some Latin, French and archaic English words like probono, ultra vires, ab initio, consensus ad idem —(agreement or meeting of the minds). These are words with special or technical meanings.

The reason for using some of these words or expression is basically due to the nature of the historical development of the law.[19] It is no longer necessary to use these Latin, French and archaic English in this modern time. The trend of globalisation has birthed the need for simple and straightforward legal language throughout the globe for those who use English as legal language in their various jurisdictions. The modern global legal language is jettisoning archaic language and legal jargons.

**The Essence of Legal Reasoning**

The essence of legal reasoning goes to the root of legal profession and the essence of laws as the fundamental tools for social functioning. The followings are the reasons for needs for legal reasoning in order to meet the legal requirements in the society:

**Societal Dynamism**: Every society experiences change in ways of doing things. Since society is dynamic, it goes without saying that the economy that serves it cannot be static, but must be equally dynamic,[20] and its laws must be dynamic also. The innovations in different aspects of society demand the essence of enacting new laws or/and interpretation of existing laws to meet up with the current standards.

[19] Abiola Sanni, op.cit, 117.

[20] Augustine Agom, Abubakar M, and Apinega S. 2012, Economic Reform and Democratisation in Nigeria, Law, Democratisation and Social Change,2012 NALT conference, page 34.

For instance, Section 84(1) of the Evidence [21]Act provides: "In any proceedings a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in sub section (2) of this section are satisfied in relation to the statement and computer in question" The example above gives credence to admissibility of computer generated evidence in the order to suit the current global transactions on the internet.

**Standard Interpretation of Laws**: Legal reasoning is very essential in order to interpret the laws in accordance to the intention and intents of the laws. Lord Denning opines that, 'It is no use having just Laws if they are administered unfairly by bad judges and corrupt lawyers. A country can put with Laws that are harsh or unjust so long as they are administered by just judges who mitigate their harshness or alleviate their unfairness."[22] The view of the Renowned Learned Scholar is that every society needs standard interpretation of its laws in order to arrive at true justice.

**Changes In Government Policies and Political Structures**: The constant changes in governments policies at different levels[23] demand legal reasoning to suit the laws that related with the changes in the policies as well as political changes in the society. For instance, the Senate of the Federal Republic of Nigeria amended the 2010 Electoral Act[24] to bring reforms to the electoral processes in Nigeria.

[21]Evidence Act of 2011, Law of Federation of Nigeria.
[22]Okunniga A. A. O. *Transplants and Mongrels and the Law: The Nigerian Experiment*; Inaugural Lecture Series 62; University of Ife Press (1983) p. 2
[23]Federal Government, States' Governments and Local Governments by the Constitutional Structure of governance in Nigeria.
[24]The Electoral Act No. 6 2010 (Amendment) Bill 2017.

These reforms have to do with the developments in the political affairs in Nigeria.[25]

**Scientific and Technologies Developments**: There is need for legal practitioners, judges and legal stakeholders to reason in line with the same global developments in sciences and technologies. For instance, the legal issues with human cloning[26] and information technologies as they intervene in human daily affairs these days.

**Rising Numbers of Anti-Social Activities**: Nigeria is faced with many anti-social issues that laws are needed to be curbed and these laws demand thorough legal reasoning to resolve the anti-social issues logically. The increase in the numbers of insurgencies, militancy, kidnapping, child trafficking are few examples of the anti-social activities.

**Globalisation**: Globalisation is a process by which different regions of the world are pulled together through an expanding network of exchanges of peoples and ideas and cultures as well as goods and services across vast distances.[27] The law is required to be considered and applied in a reasonable ways to meet up with the tenets of the gobalisation.

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[25]For instance, the death of All Progressive Congress Governor Candidate, Abubakar Audu during the 2015 General Elections brought new jurisprudential debates to electoral laws in Nigeria which the amended Electoral Act has now resolved.

[26]Laws have to be reasoned out on issue of biological *human copy* regarding requirements, structures, resources and the evolving capacities of civil rights, concerns about human rights and criminal law regarding cloning.

[27]Duro Oni, 4 elt (ed.) Nigeria and Globalisation Discourse on Identity Politics and Social Conflict, 2004 CBAAC Lagos. P. 20.

## STANDARD PRINCIPLES AND ISSUES IN LAW

Legal principles and issues in law differ in extent to which they constrain those who are charged with applying them. One can slice and dice legal principles and issues of law in various ways. One has to investigate the idea that legal principles and issues in law can be sorted into three general classes: rules, standards, and principles. These rules, standards and principles are explained below following:

**Rules** are the most constraining and rigid. Once a rule has been interpreted and the facts have been found, then the application of the rule to the facts decides the issue to which it is relevant.

**Standards** provide an intermediate level of constraint. Standards guide decisions but provide a greater range of choice or discretion; for example, a standard may provide a framework for balancing several factors.

**Principles** are even less constraining. Principles provide mandatory considerations for judges. Whereas, standards identify an exhaustive set of considerations for adjudication or policy making, a principle identifies a non-exhaustive set, leaving open the possibility that other considerations may be relevant to the decision.

### Rules

Although the phrase "legal rule" can be used in a broad sense, to refer to all legal norms, whether they be case in the form of a bright-line rule, a standard that is in the form of a balancing test, or even an abstract principle, there is also a narrower sense of "rule" that distinguishes rules from standards and principles.

Rules themselves vary- let us use hard and soft to refer to the poles of a continuum. A rule is harder if both the conditions for its application and the consequences that follow are defined by bright-line distinctions that admit of easy application. The rule that disqualifies persons who are not 35 years of age from eligibility for the Presidency of the United States is quite hard or rigid. Rules become softer as they criterion for the application and/or the consequences to which they lead become fuzzier. If the constitution had limited the presidency to "adults," then there could have been cases in which the question whether a particular candidate was unclear. Twelve-year olds are clearly not adults but twenty-five year olds clearly are. In between, the necessity of drawing a somewhat arbitrary line makes the "adult" rule relatively *softer* than the "35-year old" rule.[28]

**Standards**

Standards are less constraining than even "soft" rules. Whereas a rule defines a triggering condition and a consequence, a standard may define a set of relevant considerations and options. One familiar example of a standard is provided by the fairness component of the *International Shoe* test for personal jurisdiction. That test requires a court to find that a state's assertion of personal jurisdiction violates the Due Process Clause on the basis of a give factor balancing test, which refers to the defendant's interest, the plaintiff's interest, the interest of the forum, judicial efficiency and economy, and substantive policy concerns.[29]

[28]Legal Theory Blog at, https://lsolum.typepad.com/legaltheory/2009/09/legal-theory-lexicon-rules-standards-and- principles.html, accessed on 14th February, 2018.
[29]Ibid.

Like rules, standards themselves vary in their capacity to guide and constrain the decision-making process. Some standards give the decision maker substantial guidance, by specifying relatively specific and concrete factors the decision maker should consider and the relative weight or importance of those factors. Other standards are much more open ended, requiring consideration of factors that are general and abstract. Standards that refer to "all the circumstances," "the interests of justice," or "equitable considerations" are particularly soft. Standards that require the evaluation of "cost to the defendant" or "serious invasions of privacy" are relatively *harder*, providing greater constraint and guidance.[30]

By way of illustration, consider eligibility for the presidency once again. A rule based approach might limit eligibility to persons of a certain age or to "adults." A standard might specify that the only persons who are "sufficiently mature" may occupy the office of President. This standard is relatively open-ended, and it might disqualify some sixty-year olds from the presidency but allow some 20 year olds to serve.[31]

**Principles**

Principles are quite different from both rules and standards, at least on the basis of the definitions that we are using. Both rules and standards provide a framework that is, in theory, sufficient for resolving a particular issue in a legal dispute. But as we are using the term, a "principle" only provides guidance for the interpretation or application of a rule or standard. Principles by themselves do not resolve legal issues.

[30] Ibid.
[31] Ibid.

This sense of principle is illustrated by Ronald Dworkin's (1996) example of the principle that no one should be allowed to profit from their own wrong, drawn from the case of *Riggs v. Palmer*.[32] In that case, the statute of wills would have allowed a murderer to inherit from his victim, but the New York Court of Appeals concluded that the statute should be given an equitable interpretation in light of the common law principle against wrong doers profiting from their wrongs. This principle is not a rule: the law does permit wrong doers to profit from their wrongs in a variety of circumstances. Rather, this general and abstract principle provided guidance in the interpretation and construction of a rule--in *Riggs*, the rule provided by the statute of wills. (This example is drawn from Ronald Dworkin's famous essay *Hard Cases*.)[33]

## THE PROS AND CONS OF RULES, STANDARDS, AND PRINCIPLES

What are the pros and cons of rules, standards, and principles? When you have identified a candidate legal norm, when should you argue that the norm should be formulated as a rule, a standard, or a principle?

Here are some basic ideas about the appropriateness of rules, standards, and principles:

**Predictability and certainty.** If your goal is ex ante predictability and certainty, then rules are usually the way to go. Predictability and certainty are particularly important when the law seeks to guide future conduct.

[32] 22 N.E. 188 (N.Y. 1889).
[33] Legal Theory Blog, op.cit.

For example, if we want to deter particular forms of conduct, we may do better to define the conduct in a rule (or in a set of rules) that would enable those who engage in the conduct to clearly see that the proscribed conduct is forbidden. Standards provide less guidance, and principles, almost no guidance at all.

**Fairness and sensitivity.** On the other hand, if our goal is to insure ex post fairness, then standards may be the way to go. Standards permit flexibility and the consideration of mitigating circumstances. Rigid rules are likely to lead to unfairness in particular cases, because it may be difficult to define in advance all of the circumstances which should count as exceptions to the rule.

**The job of principles.** Principles seem best suited for another sort of legal task. Principles cut across doctrinal fields. The same principle--one may not benefit from one's own wrong, for example--may apply in torts, contracts, and the law of wills. Thus, principles are particularly well suited to give legal form to concerns which operate in a wide variety of particular contexts.[34]

## FORMALITY, PRECISION AND DISTINCTIVENESS IN THE USE OF LANGUAGE

*Legal profession and related professionals use words and language generally with formality and precision* with technical vocabulary. Lawyers use the phrase 'learned friend' with the basic notion that lawyers are learned with mastery of words and language of law as they related to legal issues. A lawyer is expected to be skillful to use language persuasively either in writing or in oral presentation.

[34]Ibid.

Many cultures have phrases and styles of language, which they label as specifically legal. These are societies with closed systems of law.[36] In closed systems especially those with legal professions there are technical terms. Technical words are of two types. Some are a form of short cut while others describe concepts and processes in a way that a lay world does not understand.[37] The lawyer's use of term like "demurrer" or "habeas corpus" can be compared to the doctor's use of "nephritis" or botanist's "monocotyledon."[38] "The law is full of ringing phrases such as "the truth, the whole truth, and nothing but the truth."[39]

In legal profession, the use of formality is to ensure that law is applicable in formal means to all formal and semi-formal activities among people in a society. For instance, a deed must be formalised in form of being "singed, sealed and delivered" in order to become a legal document with binding force.

The essence of precision in use of language in law is to avoid extraneous words that may tend towards misleading the society. If a law is clothed with ambiguity and vagueness, it shall surely birth injustice and abuse of its purpose.

Distinctiveness in law involves technicality in law. Law has to be distinctive in order for the society to understand its purpose. A journalist may write a caption in his reportage that: "The Ex-President is a Thief, He Stole Billions of Dollars."

[35]Section 1 of Rules of Professional Conduct for Legal Practitioners, in the Legal Practitioners Act, 2010 Cap. 20 Law of the Federation of Nigeria.
[36]Oji, S. I., Introduction to Legal Method, (Ibadan: Ababa Press, 2011) p. 81.
[37]Ibid. p. 82.
[38]Ibid.
[39]Ibid.

A lawyer shall not write in the way the journalist has written. A lawyer will probably write: "It is Alleged that the Ex-President Stole Billions of Dollars." The lawyer may write in such manner because he will aver his or mind to the fact nobody will be declared guilty until it is proved and declared so by a competent court.

## LEGAL RHETORIC AND LEGAL LOGIC

Legal rhetoric is analogous with dialectic.[40] Rhetoric is defined as the faculty of observing in any given case the available means of persuasion.[41] Rhetoric is any talk, speech or writing meant to persuade or influence a person.[42] Thus, legal rhetoric is any legal argument, speech, or writing meant to persuade another person, court or body.[43]

Rhetoric can be classified into three categories as:

1. Forensic rhetoric- the mere word meant to win somebody's heart;[44]
2. Deliberative rhetoric- the deep thinking and writing with honest and sincere means of persuasion; and
3. Political rhetoric- which is mere political propaganda to persuade electorate to vote for a political party or political candidate.

From the three categories above, a legal practitioner or a lawyer is more concerned with both forensic rhetoric and deliberative rhetoric in order to persuade the audience and win the hearts of the audience by his or her oratory presentation or writing presentation with precision.

[40]Oji, S. I., op.cit. p. 83
[41]George C. Christie, Text and Readings on the Philosophy of Law (American Casebook) (West Publishing Co.) p. 854
[42]Ese Malemi, Supra at Page 256.
[43]Ibid.
[44]Ibid.,

The modern trend in learning the law or in the legal profession is that legal rhetoric involves more writing to persuade or influence. Rhetoric focuses on the process of writing itself.[45] Its principle features include the following five theses:

1. Writing is a process; the process is recursive rather than linear; pre-writing, writing, and revision are activities that overlap and intertwine;
2. Writing is rhetorically based; audience, purpose, and occasion (the components of the rhetorical situation) figure prominently in the assignment of writing tasks;
3. The written product is evaluated by how well it fulfills the writer's intention and meets the audience's needs;
4. Writing is a disciplined creative activity that can be analyzed and described; writing can be taught;
5. The teaching of writing is fruitfully informed by linguistic research and research into the composing process.[46]

Legal Logic is practical logic, consisting of the application to law of the rules of pure or theoretical logic which is general logic. Legal logic[47] provides procedures through which the validity of arguments in their original language can be evaluated. In practice, legal logic is the process of argument comprises of, for example, bring up a matter to evaluate with convincing conclusion. To evaluate an argument in natural language, the argument must first be formalised, that is, translated into the language of some formal logic.

[45]Teresa Godwin Phelps, The New Legal Rhetoric, 40 Southernwestern Law Journal. Vol.40. (1986) p. 1094.
[46]Hairston, The Winds of Change: Thomas Kuhn and the Revolution in the Teaching of Writing, 33 C. COMPOSITION & COMM. 76 (1982). P. 86.
[47]Levi Edward H., An Introduction to Legal Reasoning (1961 ed.) p.7

The resulting formal argument can then be tested, and the outcome of this test is applied to the original informal argument, this same processes apply to legal logic.

## THE METHODS OF LEGAL REASONING

The main methods of legal reasoning are deductive reasoning (which involves deductive logic and syllogism) and inductive reasoning or inductive reasoning.[48] There are other methods that are ancillary to legal reasoning, examples are analogy and fortiori.

### Deductive Method

The method of studying a phenomenon by taking some assumptions and deducting conclusions from these assumptions is known as the deductive method. Deduction is a process of reasoning from the general to particular or from the universe to individual, from given premises to necessary conclusions. Deduction is also known as analytical, abstract and a priori method. It has an abstract approach to the study of science. Deductive method is a part of the scientific method. It is basically a rational approach in accordance with the tenets of deductive logic. Deductive logic uses a general statement as the basis of argument.[49] Core of the common forms of deductive logic is syllogism, runs like this,

[48] Ese Malemi, op.cit. p. 260.

[49] An MHRD Project under Idian Government's National Mission o Education through ICT. Culled from, http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09._research_methodology/03._legal_reasoning_/et/8150_et_et.pdf. Accessed on 15th Feburary, 2018.

(1)Plants grow in day time.
(2)A cactus is a plant.
(3)Therefore cactus plant grow in day time.[50]

The third statement follows from the first and second statements taken together. A syllogism consists of a major premise, a minor premise, and a conclusion. A major premise usually states a general rule. In legal arguments, this is generally a statement of law. A minor premise makes a factual assertion about a particular person or thing or a group of persons or things. In legal arguments, this is usually a statement of fact. A conclusion connects the particular statement in the minor premise with the general one in the major premise, and tells us how the general rule applies to the facts at hand. In legal arguments, this process is called applying the law to the facts.

Example: to qualify as a victim of rape under criminal law there must (1) be sexual intercourse with a woman; (2) the intercourse must be without her will. (Major premise; states a rule of law.) Here, the woman had consensual sex. (Minor premise; makes a statement of fact.) Therefore, the plaintiff cannot be a "victim" of rape under criminal law. (Conclusion; correctly applies the law to the facts.)[51]

In order for a syllogism to be valid, it must be logically impossible for its premises to be true and its conclusion to be false. In other words, a syllogism is valid if, given the truth of its premises, the conclusion "follows" logically such that it, too, must be true.

[50]Ibid.
[51]Ibid.

An argument is not valid simply because its premises and conclusion are all true. Example: "all teachers are human. Some human are excellent racers. Therefore, some teachers are excellent racers."Explanation: if read apart, each of these statements is true. Teachers are indeed human. Some human (e.g. athletes) are excellent racers. And as it happens, some teachers are also good racers. But this argument is not valid. The fact that teachers are humans and that some humans are excellent racers does not prove anything about the racing ability of teachers. Based on the information we're given in the premises, it is logically possible that no teacher of the world has ever stepped foot in field for running. Because it is logically possible for the premises to be true and the conclusion to be false, this argument is not logically valid.[52]

*Steps in the Deductive Method*

Step 1. The exploration of the problem- An indispensable preliminary to any investigation is the existence of a definite problem in the mind of the researcher. The problem must be one of significance for the actual world.

Step 2. Setting up of the hypothesis from assumptions- He has to select the assumptions from which the conclusion will be derived. The assumption must be derived from observation. They must be close to reality. On the basis of suitable assumptions, hypothesis may be formulated. A hypothesis is a conjuncture, a hunch, of the possible connection between two phenomena.

Step 3. Theoretical development of the hypothesis- The nature and implications of the hypotheses have to be carefully analyzed to formulate a theory. This is purely the deductive part of the process.

[52] Ibid.

By logical reasoning we have to deduce the consequences. Deductive explanations consist of two parts, the explanandum and explanans. The explanandum is the event, problem or thing to be explained and is the conclusion of a deductive argument. It may be an individual event. The explanans (premise) explain the explanandum (conclusion). The explanandum is deduced from the explanans. The deductive explanation has a valid argument because it takes the form of conditional argument, affirming die antecedent which is a valid form of inference. Step 4. Verification of theories.[53]

**9.1. Merits and demerits of deductive method**

**Merits**

1. Powerful- Deductive explanation is very powerful because it makes use of a valid form of deductive argument where the explanandum must be true if the explanans are true.
2. Simple method- From a few basic facts of human nature, a number of inferences can be drawn by logical reasoning.
3. Substitute for experimentation- It is not possible for the investigator to conduct controlled experiments with the legal phenomena in a laboratory. He can, therefore, fall back upon deductive reasoning.
4. Actual and exact- The deductive method lends for the generalizations which are accurate and exact.[54]

**Demerits**

1. Requires- high degree of logic and reasoning- Not everyone can use deductive method successfully and even many experienced researchers have been trapped by faulty reasoning.

[54]Ibid.

2. Danger of building inapplicable models- If the researcher confines only to abstraction, his model may have the elegance and be logically beautiful but it may be far away from real life.
3. Valid under assumed conditions- The theories arrived at by deductive reasoning are valid only under assumed conditions. The assumptions must be valid, if the theories are to be hold good.
4. Not applicable to all types of studies- Deductive method can be applicable to the limited studies only.[55]

### *9.2. Inductive Method*

Induction is the most often used method of scientific research. Induction is a process of reasoning from particular cases to whole group of cases, from specific instances to general rules. The inductive method is also known as historical, or empirical or a posteriori method. It may be described as practical approach to the research problems. It tries to remove the gulf between theory and practice. This method examines various causes one after another and tries to establish causal relations between them. General principles are laid down after examining a large number of special instances or facts. The method is said to be 'empirical' because the formulation of principle is made only after an extensive compilation of the raw data of experience. The data may be historical or statistical data, the historical instances are qualitative while the statistical data are quantitative. Generalizations are made after the analysis of data.[56]

Inductive reasoning starts from observable facts from which a generalisation is inferred. Let us take an example:

[55]Ibid.
[56]Ibid.

(1) Man A died.
(2) Man B died and so on.
(3) All men are mortal.

One comes across the death of so many individuals. On the basis of these observed facts, one may infer that all human beings are mortal basing on inductive reasoning.

Induction operates on faith that in the basic course of things, if for a long time regularity is evidenced, then it is a Surety enough for the inference that it will continue in the future. If the premise and conclusion in the logical case are both known, some probability relations may be established between them and this may serve as a paradigm of an inductive inference.[57]

Inductive explanations also have explanandum and explanans. The explanandum is generally probable, explanandum cannot be deducted from die explanans with certainty. The explanandum is implied by the explanans. The explanans support or provide evidence for the explanandum but does not make the latter certain. The explanans can be true and the explanandum can still be false in the inductive explanation. Inductive explanations explain either the probability of individual events or statistical generalisations. Inductive process examines the particular phenomena and discovers from them the general law. There are two laws which bind the process of induction, i.e., the law of universal causation and the law of uniformity of nature; Perfect induction is a method of arriving at a universal proposition after taking into consideration all the individual instances of phenomena under Investigation.[58]

[57] Ibid.
[58] Ibid.

Induction argument derives a generalised conclusion on die basis of particulars which are often empirically derived observations. The premise of an inductive argument makes die conclusion probable, not certain. The inductive approach relies on the scientific discovery of facts. One characteristic of inductive argument is that, it establishes a conclusion with a content which goes beyond its premise. Prom the observation of a sample, an inference is made about a whole population. This la called the 'inductive leap', jumping from the premise, which relates to an observed sample, to the conclusion which concerns with entire population. The greater the number or representative units in the premise or observed in the sample, the smaller is the inductive leap. The premise of an inductive argument does not establish the conclusion conclusively. The premise of a valid argument maybe true, but the conclusion may still be false. Its premise only Supports the conclusion but it does not make the latter certain.[59]

**Merits and demerits of Inductive Method**

1. More realistic- This method is more realistic because it studies the changes in conditions surrounding the social activities of man and their effect on social activities are analysed and displayed,
2. Possibility of verification- The method is more useful because its propositions can be tested and verified easily.
3. Proper attention to complexities- This method lakes full note of the complex relationship found in actual life and examines them carefully.

[59]Ibid.

4. Dynamic approach- his method takes into consideration the changeable nature of assumptions in its analysis. It does not consider facts to be stable. It is a dynamic method.[60]

**Demerits of Inductive Method**

1. It is a difficult method- This method cannot be used by a beginner or a common man because it is impossible for an ordinary person to collect facts, study them and derive some conclusions out of them. The cost is too much for him.
2. Danger of bias- The propositions obtained through this method are based upon data collected by investigators. Therefore, there is a danger of investigator's bias entering into propositions.
3. Limited scope of verification- Since the propositions obtained through this method are based on a few facts, the universal applicability of these propositions is always in doubt.
4. Limited use in socio-legal studies- This method is commonly used for lifeless objects of the physical science. In socio-legal studies, we study a man's problems. As such, die method has limited use.[61]

If anyone asks which method is preferred, the answer is both. Induction and deduction are both needed for scientific study as right and left foot for walking.

**Analogy**

Analogy is a process of reasoning between parallel cases. In this method, conclusions are arrived at by reasoning of resemblance where, from partial resemblance or agreement of two things or issues to each other.

[60]Ibid.
[61]Ibid.

Two things resemble each other in one or more respects; a certain proposition is true of the one; therefore it is true of the other. Case law involves reasoning by analogy. In practice, the judiciary proceeds on the basis of a number of points of resemblance of relations or attributes between cases by applying the old rule to the new case.[62]

**Fortori**

Fortori is another method of reasoning. Fortori provides that if something is prohibited then it is assumed that anything more obvious is prohibited.[63]

**LEGAL REASONING AND PRACTICAL REASONING**

This involves Legal reasoning, it is the process of devising, reflecting on, or giving reasons for legal acts and decisions or justifications for speculative opinions about the meaning of law and its relevance to action. Many contemporary writers, such as Aulis Aarnio (1987), Robert Alexy (1988), Manuel Atienza (1991) and Aleksander Peczenik (1989), propound the view that legal reasoning is a particular instance of general practical reasoning. They project that, reasoning can link up with action, guiding one on what to do, or showing whether or not there are good reasons for a proposed course of action or for something already done. They suppose also that, in law, reason links up to legal decisions in this way. Both suppositions are well founded. Law regulates what to do and how to respond to what has been done, doing so within an institutional framework of legislatures, law courts, enforcement agencies and the like.

[62]Ibid.
[63]Ibid.

It is a feature of legal institutions that they are expected to have, and usually do give, good reasons for what they do, and to do this in public. Legal reasoning is therefore not only a special case of practical reasoning, but a specially public one.[64]

Rationality in action has at least two requirements: first, attention to facts, to the true state of affairs in relation to which one acts; second, attention to reasons for action relevant to the facts ascertained. The former aspect concerns reasoning about evidence; the latter, reasoning about rules or norms as reasons for action. In law, such rules and other norms have an institutional character. But how are these applied – by some kind of deductive reasoning, or non-deductively? Behind the rules of the law, there presumably lie other reasons, reasons for having these rules. What kind of reasons are these, developed through what modes of discourse? A discourse of principles, perhaps, but then how do reasons of principle themselves differ from rules? Reasoning from either rules or principles must always involve some process of interpretation, so how does interpretive reasoning enter into the practical reason of law? Answering such questions is the business of a theory of legal reasoning. Legal reasoning is to be understood as a form of practical reasoning concerning these very issues.[65]

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[64]MacCormick, N. 1998, 'Legal reasoning and interpretation' In: Routledge Encyclopedia of Philosophy, Taylor and Francis, https://www.rep.routledge.com/articles/thematic/legal-reasoning-and-interpretation/v-1.doi:10.4324/9780415249126-T010-1. Accessed on 15th February, 2018.

[65]Ibid.

## LEGALISM

Legalism as a theory of law is a proposition that rule of law would be ineffective if, it did not take into consideration ethics and moral conduct prevalent in the society.[66] Legalism as a code of conduct sets standards for individual's social groups, governmental institutions, and private organisation.[67] Legalism cuts across social institutions: economics, politics, religions and intellectual attitudes. For it is the social ethos which gives rise to the political climate in which judicial and other legal institutions flourish.[68] Legalism has had some influence in the philosophical thoughts, due to the fact that legalism as a legal theory, accepts that law and other related discipline should co-habit, and this has encouraged the sharing of thoughts, and in defining the right course which law should follow.[69]

Legal Norms and moral norms are somewhat related and of importance is the fact that the two do not subsist in vacuum, because they are part of the general norms.[70] These two are not the only norms in any social system; there are also other norms.[71]

## CONCLUSION

The notions of legal reasoning have been discussed above for the purpose of law students and other readers who are

[66] Oji, I. Suleiman, op.cit. p. 84.
[67] Ibid, cite George C. Christie Supra at 85.
[68] Ibid. at 86.
[69] Ibid. at 87.
[70] Ibid. at 87.
[71] Ibid.

studying Nigerian Legal Methods. The crux of the discussion is that legal reasoning is a skill to be mastered and used to arrive at persuasive and influential legal conclusion in a given matter or situation.