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LAW REPORT AND LAW REPORTING

BY

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Introduction

JOWITT'S Dictionary of English Law 2nd Ed. (1977) defines a Law report as a published account of a legal proceeding giving a statement of the facts, the arguments on both sides and the reason the court gave for its judgment.¹

Also Norris Cohen states,

*"A statement of the decisions which the court made in settlement of a litigated case, a statement set out completely in the words of the court is called a report and the volumes in which these decisions are collected and published are known as Law reports."*²

A Law report records only the issues and fact considered necessary to the decisions of the court. It is intended to render accessible a decision upon a matter of Law. Law reports form the second great division of legal literature after statutes and statutory instruments have been consulted.³ In actual fact, a glance at the shelves of any law library will show that reports are the first in view of quality. Time and again, when studying a particular point of law, one would be driven to look up previous case laws on this point in order to see if there is anything that can be followed. Law reports are books of primary legal authority and success in practice of law depends to a considerable degree on the ability to know how to consult these various law reports to find the solutions to legal problems. Availability of reports will place at the disposal of legal advisers a knowledge of what the law is on a particular matter and may have the effect of avoiding litigation where the law is clearly against a particular claim.⁴

The importance of the law reports as a primary source of law cannot be over-emphasised. Law reports contain interpretation of statutes and their application to particular fact situation by the courts. Legal principles stated in earlier decisions are given effect in latter cases by the operation of the doctrine of precedent. All legal systems make use (in one way or another) of precedent as a means of establishing consistency and certainty in the Law.⁶

A distinctive feature of the English Legal system which we inherited is the fact that in certain circumstances precedent do not merely have persuasive authority, but are strictly binding, depending on the hierarchy of the court. Law reports are the means by which judicial precedents are made available to the legal profession and the public in general; so regular and accurate reporting is essential. Therefore, the effective operation of the doctrine of precedent requires that prior decisions of courts be easily available. The successful development of the Common Law depends largely upon the production of reliable law reports which carry not only facts, issues and decisions but most importantly legal principles upon which judgement is made.⁶

The primary purpose of a report is to make the decision on a particular legal issue available. Later, court faced with similar problems turn to report for guidance. On the basis of such reporting, judges to a greater or lesser extent follow or are influenced by their own previous decisions and those of their colleagues and predecessors. Glanville William has offered the following advice to the students of Law.

"The greatest disadvantages of confining oneself to textbooks and lecture notes is that it means taking all one's law at second hand. The Law of England is contained in statutes and judicial decisions, what the text writer thinks is not in itself law".⁷

Also, judges have been known to be seriously handicapped by absence of reports of cases touching the points that claim their attention and have come to decisions without them. In Flione V Oladipo⁸, Graham Paul J. refused to follow P.Z. and Co. V Pepple⁹ because in that judgement, Carey, J. suggest that no proper access to the authorities was possible. For an effective operation of the doctrine of precedent it is necessary that the decisions of the courts are promptly published in a manner that guarantees their authenticity. In this way the subordinate courts would become aware of decisions by which they are bound and act in accordance with them. An efficient system of law reporting is essential to the proper operation of the doctrine or judicial precedent. In Nigeria, several law reports have evolved but most have ceased after a short time. The Law reports are not regular, and several reportable cases are not

reported. The paper examines critically law reports and systems of law reporting in Nigerian and various suggestions for reforms.

LAW REPORTS CONTENTS OF A LAW REPORT

A report is composed of a number of well defined parts which are arranged in standard pattern varying only in minor detail from one series of reports to another. A report is composed of parts as follows:-

1. The Title: This is normally the names of the parties, together with the date of hearing, the suit number, the name or names of the judges and also the name of the judge presiding.
2. Below the title is a string of CATCH WORDS: These are separated by dashes which indicate briefly the subject matter of the case.
3. Next comes the HEADNOTE: This is a summary of the essential facts of the case and of the law contained in the body of the report. A particularly important part of the headnote is the "holding" which usually begins with the word "held". It is the holding that gives an indication of the ratio decidendi of the case, that is the legal principle upon which the decision is based or more accurately the legal principle which latter courts may be expected to extract from the case and the percuriam (a statement of law not considered essential).
4. Appended to the headnote is a list of cases which have been judicially considered in the determination of the case followed by a full list of all cases referred to in the judgement or cited by counsel in the argument normally much shorter than the latter.
5. Arguments of counsel: These may or may not be quoted, seldom in cases reported in the lower courts, occasionally in cases reported on appeal.
6. The judgment: In reports of cases on appeal, more than on judgement may be recorded, since at the appellate courts (Supreme Court and Court of Appeal), courts sitting comprise of at least three justices and each justice has to write his contribution about any case in issue.

7. Finally, there is a short formal statement of the outcome of the case. Such as "Appeal allowed with costs". "Leave to appeal refused" etc. Other information included will be the names of counsel appearing for the parties, this is very important because for the newly called lawyer, it is the only form of advertising which he is permitted.
8. Lastly, the names or initials of the reporter who has reported the case. This is not usually included in most Nigerian reports.

Citation of Law Reports

In order to locate a reported case, it is necessary to know something about the principles of citation. A full formal citation consists of two parts names of the case, and a precise bibliographic reference e.g.

Lewis v Bankole	(1909) INLR 81
Names of case	Bibliographic reference

The bibliographic reference normally consists of the date of the report, sometimes volume, number, the title of the series, usually abbreviated and the number at which the case starts.

Case Names:

The name of a case most commonly consists of names of the parties involved separated by "v" which though short of versus is pronounced in civil cases as 'and'. The names of companies and other organisations are usually given in full, but private individuals are represented only by their names. Most criminal cases are prosecuted in the name of the State or the Crown before independence. Rex or Regina is abbreviated by the use of the word 'R' but is pronounced as Queen or King.

Date and Volume Number: The date in a citation is always placed within brackets. If there is more than one volume into a year e.g. Nigerian Weekly Law Report, the relevant number indicated immediately after the year e.g. (1988) 3 NWLR 256.

Title Reports: The title of reports is almost invariably represented by an abbreviation. In order to avoid unnecessary and sometimes confusing variants, most publishers nowadays indicate a recommended form of citation inside each volume e.g. NMLR meaning Nigerian Monthly Law Report.

Page Number: The page number is a citation normally the page at which the report starts. However, if reference is made just to one particular passage rather than to the report as a whole, the citation would take the form (1988) 3 NWLR at 140.

Tracing Cases in Law Reports: A number of useful aids are available to assist in finding cases amongst mass of published law reports. Three kinds of aids may be used; these are: Digest, indexes and citators.

1. **Case Digest:** This enables a user to identify cases on a particular topic. Summaries of reports are in catchwords and grouped together under subject headings which are arranged alphabetically. The summaries though too brief provide a substitute for full reports given an indication as to which reports may be worth pursuing, examples are Privy Council Digest, English and Empire Digest.
2. **Case Indexes:** These are alphabetical listings by title which enable a user to trace a case when the name is known, but not the citation e.g. Index of Nigerian Weekly Law Report by Gani Fawehinmi.
3. **Case Citators:** Also arranged alphabetically by title. They list cases which have been considered by the judge in a latter case as possible precedents and upon which the judge has expressed a definite opinion of one kind or another.

REPORTING THE LAW

Ideally there are fixed principles which govern whether a case is reportable; to merit reporting, a case must either introduce new principles, or modify existing principles of law or new rule of law or settle of doubtful question of law, but in practice it is impossible to lay down a universal principle of reportability that would be for all reporting.

According to John Mews,¹⁰ "a reportable case is one that would be useful to a practitioner, one that construes a somewhat ambiguous Act of parliament, one of general interest that lays down some fresh legal principles or applies a well known principle of law to entirely different circumstances, one that distinguishes a previous reported case; cases in short that add something to our legal knowledge".

According to the theory of our jurisprudence, whenever a court or a judge having authority makes a pronouncement on a matter of law, necessary for a decision of a case: such a pronouncement declares that the law is and can be cited without delay in other cases for the purpose of informing the mind of judges. Therefore, the fact that a case is not reported is no bar to its citation, neither has it less authority as a precedent, but a copy of the judgement must be available even if it is a cyclostyled copy for verification.

Selection Policy:

Selection of cases to be reported varies from one law reporter to another. So any law-reporting firm would have its selection policy. Whether it could report only decisions of superior courts (i.e. Supreme Courts and Court of Appeal only) as being done in Nigerian Weekly Law Report, or just the decisions of the High Courts. The law reporting may cut across the three superior courts (High Courts, Court of Appeal and the Supreme Court) as being done by the Nigerian Monthly Law Reports and the All Nigerian Law Reports. Also the law reporter might decide to report only decisions along specialised lines. This is specialisation in legal reporting. Allan Milliner started this with the Commercial Law Report series and the Criminal Law Report. Also Gani Fawehinmi's Criminal Law Report and Nigerian Constitutional Law Reports are also along specialised subject area. For these reports, the selection policy is to report cases covering the specified subjects.

The Government and Court Reports:

The selection policy of the Supreme Court judgments is to report all cases or decisions of the court monthly. The Court of Appeal likewise reports all decisions of all its various divisions. In some jurisdiction, the High Courts are bound to put their judgments in writing and it is the practice to report all written judgments. The law reports which are general series are those that cover all the various fields of law. They also have their selection policy, such as they must report cases which introduce new principles or modify existing principles of Law".¹¹

Frequency of the Law Report

In preparing a law report, the law reporters or editors must decide the frequency of the law report, would it come weekly, monthly, quarterly or annually. The publication policy of law reports that report

general series is quite flexible based on the argument that even though it is desirable to limit the number of reported cases as far as possible, some cases that make headlines in newspapers or leading cases are reported, the reason being that "It is more inconvenient to find that one leading case is not reported than to have twenty unimportant cases in the report.¹² It is possible for a law report user to skip those cases he does not need, but there is no way in which he can conveniently consult an important case which has been omitted.¹³ As long as a single case of importance is not reported in a certain Law Report, but can be found elsewhere, the user would go for the other Law Reports and for private Law reporters, it means 'bad business' considering keen competitions of other publications.

The Law Reporter

Law reporting is a highly skilled occupation and cannot be satisfactorily done without training experience. Hardly any other professional work occupies so much time in doing, as does publishing of Law Reports. The Law reporters must verify all references, the work of selection, excision and revision is often very heavy. In order that a case may be cited as a precedent in court it must be authenticated by a lawyer which of course means that the first requirement of a law reporter is that he must be a member of the bar. The job of a law reporter must be a full time job in order to produce a viable law report.

Preparation of Law Report

When the reporter had decided that the case is reportable, he will start his report as soon as he receives the transcripts. The reporter checks the transcripts of the judgment and looks up all the citation to see that they are accurately reproduced, he would also check names and dates. In fact he will check everything that can be checked. While this requires meticulous attention and is often time consuming, it is the drafting of headnotes in which the reporter shows his ability. It is not easy to pick out only the essential facts of a case and reduce them to one or two short paragraphs. The task of distilling from a judgment or in the appellate courts several judgments, the reasoning on which the decision is based (*ratio decidendi*) and setting it out in a few lines is one that requires both skill and experience. He must verify all references.

The reporter will draft catchwords, which are the basis of the index, and having written out his headnotes, he will list the names of cases referred to in the judgement with their references. An introductory statement of fact is also

included. A Law reporter who is catering for specialists has only to consider the interest of a limited class and therefore has to that extent an easier task than a colleague engaged in the production of a general series. It therefore follows that the law reporter is engaged in a work of great public importance viz, the recording of decisions which are of use to the legal profession.

Editorial Work

While the proofs are being read by reports the 'marked proof' as it is called which includes the printer's correction is rechecked by editorial assistants. Though not legally qualified they have become experts in styling and checking citations. There are series of checks. When the proof had been approved by the reporter, it is then finally read by the editor before publication. In order for any law report to be used it must be properly and clearly arranged. It is essential that reports should be available immediately because a decision declares what the law is, not what it will be, and the delay of a day may sometimes cause a relevant decision to be missed.

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Reference

1. Burke, John (ed): Jowitt's Dictionary of English Law.
2. Cohen, Moris: How to find the Law, Chapter 2.
3. Derek, way: The Students' Guide to Law Libraries P.21
4. Umoh: Precedents in Nigerian Court, Chapter15.
5. Logan R.G. (e d): Information Sources in Law, Chapter 4. Case Law by Adrian Blunt. P. 46-47.
6. Dene, Jean and P. Thompson, How to use a Law Library Chapter 2, Law Reports P. 12.
7. William, Glanville: Learning the Law, 10th ed. P.78.
8. Flione V Oladipo (1934) IINLR 168 at 169.
9. P.Z. & Co. V Pepple (1933) IINLR 166 at 167.
10. Manual of Law Librarianship 2nd ed. Edited by Elizabeth Moy. Primary Sources, Law Reports by Breem W. W.S. P. 15.
11. Breem, W.W.S. Ibid.
12. Mews John, Law Quarterly Review Vol. IX 1893. P. 179 -187 at 179.
13. Ellis, C.J. Law Reporting Today. Law Libraries Vol. 6 1976.
14. Goodhart, A.L.L.Q.R. Vol. 55 (1939) 29 at 33.
15. Burrow, R. Ibid.
16. Lakanmi V.A.G. Western States (1971) 1 VILR 201.
17. Burrow, R. Law Reporting. LQR (1942) Vol. 58 P. 96-106 at 103.