

# LEGAL REASONING AND APPROACH TO PROBLEMS

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## WHAT IS LEGAL REASONING

The main purpose of studying legal method is to equip the law student with the right tools to enable him to think like a lawyer. This is what would be addressed by discussing legal reasoning. To understand it better, it would be best if the meaning of legal reasoning is expatiated upon.

The word “reasoning” has been defined by **The Concise Oxford English Dictionary, 5<sup>th</sup> ed** as:

“Thinking persuasively in a coordinated, orderly, sensible and logical manner”.

The **Black’s Law Dictionary 9<sup>th</sup> ed** further defines “legal” as:

“Of or relating to law; falling within the province of law”.

From the above definitions, one can deduce a definition of legal reasoning as the art of thinking persuasively in a coordinated, orderly, sensible and logical manner in relation to law. Legal reasoning simply concerns itself with learning how to think like a lawyer.

In order to fully understand legal reasoning, the language of the law would first be highlighted, there would be definition of some key terms and finally, the different methods of legal reasoning would be discussed.

## THE LANGUAGE OF THE LAW

“Language” in this context doesn’t mean a whole new lingua franca. Rather, in considering the language of the law, I would be highlighting of some of the general characteristics of legal language. The following are the general features of legal language:

1. **Law is Expressed in General Terms:** What this means is that when laws or legal provisions are worded, they are done in a way that would ensure that so much is covered by saying so little. Because the law deals with all aspects of life, it cannot afford to provide for only specific situations. Thus, it makes general provisions in most instances.

For example, the **Criminal Code** provides in S.317:

“A person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter”

This provision is general in the sense that if a person kills another unlawfully, and it is not murder, it would be regarded as manslaughter. It would be more awkward and time consuming if the statute had provided for the individual scenarios that would constitute manslaughter.

It should however be noted that the law could be specific in some instances. For example, the **Constitution** establishes in **S.6 (1)** that the judicial powers of the federation are vested in courts established by the constitution. The **Constitution** then further provides in **S.6 (5):**

This section relates to:-

- (a) the Supreme Court of Nigeria;
- (b) the Court of Appeal;
- (c) the Federal High Court;
- (d) the High Court of the Federal Capital Territory, Abuja;
- (e) a High Court of a State
- (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- (g) a Sharia Court of Appeal of a State;
- (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (i) a Customary Court of Appeal of a State;
- (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
- (k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with

respect to which a House of Assembly may make laws.

The above provision specifically lists the various courts which the constitution was earlier referring to.

2. **The Use of Abstract Concepts:** Lawyers are not allowed to use words anyhow. Unlike scientists who can give name to a new thing discovered, a lawyer is not allowed to formulate words that are not already in use. Thus, when a lawyer wishes to express himself accurately, he formulates legal concepts. An example of a legal concept is 'rule of law'. These concepts usually contain deeper meanings than their literal interpretations. For example, the rule of law has three main components:
  1. Supremacy of the Law
  2. Equality before the Law
  3. Fundamental human rights.
3. **Other Remarkable Features of legal language:** Legal language in addition to the above, has some other specific features. They are:
  - The use of common words with uncommon meanings. For example, instead of a lawyer to say 'the court should hold that' he says 'it is submitted'.
  - Legal language frequently uses Latin and French words like *ultra vires*, *consensus ad idem*, *nemo dat quod non habet*
  - Frequent use of archaic words like: hereinbefore, hereinafter, aforementioned etc.
  - The use of special vocabulary that is only understood by those in the profession. For example, a lawyer would say 'my brief has not been perfected', when he intends to say that he has not been paid.
  - Repetition of formal words like 'the truth, the whole truth and nothing but the truth'.

The reason for this special language can be said to be a bid to mystify the profession in order for it not to be easily understood by the 'layman'.

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## SOME KEY TERMS TO BE UNDERSTOOD

In order to better understand legal reasoning, there are some key terms that are to be understood. They are:

1. Principles
2. Rules
3. Legal Rhetoric

They shall be subsequently explained below:

1. **Principles:** A legal principle has been defined by **Farrar and Dugdale** as:

'An established legal truth or proposition that is so clear that it cannot be reproved or contradicted except by a proposition which is clearer'.

Thus, legal principles act as the standard by which actions are to be judged in order to determine their legality and relevance. Any act or proposition that goes against a legal principle would be open to criticism and rejection by lawyers. An example of a legal principle is the principle of natural justice. If a lower court's decision is made in violation of this principle, it is likely to be struck out on appeal.

2. **Rules:** legal rules are the specific instances in which the legal principles would be applied. For instance, the principle of natural justice has the following rules:
  1. *Audi alterem partem* (hear the other side)
  2. *Nemo iudex in causa sua* (You can't be a judge in your own cause).
3. **Legal Rhetoric:** Rhetoric is the act of seeking to persuade someone to accept your own opinion either through speech or writing. Rhetoric is very important for lawyers as their main business is usually to convince the judge that their cause should be favoured instead of the other party's.

Legal rhetoric is achieved by appealing to authority. Authorities are the sources of law that lawyers appeal to. They can either be primary or secondary. Primary authority include case laws and statutes while secondary authority include opinions, writings, legal commentaries etc. Primary authorities when quoted, are weightier than secondary ones. Thus, if the plaintiff backs up his arguments with primary authorities and the defendant back up his own with secondary authorities, judgement would be entered for the plaintiff.

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## METHODS OF LEGAL REASONING/LOGIC

The methods of legal reasoning are the rules of logic normally applied by lawyers in order to substantiate their arguments. Three methods of legal reasoning/logic are:

1. Inductive reasoning
2. Syllogism/ deductive reasoning
3. Analogical reasoning

The above shall be expatiated below:

1. **Inductive Reasoning/Logic:** Inductive reasoning is the one used by a lawyer if he supports his claim with judicial provisions. In this instance, the lawyer first states the court holdings in different cases, he then applies it to the case at hand. It is a form of moving from the specific to the general.
2. **Syllogism/Deductive Reasoning:** This form of reasoning is used by a lawyer in most cases in which he uses statutes as authority. It is a form of logic in which the lawyer starts from a major premise, advances to a minor premise and then draws a conclusion. It is a form of reasoning from the general to the specific.

For example, in a situation in which a prosecutor want to secure a conviction for rape, he states:

- It is provided in **357** of the **Criminal Code** that whoever has unlawful carnal knowledge of a woman without her consent is guilty of rape. (MAJOR PREMISE)
  - The accused had unlawful carnal knowledge of the complainant. (MINOR PREMISE)
  - The accused is thus liable for the offence of rape.(CONCLUSION)
3. **Analogical Reasoning:** This occurs in a situation in which when using inductive reasoning, the points of similarity and differences between the different cases are pointed out. It is used by judges in order to determine if an authority cited is appropriate.

For example, the case of *Carlill vs Carbolic Smokeball Co* cannot be used in a case relating to illegality of a contract. This is due to the fact that by analysis, it can be deduced that *Carlill vs Carbolic Smokeball Co* doesn't have facts that concern the illegality of contracts.

## SOURCES:

1. O Sanni: Introduction to Nigerian Legal Method
2. The Concise Oxford English Dictionary 5<sup>th</sup> Edition
3. Black's Law Dictionary 9<sup>th</sup> Edition
4. Criminal Code Act
5. The Constitution of the Federal Republic of Nigeria 1999 (as amended).
6. John H Farar & Anthony Dugdale: Legal Method.

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