

SIMPLE GUIDE TO ENGLISH FOR LEGAL WRITING
[LEGAL ENGLISH]

LAW 101 Teaching Materials

Prepared by:-

Dr. SANI Salisu, Esq.
Senior Lecturer,
Faculty of Law,
Northwest University,
Sokoto, Nigeria.
[Tel:08060955619](tel:08060955619)
Email: sanisalisu70@gmail.com

CHAPTER ONE

Introduction to English for Legal Writing [Legal English]

1.1 Introduction to Legal English

Legal English also known as *legalese* is unique and specialized English used by lawyers, judges and some individuals interested in the field of law or law making bodies. The ‘phrase’ ‘Legal English’ or ‘Legal Writing’ has increasingly become a centre of attraction in the present day discourse especially within the legally oriented academic institutions, legal practitioners, law students and indeed legislative drafting.¹ Accordingly, due to the importance of the genre linking legal business with English, the ‘theme’ of the 2025 International Law Institute (ILI), Washington DC, USA’s International Seminar held between 14th to 25th July, 2025, was ‘Legal English and Legal Writing’.

Objectives:-

At the end of the lesson, students are expected to explain the nature and brief historical evolution of Legal English. They are also expected to know and understand as to what legal writing is all about; the fundamental principles of legal writing and the elements or factors that distinguishes legal writing from the plain English writing.

1.2 Nature of Legal English

Legal English is often refers to as strange style of English used by lawyers in commercial, contractual or other legal contexts. It is a fusion of Latin and Anglo-Saxon principles through developmental process of common law doctrine, which makes it unique and specialize English used in legal settings characterized by complex sentence structure, vocabulary, jargons and Latin terms in their communication. They use words such as *tortfeasor*, *Lessee*, *Leasor* or *Deed* etc in order to convey certain meanings which sometimes only understood by their colleagues, thereby making the area or subject specially for them alone.

Legal English language is more than vocabulary; it is unique and specialized kind of language used by certain class of people, mainly such as lawyers, judges, law making institutions and others who need to use such language among themselves for professional needs such as client interview, court hearing, contract discussions, negotiation and indeed

drafting of legal instruments and other process. As a lawyer, you need to master the art of articulated speech, effective communication skills both in written and oratory.

The language has been developed over centuries shaped by various internal and external factors leading to sometimes many archaic features. However, it now becomes a subject in many high institutions of learning in the modern period.

1.3 Brief Historical Evolution of Legal English

The historical development of the Legal English goes back to the origin of the common law of England which forms the integral part of the Nigerian legal system. Prior to the 11th Century, the common law proceedings in England were conducted in the Royal Courts/Palaces without a formal Court setting as obtainable in the later period. The Courts were presided over by the palace officials or those appointed from the civil service who are experience in the common norms and value systems practiced by the people of England to preside over as Judges, though without formal record of the proceedings.

Thus, by the year 1066, and with the conquest of England by the French adventurers led by Norman on 14th September, 1066, the situation drastically changed. Norman the conqueror, immediately assumed the title of Williams 1, as the King of England. He issued proclamations for the application of Anglo-Saxon Law in England. As a result of that proclamation, French was officially introduced as the official language of the Court throughout England. Thus, all proceedings in Court were to be conducted in French language and later such practices where termed as 'French Law'. That was the situation for over a period of time up to the middle age. However, with the passing of the Normandy and some of his successors, the people of England started protesting for a change, consequently, at a later period, the 'French Law' practices has to be phased out, but its legacy remains till date.

Legal English generated its words from Anglo-Saxon mercenaries Law, Latin-Speaking missionaries, Scandinavian raiders and Norman invaders, who left their marks not only in England but on the language of its law. The Anglo-Saxon words found in present body of English legal system includes 'bequeath', 'goods', 'guilt', 'manslaughter', 'murder', 'oath', 'right', the 'riff', 'steal', 'swear', 'theft', 'ward', 'witness' and 'writ', among others.

Furthermore, French also had its own impacts on law. It was as a result of those impacts that led to the coined phrase 'Law French'. However, every effort to abolish its spread at the

developmental stage proved abortive. Nonetheless, 'Law French' later disappeared, while possible reasons for the retention of its legacies to the present period cannot be over emphasised.

Though, some certain quarter of the antagonist are of the view that, such system allow extensive use of technical vocabulary and making the profession more conservative, shutting the window to those that are not learned in the profession. It is worthy to however note that, some of the legacies left by the 'Law French' includes the addition of initial 'e' to words like 'squire' to create or creating 'esquire'; simplification of the French verb system so that all verbs eventually ended in 'er', as in 'demurrer' or 'waiver'; and words such as Attorney, bailiff, chattel, estate, executor, fee simple, lease and tenant to mentioned but a few were borrowed from the French language.

It should be stressed here that, the impact of the Latin words in Legal English as introduced into the body of the legal systems right from the 597 during the Christian Missionary activities in England cannot be over emphasised and would be difficult if not impossible to be expunged from the body of the present legal system. Some of the Latin words used in the present Legal English and indeed present legal system include but not limited to: Habeas Corpus (a writ to challenge unlawful detention), Prima Facie (evidence that appears sufficient on its face), Bona Fide (in good faith), Ex Parte (on the part of one side), Stare Decisis (to stand by things decided), Mens Rea (guilty mind), Actus Reus (guilty act), Pro Bono (for the public good), and Quid Pro Quo (something for something). These terms are used to describe fundamental legal concepts, types of evidence, procedures, and legal roles.

The above words and phrases right from that period form parts of the common law of England which was imported into the body of the Nigeria legal system via the provision of Nigeria's Interpretation Act, which provides:-

- (1) Subject to the provisions of this section and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.*
- (2) Such Imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to any Federal law.[italising is mine]*

As the lecture for this topical issue was ongoing, a student in the class asked as to whether such words and phrases could be removed from the body of the Nigerian legal system. In an attempt to answer this question, two possible scenarios were presented the 'rules' base and 'logical' base approaches. In the first scenario, the possible measure or guide for the exclusion of any rule or law forming part of the common law of England from being received into the body of Nigerian legal system is and should be the provisions of the aforementioned interpretation Act. Thus, the provisions of the above cited interpretations Act is primarily about regulating the reception of legal rules or 'common law of England....' and not about 'words or phrases' of this nature. Secondly, it might also be viewed as to whether such 'words or phrases' are term to be repugnant to the notion of natural justice, equity or good conscience?, While, not a single known report yet. However, it is a fact that some of such 'words or phrases' form part of, or form the basis of certain legal rules or principles applicable or encapsulated into the body of the common law of England, and therefore forming part of it. In this context, it is the particular law that should be subjected to the inconsistency/repugnancy test as provided by the interpretations Act and not the word or phrases forming part of or forming the basis of the principle(s). Accordingly, in so far as such legal rules or principles are not inconsistency with the provisions of the above enactment or any other Federal law, such rules or principles forming part of the common law of England are deem to be validly received into the body of our legal system as per the provisions of the aforementioned cited enactment.

Conversely, considering the logical base approach, the first logical question could be that, is it 'all of them that should be excluded? I don't think so; or 'some of them'? Umm possibly! However, in each of the two answers, there is the need for an example for the purpose of understanding and clarity. In considering the second answer instead of the first one, one may be tempted to state that some certain Latin 'words or phrases' could be '**out of use**' (not excluded) not necessarily by the provisions of any particular legal rule but by 'choice of convenience'. For example, *Habeas Corpus* (a writ to challenge unlawful detention): It should be noted upon careful observance that most of the legal practitioner now a day's tends to be more incline in the use of Fundamental Human Rights Enforcement Procedure when their client(s) are wrongly or unlawfully detain instead of using the writs of *Habeas Corpus*. In this circumstances, there is no any rule preventing the use of *Habeas Corpus* but instead most of the lawyers feels more convenient to go by Fundamental Human Rights Enforcement

Procedure, and with the course of time the former may ultimately have to give way for the later not necessarily excluded by the rule but by choice of convenience.

Now, coming to the first question and first answer, is it 'all of them that should be excluded? I don't think so. Yes, I don't think all of them could possibly be 'excluded' or put 'out of use' even with the 'choice of convenience' approach or by rules or by combination of both. The simple reason is that some of such Latin 'phrases' though started as mere norms, but metamorphoses into legal principles internationally recognised as such and it would be difficult if not impossible to do away with them. Such Latin 'Phrases' includes (but not limited to) *nullum crimen sine lege* (no crime without law). This Latin 'phrases' has now become worldwide accepted legal principle encapsulated into various national and international legal systems. For instance, in Nigeria, the provisions of the Constitution of the Federal Republic of Nigeria² echoing this principle clearly provides:-

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.[utilising is mine]

Therefore, the three requirements must exist simultaneously before an act can constitute criminal offence. These are:-

1. Definition of the offence - Certainty of the offence.
2. Prescription of the penalty - Certainty of the punishment.
3. The offence must be written - Codification.

The three elements of an offence is now what constitute the doctrine or legality principle in Nigeria's Criminal jurisprudence; and this principle has been judicially recognized in the case of **AOKO V FEGBEMI** WHERE THE Court held that the conviction of the appellant for adultery by customary court was unconstitutional as adultery was not an offence in Southern Nigeria.

Nonetheless, considering the nature and role of such Latin words and phrases that are deeply rooted into the present Legal English and indeed Nigerian legal system, it would be difficult

² Section 36 (12) of the Constitution of the Federal Republic of Nigeria, CFRN (1999), as amended

if not impossible to easily do away with it, as doing so may present certain consequences, such as:-

1. **Eliminating Historical Link**: This simply means detaching the historical link of the Nigerian legal system from that of the common law of England from where such words or language find itself into the body of Legal English and indeed legal system.
2. **Diminishing the beauty of the legal profession**: The application and usage of such Latin words makes the legal profession different, while a lawyer who master the art of using such words both in written and oral expression in his persuasive argument makes him unique. By eliminating such words, the uniqueness is also done away with; the sweetness and beauty of the language also diminish.
3. **Less Patronage**: If the usage of such words are no longer in existence thereby introducing purely plain English, then anyone who can write and speak the plain English may no longer require the services of a lawyer, as he can draft his own document and represent himself in court.
4. **Judicial Over-Haul**: Considering the fact that, there are several forms for the initiation of proceedings, certain words used in the commencement of proceedings, certain terms used in legal reliefs, up to the delivering of judgement, and if such changes are indeed desirous, then certain judicial overhaul may be anticipated to enable the system works. Example of such words and terms as they are put into use are:-

- a. **Initiation of Proceedings**: In the course of initiating civil proceedings, certain forms such as writ of whatever nature needs to be issued to a party to the proceedings, most especially, the respondent needs to be served with the court process to enable him appear before the court to answer to the allegation or issues against him. However, with the absence of such forms another alternative has to be provided in the circumstance. Similarly, in criminal trial, if the defendant is not arrested by the security agencies and presented in court via First Information Report [F. I. R] the use of warrant of arrest has to be resorted to and warrant is also not an English word but an Old French word, hence, an alternative has to be provided.

- b. **Commencement of proceedings**: During the commencement of proceedings, items or forms such as Motion, affidavit of whatever nature has to be involved in civil matter, while, plea of the defendant is necessary for the commencement of

criminal trial. Thus, in the absence of those forms or procedure, the commencement of the trial or proceedings would be difficult if not impossible; hence, alternative procedure needs to be adopted.

- c. **Reliefs:** Accordingly, in the event of any miscarriage of justice, reliefs such as *Mandamus*, *Habeas Corpus*, and *Certiorari* need to be replaced with something else.
- d. **Trail- Judgement:** The use of words or phrases such as *locus in quo*, *obita dictum*, *ratio decidendi*, *allocutus*, among others also needs to be replaced for something else, which would ultimately lead to overhaul of judicial process.

1.4 Characteristics/Features of Legal English/Writing

The characteristics of a particular person or thing reflect the factual features, aspects, attributes, components or nature and peculiarities of that person or thing. In a typical expression as to the characteristics of legal English/writing, **Prof. Richard C Wydick** passionately opined that:-

'We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrase to express common place ideas, seeking to be autious, we become verbose seeking to be precise, we become redundant. Our sentences twist on, phrase within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic four understanding characteristics; it is wordy, unclear, pompous and dull'. [itilising mine]

Thus, in order to practically demonstrate and identify such features in relation to Legal English, samples of ten (10) motion papers and affidavits, ranging from originating motions, counter affidavits, as well as further and better affidavits were carefully selected from three different Courts ie Federal High Court sitting in Sokoto, Sokoto State High Court and Federal High Court Birnin Kebbi, Kebbi State respectively. The selected documents were subjected to critical but objective scrutiny by a class of 57 Law 101 Students of North-West University, Sokoto all in attendance. The exercise was carried out with a view to introducing the student into critical analytical reasoning techniques, as they grow into the legal profession. The observable result of their general opinion/findings reflects some but not all features early observed by some learned legal professionals. The observed features are:-

1. **Too wordy**: That the content of some paragraphs in the observed affidavits are too wordy, in which, if splits, is capable of providing multiple but independent simple, concise and meaningful sentences.
2. **Complex Sentences**: It was observed that most of the sentences used in the considered documents are complex in nature, containing at least one independent clause (as a complete idea) and multiple clauses connected by subordinating conjunction with a view to adding or providing details to the main idea.
3. **Uncommon use of Active Voice**: That the observation contain in item number 2 above was as a result of rare use of active voice. That, if such document imbibe or comply with the use of active voice instead of passive voice strategy, the complexity would have been eliminated.
4. **Special Vocabulary**: The students in attendance were in unanimity to the frequent use of certain words or phrases that are not ordinary or in plain English Grammar, which includes Latin words. However, they are in support of the usage of such words or phrases, as it add more value and beauty to not only to the Legal English but also to the Legal profession.
5. **Redundancy**: It was observed that there are lots of unnecessary repetition of ideas/thought and statements in an attempt to stress or emphasis on a particular point. That such unnecessary repetition could be eliminated when active voice is use when assigning action to the subject by following the rules of Subject - Verb - Object (SVO) formula in legal writing.

1.5. Introduction to Legal Writing

One may wonder asking as to why legal writing at all is distinct from the writing skills which he acquired since primary education. One may also inquire if legal writing serves a special purpose that is not covered by the initially acquired skills. Certainly the skills of writing that have been acquired so far from different courses would not be useless. Rather, your background would provide great support to your ability to practice legal writing. Nonetheless, you will need more time and effort to understand and practice legal writing. This is because, legal writing involves specialized form of writing with the nature and its distinguishing features.

1.5.1 What is Legal Writing?. Legal Writing is a type of technical writing used by legislators, lawyers, Judges, and others in law to express legal analysis and legal rights and

duties. Its distinguishing features include reliance on formality and citation to authority, specialized vocabulary or jargon.

1.5.2 Difference between Plain English and Legal English Writing.

1.5.2.1 Authority: Legal writing places heavy weight to authority. This is so because the law operates with reference to authority. In most legal writings, the writer must back up assertions and statements with proper reference to authority. This is particularly the case when one is writing articles, teaching materials and books. Here the authority may pertain to rules, custom or contract, as the case may be. In the common law legal system precedents (i.e. judgments of higher courts) are also invoked as authorities.

1.5.2.2 Citation: The legal profession has its own unique system of citation. While it serves to provide the experienced reader with enough information to evaluate and retrieve the cited authorities, it may, at first, frustrate a lay reader. Every legal school, no matter whether it has adopted its own code of citation, requires proper use of citation.

1.5.2.3 What May be Cited?: In legal writing ideas and/or facts incorporated in books or articles are the subjects of citation. Thus, anyone who has taken facts or ideas from the work of another would be bound to show his sources through proper ways of citation. Primarily, the purpose of citation is to enable reader's use and refer to the sources that the writer has used. But equally important it ensures that the writer has not misappropriated the work of another author. The classical rule of citation covers books, articles, journals, law reports or judicial reports that are materially at the disposal of the readers. However, recent legal research has shown that online and disk-based law collections are becoming primary research tools for many lawyers and judges. Because of these changes, there has been growing pressure to establish new rules of citation that accommodates the developments in legal research.

1.5.2.4 Vocabulary: Legal writing makes extensive use of technical terminology. This distinctive vocabulary can be classified in four categories:-

1. Specialized words and phrases unique or nearly unique to law, such as *tort*, *fee simple*, and *novation*.

2. Everyday words that when used in law have different meanings from the everyday usage, such as *action* (a lawsuit, not movement), *consideration* (support for a promise, not

kindness), *execute* (to sign, not to kill), and *party* (a principal in a lawsuit, not a social gathering).

3. Archaic Vocabulary: legal writing employs a fairly large number of outdated words and phrases that were formerly part of everyday language but are today rare except in law. Some date from the 1500s. Most are long-abandoned outside the law. Some English examples are *herein*, *hereto*, *hereby*, *heretofore*, *whereas*, *whereby*, and *wherefore*; *said* and *such* (as adjectives).

4. Loan words and phrases from other languages: This includes terms derived from French (such as *estoppel*, *laches*, and *voir dire*) and Latin (both terms of art such as *certiorari*, *habeas corpus*, and *prima facie*; and non-terms of art such as *inter alia*, *mens rea*, and *sub judice*). These foreign words are not written in italics or other distinctive type as is customary when foreign words appear in other English writing.

1.5.2.5 Formality: The three preceding features bring to legal writing a high level of formality. The resort to authorities that were created long ago can lead lawyers to follow an older and more formal style of writing. The use and re-use of form documents without updating their language also perpetuates a formal style of writing. Many law schools now teach writing in this classical, formal, and sometimes over complex manner, which has allowed this style to continue. However, in recent years, there has been a movement away from classical legal writing, towards a more reader friendly and concise method of conveying ideas.³ While legal vocabulary and sometimes verbose sentences make legal writing a difficult read for non-attorneys, they are in many cases necessary. The primary purpose of legal writing is to provide a thorough and precise document to serve a need for formal documentation. By following the tried and true path of formal legal writing, a document will leave very little to interpretation.

1.6 Fundamental Principles of Legal Writing.

Whether you are new to legal writing or veteran professional, keeping in mind some essential fundamentals is important. Without structure, clarity, proper grammar, and coherence, you are presenting a position that is less easily defended and supported. If you are presenting a case to a judge, they would expect to understand your position right away. Legal writing is not the type of writing that accommodates your personal voice and style into a document.

³ *ibid.*

Legal rhetoric includes specific and unique style guidelines and requirements to be successful. Without following those principles, you could experience some problems with credibility and success.⁴ Here are some of the few fundamental principles of legal writing:-

1.6.1 Organization:

First and foremost, stay organized. This principle comes first because it starts with creating an outline of what you need to write. Organize your thoughts and then elaborate on them. When you create an outline first, you are able to see if the progression of your argument makes logical sense before getting into the details of each aspect. Put a focus on identifying the key points in your argument and develop smaller sections from there to ensure clarity throughout your document.

1.6.2 Short Sentences:

Write shorter sentences with plain language. As you will see a little further down this list, being clear makes a difference in writing a successful legal paper or brief. Attention spans have gotten shorter over time as society has increased usage of television, streaming services, apps, smart phones, and instant messaging. Using long sentences of legal jargon no longer serves positive purpose. Keep each of your ideas short and precise.

1.6.3 Plain English vs. Legalese

In the section above on short sentences, it was pointed out that the more complicated the topic is, the shorter the sentences should be. One simple way to do this is to opt for plain English over legalese. Long-winded sentences using extravagant legal terms are often unnecessary.

1.6.4 Accuracy and Honesty

When you are writing a legal document, staying accurate and honest is important to the success of your argument or position. If you need to create legal document that meets these standards, using reliable templates can help ensure that your writing is both precise and comprehensive, allowing you to focus on the specifics of your case. Write the facts only. Do

⁴ ibid

not get into the habit of adding in hyperbole to make a point, and do not insert your personal feelings about a situation where there are hard facts and evidence to present.

Furthermore, do not use vague reference words. For example, instead of saying something like, ‘The Defendant recently paid the Plaintiff for professional services,’ it is more preferable to say, ‘The Defendant paid the Plaintiff Two Million [₦2,000,000] Naira, for professional consulting services on May 15th, 2025, through a personal check number 9999999 domiciled at New Generation Bank’. The more specific information you have, the clearer the case will be.

1.6.5 Clarity, concision, coherence

Legal writing is a different form of technical writing. Some elements of technical writing are clarity, concision, and coherence. Without those three elements, your legal document will be unreadable and therefore unhelpful to your case. Even if you are writing for a legal class in tertiary Institutions, your document needs to be clear and understandable. If you are unable to clearly present your argument, then this will signal to your audience that, you do not fully understand or support your own position. By combining all the previous principles of legal writing above, you can ensure that you have a clear and concise legal document that is worthy of presentation.

1.6.6 Punctuation

Strict observance of punctuation mark is very important in legal writing. Too often, legal documents have errors in clarity as the result of missing punctuation that would make a statement clear. Though, many writers in other disciplines think the application of Oxford comma, or serial comma is superfluous punctuation, nonetheless, it absolutely has a place in legal writing. Do not take a chance that your sentence will be unclear by leaving out this punctuation mark.

1.6.7 Use Active Voice

There are generally two types of voice one can write in: active voice and passive voice. Use active voice as your primary tool, while passive voice should be used for emphasis. The simple logic behind the preference is that, Passive voice often requires the reader to fill in gaps, make assumptions, and do extra work to figure out what you are trying to say. In legal

writing, this presents an issue with accuracy and honesty in your argument. By using active voice, you can stay clear, concise, and coherent. Active voice means that you say who is doing the action and what that action is. Do not leave the interpretation up to the reader, because that can leave your case or argument going in a direction you did not intend. Another aspect of using active voice is putting the modifying words as close as you can to the words you are modifying.

1.6.8 Know Your Purpose and Your Audience

Effective persuasion requires knowledge of your purpose and your audience. Again, your purpose is to persuade. Thus, you should always represent facts and arguments in a light most favourable to your client. Your audience may usually be a judge. If you know which judge you are writing for, you should take the time to gather as much information about that judge and how he or she has ruled in the past on similar cases. If not, you should present your argument that will work as much as possible for most judges. It is also important to bear in mind that judges have extremely limited time with which to read your brief. Thus, you should also be concise, avoid repetition, and keep your writing impeccably organized. Judges also must apply the applicable law. Thus, they need to know what the law is, rather than what you think it should be.

1.6.9 Proofread then proofread again

The last thing you want is to have typos, grammar mistakes, omissions, and punctuation errors in your legal filed documents. Not only could this harm a case you are working on, but it could also cause damage to your reputation as a legal representative if word gets around that you repeatedly have mistakes in your documents. Legal writing can have life or death consequences, so it seems obvious that taking the extra time to ensure correctness is mandatory.

1.6.10 Conclusion

As you started in your organization principle listed above, present your position statement and conclusion effectively, by clearly identifying the concluding idea. By doing that you are putting that idea in the reader's mind upfront before outlining what supports that position.

After presenting all the evidences supporting that conclusion, bring the legal document to a close by restating that position.

1.6.11 Citations

In legal writing, citations require a balance. While you do not want to leave out specific information from a case, you also do not want to over-burden the document with so many citations without new substance(s) to support the specific case at hand. Carefully consider what information is necessary to repeat verbatim with the legal citation versus what information can be summarized or paraphrased with an in-text citation for the reader to use if they want to explore more detail.

1.7 Conclusion

In this chapter, the nature and brief historical evolution of legal English was considered paving the way for a better understanding of Legal English. The fundamental principles of Legal writing; its unique and distinctive nature from plain English writing was equally explored. In the next chapter the principles, standard and issue in law are expected to be considered and how they serve as guiding mechanisms toward the interpretation and application of legal rules while deciding legal rights and duties.

CHAPTER TWO
Principles, Standard and Issues in Law

2.1 Nature and meaning of Law

Before considering the principles, standard and issues in law, there is the need for the law students to understand and have an idea as to what the term 'Law' entails. The term 'law' is a complex phenomenon which does not have a universally accepted definition. Though, various authors proffer various definitions, yet it remains as such. However, law consist of a body of rules recognise by the state, governing human behaviour and relationships among individuals and between individuals and their society (state).

'The study of the law qualifies a man to be useful to himself, to his neighbours, and to the public.' Per ----- Thomas Jefferson

Note: Ask the students to give their perspectives about the definition of law. Let's proffer a working definition.

2.2 What are the Elements of Law?

Based on the aforementioned characteristics, the following may be considered as the basic elements of law.

1. Body of rules
2. Recognition
3. Governing human conduct
4. Binding nature (creating mandatory obligation, failure of which attracts legal consequences).

2.3 Nature of principles of law

The term 'principle' originates from the French and German languages in the 18th Century. It goes back to the Latin word 'principium' meaning 'basis', 'origin', 'basic position', 'guiding idea', 'basic rule of behaviour'.

In common law concept, it is has been viewed as consisting of legal rules, principles, and standards. Common law legal rules are relatively specific legal norms that require actors to act or not act in a specified way, enable or disable specified types of arrangement, or set remedies for specific wrongs.

Nonetheless, principles are fundamental concepts (like fairness or accountability) that underpin a legal system, guiding its interpretation and application. Standards are general norms, detailed rules or ethical regulations (rules) provided as a specific criteria or benchmarks guiding the application of legal rules, depending on the practical context. Such standards includes standard of proof as encapsulated in the provisions of **Part IX** of the evidence Act. Issues in law refer to the complex but contentious or unresolved issues sometimes involving legal rights or duties requiring judicial interpretation or attention. Such issues includes balancing competing rights, ensuring access to justice, or adapting laws to new societal changes like technological advancements, among others.

2.4 Definition of Principles of Law

Legal principles refer to standard rule commonly used to interpret and apply the law to different circumstances. Usually, the sources of legal principles stem from judicial precedents, statutes, customs, and other sources of law. These elements are generally accepted as the basis of legal processes and decisions in a particular country. The Constitution of a country is often an instrumental source of legal principles. Essentially, the role of legal principles revolves around serving as a critical platform to promote the understanding of legal issues in a country or society.

Principles of law in Nigeria are fundamentally rooted in the Constitution, that form the basis for legislation and judicial decisions, such as the rule of law, separation of power, supremacy of the constitution and natural justice. The Nigerian legal system also follows common law principles like the doctrine of precedent (*stare decisis*) and an adversarial court system, alongside incorporating English law, customary law, and influences from international law. The Core Fundamental Principles and Concepts are:-

2.4.1 Rule of Law:

This foundational principle requires that the law be applied equally and fairly to all citizens, with independent and impartial courts administering justice. The key aspects here include:

- a. Supremacy of the Constitution.
- b. Equality before the law.
- c. Doctrine of Separation of Power
- d. Absence of arbitrary power.
- e. Natural Justice

However, it is expedient to provide brief explanation of each of the concepts below:

a. Supremacy of the Constitution.

The provision of the Constitution⁵ of the Federal Republic of Nigeria clearly provide that:- *‘This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria’*. Accordingly, it means that all persons and authority in Nigeria derives their power and authority from the Constitution.

b. Equality before the law.

Equality before the law is one of the principles of fair hearing. It simply means that every individual is or should be treated the same by the law and under the law, regardless of their social status, wealth, gender, race, religion, or any other personal attribute, and that no one is above the law. This principle ensures equal access to the legal system, fair treatment in all legal processes, and protection under the law without discrimination.

c. Doctrine of Separation of Power

This is one of the principles of democratic governance. It simply refers to the division of governmental authority between the legislative, executive, and judicial branches in line with the provision of **Sections 4, 5, and 6** of the Constitution⁶ of the Federal Republic of Nigeria with a view to preventing the concentration of power in one place. It is aimed at ensuring transparency, accountability and promoting check and balances between the three arms of government.

d. Absence of arbitrary Power.

This principle implies that there should be absence of arbitrary power. It therefore simply means that people are or should be ruled by the law alone, not by the personal discretion, prejudice, or whims and caprices of government officials.

⁵ Section 1(1) of the Constitution of the Federal Republic of Nigeria, CFRN, (1999), as amended

⁶ CFRN, (1999), as amended

e. Natural Justice

This refers to the principle of administrative law which includes rules such as *nemo iudex in causa sua* (no one should be a judge in their own case) see the case of **GANI V LPDC**⁷ and *audi alteram partem* (both parties should be heard).

2.4.2 Legality Principle

Legality principle is one of the fundamental legal doctrines or principles which guarantee that no one should be convicted or punished for a crime unless his or her conduct was clearly defined as a criminal offense and prescribed by a pre-existing, codified law at the time the act was committed. This principle, is often expressed by the Latin maxim as *nullum crimen sine lege* (no crime without law).

Accordingly, the above principle is in line with the provisions of **Section 36 (12)** of the Constitution⁸ which provides:-

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.[itilising is mine]

Therefore, the three requirements must exist simultaneously before an act can constitute criminal offence. These are:-

4. Definition of the offence - Certainty of the offence.
5. Prescription of the penalty - Certainty of the punishment.
6. The offence must be written - Codification.

There three elements of an offence is what constitute the doctrine or principle of legality in Nigeria Criminal jurisprudence; and the principle has been judicially recognized in the case of **AOKO V. FEGBEMI**⁹, WHERE THE Court held that the conviction of the appellant for adultery by customary court was unconstitutional as adultery was not an offence in Southern Nigeria.

⁷ (1985) 1 NWLR (Pt. 7) 300

⁸ CFRN, (1999), as amended

⁹ (1961) 1 ALL NLR, 400

2.4.3 Judicial Principle

The principle of judicial precedence otherwise known as *stare decisis* originated from the Anglo-Saxon principles. The 'term' *Stare decisis* is a Latin word, meaning 'let the decision stand'. It is a principle that once a question or matter is considered by a court of competent jurisdiction and answered, then, it must elicit the same response each time the same issue is brought before the courts.

The name *Stare Decisis* is taken from the Latin maxim, *stare decisis et non quieta movere*, and the translation of the maxim is a good definition of the rule itself. It means 'to stand by precedent and not to disturb what is settled'. It is now refer to as the 'doctrine of precedent' or of authority. It should be noted at this elementary level that, *stare decisis* simply means, all other things being equal regarding to an issue of law, a legal system is better advised to resolve matters firmly and finally than to search for more appealing solution on a case-by-case basis.

Accordingly, it is also refers to as case law, which serve as a very important source of law, most especially in common law countries. In countries that follow common law system, the judgments of the higher courts are treated as binding on all subordinate courts. This concept of treating judgments of superior courts as binding on the inferior courts is called the doctrine of precedent or *stare decisis*. The philosophy behind this concept is attributed on the certainty and predictability which are very important attributes of law, and indeed essential for its success. If law treats a person in a particular way, it is only just that other persons in similar position are treated likewise. Only then will there be greater compliance with law. This principle of law is applicable to most of the common law country's legal system, Nigeria inclusive. Therefore, the doctrine of precedent was evolved in order to maintain consistency, certainty, predictability and uniformity in law thereby ensuring equality, efficiency and avoiding arbitrariness.

2.5 Judicial Independence.

This principle is aim at ensuring that courts and judges can perform their duties impartially, deciding cases on the facts and law without improper and undue influence or control from other government branches (executive and legislative), private groups, or the public. This freedom from external pressures allows judges to make decisions solely based on the law, upholding the rule of law and ensuring fair and equitable justice for all.

It should be stress here that, without judicial independence the achievement of all the aforementioned principles would be difficult if not impossible. Thus, fair and equitable justice is only achievable with true judicial independence. Accordingly, judiciary should and must be free from interference, free in terms of financial autonomy, and indeed free from corrupt tendencies of certain judicial officers, if we desire to achieve fairness and justice. In order to achieve that objectives, the combine provision of **Sections 17 (1), (2) (e), 36(1), and 153** of the Constitution¹⁰ as well as the third Schedule to the constitution which establishes the National Judicial Council granting it powers for the appointment, discipline and removal from office of all judicial officers are aimed at safeguarding such independence from unnecessary interference from the executive or any other arm of government.

Additionally, the financial autonomy of the institution guaranteed by **Section 84 (1)(2) and (4) and Section 121(2) and (3)** of the Constitution¹¹ which makes the recurrent expenditure of the judiciary directly charge on the consolidated revenue fund is equally directed towards its independence.

Accordingly, the provisions of **section 17 (1) and (2) (e)** of the Constitution¹² clearly provides:-

- (1) The State social order is founded on ideals of Freedom, Equality and Justice.
- (2) In furtherance of the social order-
- (e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

Similarly, the provisions of Section 36 (1) of the Constitution¹³ also provides:-

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

With regards to the financial independence of the judiciary, adequate provisions were provided by the provisions of the constitutions towards ensuring such independence for implementation by the Federal and state governments respectively. With regards to the

¹⁰ CFRN, (1999), as amended

¹¹ CFRN, (1999), as amended

¹² CFRN, (1999) as amended

¹³ CFRN, (1999), as amended

Federal Government, the provisions of section 84 (1), (2) and (3) of the Constitution¹⁴ provides:-

- 84 (1) There shall be paid to the holders of the offices mentioned in this section such remuneration, salaries and allowances as may be prescribed by the National Assembly,...’
- (2) The remuneration, salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the Consolidated Revenue Fund of the Federation.
- (4) The offices aforesaid are the offices of ..., Chief Justice of Nigeria, Justice of the Supreme Court, President of the Court of Appeal, Justice of the Court of Appeal, Chief Judge of the Federal High Court ...’

While with regards to the State Government, the provisions of section 121 (2) and (3) of the Constitution¹⁵ clearly provides:-

- 121(2) The heads of expenditure contained in the estimates, other than expenditure charged upon the Consolidated Revenue Fund of the State by this Constitution, shall be included in a bill, to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the State of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.
- (3) Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the **courts** concerned.

Considering the aforementioned provisions it would be on the safer side to state that adequate provisions are provided by the constitution for the independence of the judiciary, however, the issue of implementation is also another matter entirely and for another discourse.

¹⁴ CFRN, (1999), as amended

¹⁵ CFRN, (1999), as amended

CHAPTER THREE
Practical and Legal Reasoning

3.1 Nature and meaning of Practical Reasoning

In a very simple and concise manner, the basic concept of ‘practical reasoning’ is credited to have originated from Aristotle; nonetheless, the precise nature of it still remains a contentious issue among various philosophers. However, Practical reasoning has been described as a thinking process necessary for solving the everyday routine and unexpected problems facing individuals and families. This is because, every day, questions such as ‘what should I do and what to choose among others’ are practical problems facing all of us, repeatedly and throughout our lifetime.

Every day of our lives, individuals must decide as to what to wear and eat, and how to act toward family members, friends and others. Families make decisions with far-reaching consequences. They must decide if they should have children; how to take care of them; how they should take care for their parents and elderly, and how they should relate to their neighbours and other communities. Accordingly, critical thinking is often equated with practical reasoning. As a central dimension in the practical reasoning process, critical thinking involves continuously and reflectively judging and assessing information accuracy and reliability and the acceptability of criteria and actions.

Therefore, practical reasoning is the process of using reason to decide what to do [action], and it is concerned with action rather than just thought. It involves deliberating on facts and values to determine the best course of action to achieve a goal, whether the goal is a simple one like getting to a destination or a complex one like living an ethical life.

For example:

One of the important examples of excellent reasoning can be found in the case of the medical advances of the Nineteenth Century physician, **Ignaz Semmelweis**. Semmelweis was an obstetrician at the Vienna General Hospital. Built on the foundation of a poor house, and **opened in 1784**, the General Hospital is still operating today. Semmelweis, during his tenure as assistant to the head of one of two maternity clinics, noticed something very disturbing. The hospital had two clinics, separated only by a shared anteroom, known as the First and the Second Clinics. The mortality rate for mothers delivering babies in the First Clinic, however, was nearly three times as bad as the mortality for mothers in the Second Clinic (9.9 % average versus 3.4% average). The same was true for the babies born in the clinics: the

mortality rate in the First Clinic was 6.1% versus 2.1% at the Second Clinic. In nearly all these cases, the deaths were caused by what appeared to be the same illness, commonly called ‘**childbed fever**’. He wanted to see if he could possibly find the reason of such mortality rates so as to change the bad narratives about their Hospital; their reputation; and above all save lives. Worse to him was that, these numbers actually understated the mortality rate of the First Clinic, because sometimes very ill patients were transferred to the general treatment portion of the hospital, and when they died, their death was counted as part of the mortality rate of the general hospital, not of the First Clinic. Semmelweis set about trying to determine why the First Clinic had the higher mortality rate. He considered a number of hypotheses, many of which were suggested by or believed by other doctors.

One of the hypotheses was that of cosmic-atmospheric-terrestrial influences caused childbed fever. The idea here was that some kind of feature of the atmosphere would cause the disease. But, Semmelweis observed, the First and Second Clinics were very close to each other, had similar ventilation, and shared a common anteroom. So, they had similar atmospheric conditions. He reasoned: If childbed fever is caused by cosmic-atmospheric-terrestrial influences, then the mortality rate would be similar in the First and Second Clinics. But the mortality rate was not similar in the First and Second Clinics. So, the childbed fever was not caused by cosmic-atmospheric-terrestrial influences.

Another hypothesis was that overcrowding was the cause of the childbed fever. But if overcrowding was the cause of the childbed fever, then the more crowded of the two clinics ideally and realistically should have the higher mortality rate. But, the Second Clinic was more crowded (in part because, aware of its lower mortality rate, mothers fought desperately to be put there instead of in the First Clinic). It did not have a higher mortality rate. So, the childbed fever was not caused by overcrowding.

Another hypothesis was that, fear caused the childbed fever. In the Second Clinic, the priest delivering last rites could walk directly to a dying patient’s room. For reasons of the layout of the rooms, the priest delivering last rites in the First Clinic walked by all the rooms, ringing a bell announcing his approach. This frightened patients; they could not tell if the priest was coming for them. Semmelweis arranged a different route for the priest and asked him to silence his bell. He reasoned: if the higher rate of childbed fever was caused by fear of death resulting from the priest’s approach, then the rate of childbed fever should decline that the rate of childbed fever declined when people could not tell if the priest was coming to the

First Clinic. So, the higher rate of childbed fever in the First Clinic was not caused by fear of death resulting from the priest's approach.

In the First Clinic, male doctors were trained; this was not true in the Second Clinic. These male doctors performed autopsies across the hall from the clinic, before delivering babies. Semmelweis knew of a doctor who cut himself while performing an autopsy, and who then died a terrible death not unlike that of the mothers who died of childbed fever. Semmelweis formed a hypothesis. The childbed fever was caused by something on the hands of the doctors, something that they picked up from corpses during autopsies, but that infected the women and infants. He reasoned that: if the fever was caused by cadaveric matter on the hands of the doctors, then the mortality rate would drop **when doctors washed their hands with chlorinated water before delivering babies**. He forced the doctors to do this. The result was that the mortality rate dropped to a rate below that even of the Second Clinic. Semmelweis concluded that **the best explanation** of the higher mortality rate was this 'cadaveric matter' on the hands of doctors. He was the first person to see that washing of hands with sterilizing cleaners would save thousands of lives. What an excellent reasoning?

3.2 Legal Reasoning

Like in the process of defining the concept of law, for more than a century, lawyers have written about legal reasoning, and the flow of books and articles describing, analyzing, and reformulating the topic continues unabated. The volume and persistence of this 'unrelenting discussion' suggests that there is no solid consensus about what legal reasoning *is*. Legal scholars have demonstrated persistent 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. These attempts generate criticism, the critics devise new formulations that generate further criticism, and the process continues.

In this context, and for better understanding of the students, legal reasoning would be described in simple terms and illustrations without necessarily engaging in numerous contentious arguments of different schools of thought about legal reasoning, while at the same time two types of methodologies in legal reasoning would be considered in the circumstance to enable better understanding of the concept.

The first question is, "**Whose legal reasoning are we talking about?**" Jurors are given instructions on the law at the end of every trial and are asked to apply that law to the evidence they've heard to reach a verdict. They are asked to engage in "legal reasoning." Clients approach their lawyers with different types of stories and a strong, if somewhat vague, sense of injustice, and it is the attorney's job to figure out the laws, precedents, and facts that most favour the client and to integrate them into a persuasive case. This task involves legal reasoning, but the reasoning is driven by the desired outcome. The goal is not to reach the right decision but to make the best argument for one side.

The evidence, as orchestrated by the lawyers and the legal arguments they make, form the raw materials for the judge's decision, although judges (like juries) may also draw on their own background knowledge and experience and their own interpretations of the evidence and (unlike juries) their own understanding of the law. When scholars write about 'legal reasoning,' they are writing about judges.

The lawyer does not have to decide the case, but only to make the strongest persuasive appeal or argument for one side (**rhetoric**); lawyers' reasoning is discussed in courses and writings on advocacy. Jurors interpret the evidence to decide what actually happened and apply the law given to them in the judge's instructions to reach a verdict. The judge must also seek out the appropriate legal authority, deciding which laws and previous cases are applicable. Jurors are not necessarily supposed to reason about the law itself; that is the task of the judge. Judges are trained in the law, they know the statutes and precedents, and they have the experience of judging many cases and reading the decisions of other judges. Jurors do not provide reasons for their verdicts; judges often do.

Finally, much of what is written about legal reasoning is about appellate court decisions, in which judges are primarily concerned with legal procedure and the law itself, not about who wins and losses, and in which they almost always must provide legal explanations for their decisions. It is now ripe to consider the two most common reasoning strategies, the **deductive** method (rule-based reasoning) and the **analogical** method (case-based reasoning).

3.2.1 Deductive (Rule-Based) Reasoning

In deductive legal reasoning, the decision maker (possibly a judge) begins with evaluating the facts of the case at hand and looks at the law that applies to those facts, and reaches a verdict.

Let us look at an illustration:

Ibrahim is a 16 years old boy. For several years, he worked at a nearby bread bakery after school and saved money that he plans to use to support his continued education. Ibrahim also likes computers. One day was sent on errand by his mother to Sokoto Central Market. While in the market, he stepped into an electronics store just to look at the new models. The sales manager in the shop warmly welcomed Ibrahim and presented various portable mini laptop computers to him and promise to give him a very good price, but Ibrahim declined. However, the sales manager persisted, prompting Ibrahim to change his decision but asked if he could call his parent. The sales manager replied that Ibrahim should decide as he is a fully grown-up man. Ibrahim quiet paused for a moment and then said that he will buy the computer. He signed a contract promising to pay **One Hundred Thousand (₦100,000) Naira** the following day as the cost of the laptop Computer, while the laptop computer was issued to him by the sales manager. When Ibrahim went back home, his parents were very upset. Ibrahim immediately regrets his action and wanted to cancel [invalidate] the contract. However, when he took back the computer to the store, the sales manager refused to accept it. He said, he thought Ibrahim was an adult having full capacity to enter into the concluded contract; hence, he should have to pay for the computer.

Now consider the following questions:-

1. Can Ibrahim possibly cancel the contract?
2. If yes, why?
3. Can the judge invalidate the contract?
4. If 'yes' why?
5. If 'no' why?
6. Do you think the situation would have been different had the sales manager allow Ibrahim to consult his parent/guardian for advise before the conclusion of the contract?

In order to effectively answer the aforementioned questions, it is advisable to consider the provisions of Sections 1 and 277 of the Nigeria's Child Rights Act,¹⁶ for guidance. Thus, **Section 1 of the Act** clearly provides:-

In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

While **Section 277** of the Act provides:- In this Act-

'age of majority' means the age at which a person attains the age of eighteen years;

'child' means, a person under the age of eighteen years;

Now, as a law student, consider the above provisions to draw your conclusion or answer the questions provided out of the illustration.

Accordingly, in deductive method of reasoning, any provision of the law decided to be used by the judge in arriving at any decision, to either invalidate or uphold the validity of the contract is his 'legal reasoning' in the circumstance.

Sometimes a judge may be confronted with two different rules dealing on the same or similar subject matter which he has to decide on , such as:-

Example: House trespass.

S. 339 (2) Whoever commits house trespass in order to commit any offence punishable with fourteen years imprisonment, shall be punished with imprisonment for a term not exceeding ten years and shall also be liable to fine.

(3) Whoever commits house trespass in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.¹⁷(italising is mine)

In the aforementioned situation, the possible questions could be:-

1. What constitute house trespass?
2. Which type of action in house trespass may amount to or could warrant the imposition or awards of fourteen years imprisonment as a punishment; and

¹⁶ Sections 1 and 277 of the Nigeria's Child Rights Act, 2003, as amended

¹⁷ Section 339 (2) and (3) of the Sokoto State Penal Code Law, 2019

3. Which type of action in house trespass may attract imprisonment (*simpliciter*).

These are the type of questions among others, a judge has to consider and analyse in each and every fact(s) presented to him in relation to the offence(s) of house trespass before applying the provisions of any of the aforementioned sub-sections of the law. Any possible choice he made in any circumstance may be regarded as his legal reasoning.

The decision maker (possibly a judge) could be faced with specific or various set of facts for determination. In such a situation, there are almost always two versions of the facts [one supported by the claimant and the other by the opposing party] often each being represented by a lawyer. It is the lawyer's job to organize the facts in a way that fits the legal outcome he/she wish to achieve, by emphasizing different facts and, often being supported by different legal rules and precedents. *The judge should always reminds himself that it is the law that determines which facts are relevant, while at the same time, it is the facts that determine which law is relevant and applicable.*

There may be several statutory provisions that might be relevant in a particular issue, possibly the state and federal statutes dealing on the same or similar contentious matter. Accordingly, the two opposing counsel may argue that it is a particular rule that should be the most appropriate and therefore be applied in this case.

Example:- In defamation of character and cyber stalking

*S. 376 (1) Whoever by words either spoken or reproduced by mechanical or electronic means or intended to be read or disseminated by signs or by visible representations makes or publishes any imputation concerning a person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said,...*¹⁸

*S. 377 Whoever defames another shall be punished with imprisonment for a term which shall not be less than Three Years or with fine of not less than One Hundred Thousand Naira or with both.*¹⁹

Accordingly, the provisions of Section 24 of the Cyber Crimes (Prohibition, Prevention, etc) Act, 2015 provides:-

¹⁸ S. 376 (1) of the Sokoto State Penal Code Law, 2019

¹⁹ S. 377 of the Sokoto State Penal Code Law, 2019

24. Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that:-

(b) he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent: commits an offence under this Act and shall be liable on conviction to a fine of not more than N7,000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.²⁰ (italising is mine)

The judge or Magistrate in the circumstance may choose one of the arguments and delivers his ruling. Thus, considering the facts that Cyber Crimes Act is a Federal enactment, and magistrate do not have jurisdiction to try such offences, then as a magistrate he has to decide either to dismiss the case to enable the matter to be filed before the Federal High Court or he has to assume jurisdiction on same citing relevant provision of the law that confers him with necessary legal authority to assume jurisdiction in the circumstance.

3.2.2 Analogical (Case-Based) Reasoning

In the Anglo-American common law tradition, cases are decided by examining the patterns of decisions in earlier but related cases. No case has meaning in isolation, and general rules and propositions are useless without ‘the heaping up of concrete instances’ except in very simple cases.

The judge is expected to begin with examining the similarities and differences between this new case and the previous cases and choosing an outcome that corresponds to the holdings of the cases it most resembles. For example, in the case of Ibrahim, a similar case where a 15 or 16 year old contract is cancel [annul] by the court would be a perfect case to be cited in the circumstance.

However, where there are certain arguments or disagreement by lawyers in certain difficult scenario or case other than simple cases, the judge is expected to examine the strengths and weaknesses of the arguments of the two parties and either chooses between them or develops a different principle for placing the present case in the context of the past ones. When legal educators claim that the basic mission of the first year of law school is to train the student to ‘think like a lawyer’, it is this sort of analogical reasoning they generally have in mind - the

²⁰ S. 24 (b) of the Nigeria’s Cyber Crimes (Prohibition, Prevention, etc) Act, 2015

ability to spot the factual and legal similarities and (more important) differences between the case under study and related previous cases and to recognize which similarities and differences are relevant (e.g., the defendant's state of mind) and which are not (e.g., the defendant's name). This entails defining the universe of possibly applicable cases and deciding which ones match the current case most closely and which, although apparently similar, do not apply. The focus is on the particular cases, and the reasoning is more like feature matching than like the application of a general principle.

Finally, as with deductive reasoning, the significance of a particular fact depends on its legal significance and the significance of a particular law or previous holding depends on the exact fact pattern of the case. The person making the legal reasoning must consider both simultaneously.

3.3 Inference

An inference is an idea or conclusion that's drawn from evidence and reasoning. It also involves drawing a conclusion or making a logical judgment on the basis of circumstantial evidence and prior conclusions on the basis of direct observation.

For example, we may infer from a person's demeanour, dressing and attitude that he/she is a Muslim; we may also infer from the nature of the debris that it was a building razed by fire. Therefore, inferences may be carefully or carelessly made. They may be made on the basis of a broad background of previous experience with the subject matter or with no experience at all.

Accordingly, the inferences that a good mechanic can make about the sound and good condition of the engine of a motor vehicle by listening to it are often startlingly accurate, while the inferences made by an amateur (if he tries to make any) may be entirely wrong. But the common characteristic of inferences is that they are statements about matters which are not directly known; statements made on the basis of what has been observed. Consider the following example:-

Suppose that Gloria visited her friend Chucks and upon entering his room, Chucks within splits of minutes shut the door of the room. Immediately thereafter, Gloria was heard loudly screaming. When people came to the direction of the scream, Chucks believably refused to open the door, and

upon forcing the doors open, Gloria's dresses and pant was found to have been torn and she was seen crying. Thus, the common and ordinary inference in the circumstance or scenario is that, Chucks was attempting to, or perhaps has indeed, raped Gloria.

In this example, although the fact that Chucks was attempting to rape Gloria was not given; the inference is drawn consequent upon the reasoning based on the observed state of affairs, that is, the projected experience. Inference is thus, the endpoint of reasoning; it is the process that enables us to arrive at (infer) a conclusion of an observable scenario or state of affairs in a given context or situation.

However, there is no doubt that inference as a process of reasoning is an important category in evaluating arguments, but the logician's interest is not in the process of inference. The logician is interested in the propositions that are the initial and endpoints of that process, and the relationships between them. Inference is thus not a component or part of an argument; it is only a process to which corresponds an argument. If you examine our examples above, you may understand that 'making an inference' is a *psychological process*, yet an inference is a reasoning process by which a logical relation is understood.

3.4 Rhetoric

Rhetoric is the art and study of using language effectively and persuasively in speaking, writing, and various forms of media to influence an audience's thinking or actions. It involves careful communication strategies, often incorporating appeals to logic, emotion and ethics within a specific rhetorical situation that considers the purpose, audience, topic, and context at all point in time.

At its heart, rhetoric is about persuasion or convincing others to adopt a particular viewpoint or take a specific action. Rhetoric is not just for formal speeches or academic texts; it's present in everyday communication.

Accordingly, rhetoric is the way in which you communicate in everyday life. These communications can be persuasive in nature and can be made of text, images, video, or any other type of media.

3.4.1 Importance of Rhetoric

- i. Since everyone can use rhetoric, an awareness of its prevalence can be empowering and can help you become a more critical consumer and creator.
- ii. It helps you as a writer and reader understand the different and interrelated influences surrounding your writing and how it will be received and interpreted.
- iii. Rhetoric gives you a framework to think critically about your writing and reading choices.
- iv. Knowing how to use the tools of rhetoric can improve your communication and can help more people to agree with your perspective.
- v. Rhetoric is a careful way of channelling your creative energies and incorporating written/visual/audio compositions to create, affirm, and improve the world around us.

CHAPTER FOUR
Study and Note-Taking Skills

4.1 Introduction

Study and note-taking skills are very essential to every law student and indeed all students of institutions of higher learning with a view to eliminating or minimising certain challenges resulting from non-issuance of hand-out policy by the University managements and other tertiary institutions. It should be borne in mind that there are skills that are specifically for law students and there are other certain skills that are applicable to every other student studying various field or discipline at different institution of higher learning.

One of the major advantages of acquiring these skills is to enable students to cope with a new and unanticipated workload; enable students to manage time, prepare for lectures, and attend to other extra-curricular activities, such as debates, quiz competitions, tutorials, presentations, and indeed moot trials.

It is essential to note that one of the fundamental changes in the current law courses curriculum for the first year students is not merely theoretical concepts but also aimed at inducting certain skills to the students with a view to assisting their educational learning process, thus, notes taking and notes making is one of them.

4.2 Note Taking

Note taking is the process of jotting down information on a sheet of paper or electronic device from various sources in an organized manner. It is one of the essential skills for successful students. When and how you need to take notes is absolutely necessary for your success. Everything you do during each year of study is leading up to some kind of assessment, often in the form of a written assignments, presentations, semester or final examination and indeed piece of final year Coursework. Thus, it becomes expedient to have complete lecture notes not only to guide you but to also enable you to be effectively ready for your different evaluation while in the course of your studies. Notes could be compiled in the following:-

- while sitting in the lecture;
- while preparing for tutorials;

- while participating in tutorials;
- while reading textbook(s)/ Casebook(s);
- while reading Case law; and
- while reading journal, articles or other academic materials.

Do not condemn yourself for not having a very good and concise note, no, no; no one is perfect, and no one writes everything. However, with time you will also be good if not perfect. The basic thing is for you to align yourself with some good students in the class, so that you will be conferring notes, so as to be correcting dots, updating your notes and with time you will be good if not better.

4.3 Lecture Notes

The first lecture notes you take will give you the expected structure in relation to the course in question, most especially from the course outline provided by your respective lecturers. Remember that some of your lecturers may not possibly cover everything provided in your school curriculum, therefore, you may need to further your research to find the extra reading yourself. The course outline provided by your lecturer could be used as the basis for your notes. In the course of your lectures, listen attentively, pick the most important points which could serve as the bullet points, then you can expand your notes. It is very important to carefully listen to your lectures as the explanations provided by your lecturers are borne out of long time experience that may not necessarily be found in the books.

Types of note taking

1. Guided Note Taking
2. Note Taking and Note Making from Texts

4.4 Guided Note Taking

Guided notes otherwise known as control note taking are a form of note-taking that provide students with a predetermined outline or structure to follow during class. They may include headings, subheadings, prompts, questions, or space for students to fill in their own notes. By providing students with a framework to follow, guided notes help them to organize their thoughts and pay closer attention to the material being presented. The **major advantages** of

Guided Notes taking is that it encourages active participation in the class; it reduces overload as only the relevant materials would be provided by the lecturers; and it also provide use of the same module by all the students.

4.5 Note Taking and Note Making

Many of us try as much as possible to **make notes** that are meaningful when we need to refer back to them, this is because unlike note taking which is the process of recording information as it is presented, often verbatim, note making is an active process of rephrasing and synthesizing information in your own words to create deeper understanding. Note taking is a faster, initial capture of key points, ideal for lectures [as enumerated above], whereas note making is much slower, more intellectual activity, often done after reading, which focuses on personal comprehension and long-term memory. For you to be a successful and effective in making notes you need to adopt strategies that work for you to help you take and make effective notes. Accordingly, to take or make effective notes you should prepare for the lecture or reading. You should also have to think about what you want to know, what the lecture or material is all about, and how is it relevant to your work.

Therefore, 'taking notes is the process of systematically recording information in minimal parts. Writing down or recording in a descriptive manner what you see, hear, or read at lectures, tutorials, webinars, and seminars which is the first step in creating an effective note'.

Whereas, making notes is the cerebral activity that requires you to choose, analyze, comprehend and summarise what you read or hear. Making notes therefore is an **active** way of study because it requires you to read, think and make decisions about what to write.

4.5.1 Difference between Note Taking and Note Making

Going by the aforementioned explanation, it is essential to notice that both note taking and note making share similar characteristics, thereby making it difficult to separate the two, nonetheless, there are certain lines of divergence between them most often on the active and passive premise. The differences are:

1. Note-taking is a quicker process than note-making, because taking notes takes **minimal time and effort**. On the other hand, making notes **takes more time**, because you need to read, analyse comprehend and select the most important and relevant aspect of the text for your purpose.

2. Note Making allows you to **add your own** thoughts, examples and illustrations to what you are writing down, whereas in Note taking you simply **copy** down what you hear or see.
3. Note taking involves taking points from a **single source** at a time, whereas Note Making involves taking points from **various** sources.
4. Taking notes involves jotting down what you hear or read **without processing** the information, whereas making notes **involves analysing** what you read.
5. Taking notes is a passive method for studying, whereas making notes is an active method for studying.

4.5.2 Stages of Note Making

Note making doesn't only happen when you are reading or attending lectures. There are three stages to making effective notes: before, during, and after.

- i. **Before:** Prepare yourself by finding out what you need to know and what the purpose of the reading or lecture is.
- ii. **During:** Note down main ideas and keywords. Find techniques that work for you.
- iii. **After:** Reflect and review and then organise your notes.

4.6 Notes Making from Text

If you are preparing to make notes from text, before reading such texts, ask yourself, what you need to get from your reading. Do you need an overview, case studies and examples, definitions, or ideas and evidence to support your own argument? The purpose of your reading will influence your reading technique as well as the way and manner you take notes. Depending on the size of the notes you are about to make or your research, critical **in-depth reading** requires detailed notes, thus, your purpose always is the key in your reading.

In making effective notes, there are three main strategies you can use to make your research or reading faster and easier most especially when reading to make notes in tertiary institution settings like university. They are:-

- Scan for key information such as statistics, dates, facts and keywords.

- Skim the introduction, conclusion, and the beginning and end of paragraphs to get the main idea and a general overview of the text. [these two strategies will be discussed separately in due course]
- Read carefully, slowly and possibly repetitively to interrogate the text and raise questions.

While making notes, consider developing a system of symbols and abbreviations to help you speed up your note taking. Some common abbreviations in notes making include ‘poss’ for possibly, ‘esp’ for ‘especially’, and ‘govt’ for government, but you can create a list that works better for you.

In order to avoid plagiarism, provide accurate source of your information, such as the name of the author, title of the work, page number, publisher if necessary, and the online link or websites where the work is or could be found if necessary. If it is unpublished lecture notes, you provide the name of the lecturer, the title of the work, as well as the date and page number you obtain the information.

4.7 Use of AI tools in Making Notes

The present technological evolution has virtually affected every sphere of our human endeavours. Accordingly, Artificial intelligence (AI) has also significantly manifested its impact within and around the educational realm most especially in making, drafting and creating School curriculum and notes making among others. Thus, as making notes is a key part of information processing and knowledge building, artificial intelligence applications help students and lecturers alike in creating or making notes for knowledge base purposes. However, while there may be certain specific advantages for some people in using generative AI tools to make notes for them, many others will find that the process of making notes, whether on screen or handwritten, has benefits for building knowledge and understanding better than using AI tools.

Nonetheless, if you are allowed to use generative AI tool to make notes, make sure that you revisit these notes and edit them to reflect your own understanding, interests and the main purpose the notes were intended to serve. This is done by adding some ideas, questions or illustrations about how a particular idea or something links to another concept or theory that can better help you to use your notes in line with the intended purpose or objectives.

It is very pertinent to notes that there are some certain issues around AI, such as copyright and intellectual property, which means that you should not upload the full text or PDFs of journal articles to generative AI tools to create summaries or notes. This is because in a jurisdiction where there exist strict copyright laws, you may be sued for infringement of such rights. However there are instances where consent in exceptional circumstances are sought for and granted for private use or study, in such situation, you may be allowed to record, take or make notes in the circumstance. It therefore means that you should not record your lectures with any AI note-taking tool unless you have been granted clear permission to do so.

4.8 Main Idea and Supporting details

In every piece of writing, the writer must have a particular message he or she wants to convey to the readers or audience. In such a situation, the main message may contain other elements, facts or points use in discussing the main message to make conveyance of such message easier or suitable for the audience. Thus, main idea is the main point a writer wants the reader to come away with. While the supporting details are the information, facts, or points of discussion the writer use in order to tell or explain about this main idea. **Main idea** is the number one thing a writer wants the audience to understand after reading and it can also be referred to as the **main point**.

Therefore, in every piece of writing there must be both main idea and supporting details. Then, what is the main idea and supporting details?

In a very simple manner, main idea is the main point a writer wants the reader to understand as a take home message. It could be stated explicitly in a topic sentence or impliedly left in the body of the passage. While the supporting details are the information, facts, examples, illustrations or points of discussion the writer use in order to tell or explain about this main idea. For a better understanding, let us consider an example in this context.

Example:-

Sokoto State as a seat of the Caliphate is one of the Border States in the country, creating vast economic interest between the state and neighbouring country, Niger Republic. Sokoto Central Market which has been strategically located at the heart of the Metropolis serves as the nerve centre of that economic activity. However, as one approaches the Market from any

of the angles, you will be welcomed by extraordinary different sound track and noise ranging from the locally made medicinal vendors, electronics, and wheel barrow trade vendors just to mention but a few.

The volume of noise pollution in and around the market area is so alarming but could possibly be minimised if the state and federal regulatory agencies wishes to do so. The Union of the electronics dealers, traditional medicine vendors or practitioners and indeed all other relevant state stakeholders could be invited for a meeting, registration, and sensitisation. Accordingly, the affected group and union could be directed as to the manner in which they could advertise their businesses through the mainstream and social media platforms, indicating their contact addresses where they could possibly be contacted by their customers. By so doing, the noise pollution in and around the market area could be minimized.

Questions:-

1. What is the main idea in the above story?
2. What are the supporting details?

4.9 Skimming

Skimming is a technique that allows you to quickly read through a text and pick out the main ideas. This is a useful skill when you need to get an overview of the **general or main ideas of the work**. With skimming, your overall understanding is reduced because you don't read everything. You read only what is important to your purpose. Skimming can save you time of laborious reading. However, it is not always the most appropriate way to read. It is very useful as a preview to a more detailed reading or when reviewing a selection heavy in content.

However, skimming can tell you enough about the general idea and tone of the material, as well as its gross similarity or difference from other sources, to know if you need to read it at all. To skim, you need to prepare yourself to move rapidly through the pages for you to achieve your objectives. To be very successful and fast in using skimming techniques, use the following steps:

1. Read the table of contents or chapter overview to learn the main divisions of ideas.

2. Glance through the main headings in each chapter just to see a word or two. Read the headings of charts and tables.
3. Read the entire introductory paragraph and then the first and last sentence only of each following paragraph. For each paragraph, read only **the first few words of each sentence or to locate the main idea.**
4. Stop and quickly read the sentences containing keywords indicated in boldface or italics. **When you think you have found something significant, stop to read the entire sentence to make sure.** Then go on the same way.
5. Resist the temptation to stop to read details you don't need.
6. Read chapter summaries when provided.

Accordingly, if you are **skimming** the text then you should highlight key parts and also annotate the text. A good annotation will include keywords, ask questions, and include related ideas and comparisons with other texts. Use the annotations to help you make more detailed notes that summarise the main ideas. There are some online tools to help you skim text such as Spreeder online tool, which allow you to adjust the number of words presented and reading speed. It also helps to keep your place in the text.

4.10 Scanning

Scanning is a technique that allows you to quickly read through a text and find specific information. This is a useful skill when you need to find specific information in a text. Scanning, too, uses keywords and organizational cues. But while the goal of skimming is a bird's-eye view of the material, the goal of scanning is to locate and swoop down on particular facts, name, or specific information.

Facts may be buried within long text passages that have relatively little else to do with your topic or claim. Don't forget to scan tables of contents, summaries, indexes, headings, and typographical cues. To make sense of lists and tables, skim them first to understand how they are organized: alphabetical, chronological, or most-to-least, for example. If after skimming you decide the material will be useful, go ahead and scan. It also follows that, if you are **scanning** the text, highlight the text and note down the key information and full details of the source. Only highlight what you need, as there is no need to highlight what may appear not relevant to your work.

4.11 Anaphora

The word ‘Anaphora’ means the deliberate repetition of a word or phrase at the beginning of successive clause or sentence. It is a rhetorical device orators and writers use to create a rhythm or add emphasis to their message by making them memorable. Understanding how to utilize this device can help you emphasize the messages in your writing or public speaking. Let us take some examples:

Example No. 1

‘It was the best of times,
it was the worst of times,
it was the age of wisdom,
it was the age of foolishness,
it was the epoch of belief,
it was the epoch of incredulity,
it was the season of light,
it was the season of darkness,
it was the spring of hope,
it was the winter of despair. ---per **Charles Dickens**, in his
famous opening lines to his poem ‘ *A Tale of Two Cities*’.

Example No.2

We went to Lagos, in Lagos State
We went to Victoria Island, in Lagos State
We went to the beach, in Lagos State
We saw the beach, in Lagos State
We envy the beach of Lagos State

Accordingly, "I Have a Dream" speech, delivered on Aug. 28, 1963, on the steps of the Lincoln Memorial, by Martin Luther King Jr. using the anaphoral phrases could also be used as another example.

Note: Students can also create their own anaphoral lines for demonstration of better understanding.

