

NIGERIAN LEGISLATIONS

The basic function of the judiciary in any political system is to interpret and apply laws. Laws therefore comprise both the language and tool of the lawyer and the judge. Consequently, it is important for the lawyer to have a good understanding of the legislative process and the reasoning behind it, so as to enable him/her do the job better. This class is expected to help the student do the following:

- i. Learn the rudiments of legal drafting
- ii. Understand and appreciate the legislative process by which bills become laws
- iii. Become familiar with the rules guiding the judiciary's job of interpreting the law

This lecture will be divided into three parts, viz: **Legislative Drafting**, which will cover the inception of legislative proposals and the rules governing effective drafting of legislation; **Legislative Process**, which will cover the process applied by the legislature in converting those proposals into law, and; **Interpretation**, which will identify rules of interpretation, and prescriptive maxims to guide the lawyer and judge in their interpretation of legislations.

LEGISLATIVE DRAFTING

The need for law in society usually arises out of a perceived need to construct rules governing a particular field in society's socio-political and economic structure. The need may be revealed by private or public individuals or institutions. Government ministries usually introduce proposals for new laws based on their area of jurisdiction or operation, and private institutions such as non-governmental organisations (NGOs) or private corporations may also introduce issues based on their field of operation. Whether private or public, individual or institution, the initiator of a bill will introduce a bill for one of several reasons. Yussuf, for instance, notes that bills may be introduced to address the following:

- a. changes brought about by the dynamic nature of society;
- b. changes in the political and economic ideologies of government;
- c. global shifts in value;
- d. scientific and technological breakthroughs, and;
- e. arrest of anti-social behaviour¹

Hence, when new issues arise, or old issues are brought to the fore by interested parties, these interested parties may approach the necessary political actors to include such issues within the

¹ Yussuf, Akorede O (2006), 'Legal Reasoning in legislation', in Sanni Abiola, ed. *Introduction to Nigerian Legal Method* (Obafemi Awolowo University Press; Ile-Ife), 197 at 198-201.



established rule structure of society. The initiator, who may also be the sponsor of the bill, depending on the procedure in that society, gives *instructions* to a draftsman to prepare a draft, which will serve as a proposal to the legislature on that particular bill. The draftsman is not always a lawyer, but many lawyers are skilled in the art of legal drafting, and may be hired for this type of job. This is the beginning of the drafting process, and the draftsman, whether or not he is a lawyer, must make sure that he follows the instructions given to him by the sponsor. He must also adhere to deadlines and formatting requirements dictated by the system to which the draft is to be submitted.

The legislative proposal stage, where the issue is first presented to the legislature by the initiator is a very political stage, especially where it is a private bill, being spearheaded by individuals or institutions. Lobbying is an important part of the legislative process, and the initiator of a bill must be familiar with legislators who are relevant to the issue being addressed in the proposal. NGOs in Nigeria have become very effective at this kind of advocacy and lobbying. For example, the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) was very instrumental towards the passage into law of the National Agency for Traffic in Persons (Law Enforcement and Administration) Bill, and Media Rights Agenda (MRA) is known to have been very active, along with other NGOs such as the Civil Liberties Organisation (CLO), in the introduction and subsequent process involving the Freedom of Information Bill which is still before the House of Representatives.²

Legal drafting is an art, and the draftsman must understand both the substantive content of the bill which he is about to draft and the formatting requirements for the creation/preparation of the bill. Certain rules must be taken into consideration in drafting:

Clarity: the draftsman must express the intention of the sponsor contained in the *instruction* as clearly as possible, so that its meaning can be easily known. Also, the draftsman, knowing that the instrument which he is creating is going to be subject to interpretation, must make such interpretation clear and simple.

Brevity: the draftsman must also express the intention of the lawmaker as briefly as possible, in as few words as possible. This will also help to enhance comprehensibility of the instrument, and to clarify the intention of the lawmaker.

Simplicity: the draftsman must use simple language, and if he is a lawyer, he should avoid the use of legal jargon, because, although laws are interpreted and applied by lawyers and judges, lay people also have recourse to legal instruments for their own personal or professional purposes. The language of the legislature in Nigeria is English, although the 1999 Constitution permits the use of

² See Okafor, Obiora (2004) 'Modest Harvests: On the Significant (But Limited) Impact of Human Rights NGOs on Legislative and Executive Behaviour in Nigeria', 48 *Journal of African Law*, No, 1, pp. 23-49 at 31



Hausa, Igbo and Yoruba, where appropriate mechanisms have been put in place. The draftsman must therefore use plain, simple English to express the ideas and intentions of the lawmaker/sponsor.

Conformity: the draftsman must ensure that the instrument he prepares conforms to standards of the system where he is working. For example, some countries use Articles and paragraphs in their laws, while others use sections and sub-sections. Such standards ensure that there is uniformity in the format adopted within any particular political system, to aid comprehension and certainty. General rules of usage in language regarding punctuations, parts of speech, such as verbs, conjunctions, prepositions, and so on, must also be used correctly.

Regarding formats, the draftsman is expected to understand the formatting requirements in order to comply with them accordingly. For example, different parts of a statute may be expected to contain different kinds of information. The preliminary part of the statute usually provides a general introduction to the content of the statute. Sometimes, as is usually the case with constitutions and international conventions, the preliminary part contains a preamble which provides a brief description of the circumstances leading to the creation of that statute or instrument.³ The principal provisions contain the detailed sections of the law which provide the necessary information relating to the issue being addressed by the law, and procedures for implementation. Miscellaneous provisions usually contain technical information on application of the law, such as offences with regard to that law, accounting and budgeting, and so on. The Final part of the statute usually contains the interpretation section, schedules and annexes with further information on issues already mentioned in the statute. A law may, in addition to these, also contain an executive endorsement, where the relevant authorities sign the law into existence. This is very common with international instruments.⁴

Apart from being familiar with these general guides to the content of legislation, the draftsman is also expected to meet particular requirements, such as the following:

The Long Title: the long title of a law contains the title of the law and a brief description of the law, which is meant to capture the purpose of the law. The long title of the Niger Delta Development Commission (Establishment, etc) Act⁵ is as follows:

An Act to provide for the repeal of the Oil, Mineral Producing Areas Commission Decree 1998, and among other things, establish a new Commission with a re-organised management and administrative structure for more effectiveness; and

³ See the Preamble to the 1999 Constitution of the Federal Republic of Nigeria.

⁴ See generally, Yusuff, supra; Farrar J.H and Dugdale A.M (1990), *Introduction to Legal Method* (Sweet & Maxwell; London)

⁵ Cap N86, Laws of the Federation of Nigeria 2004.



for the use of the sums received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger-Delta area and for connected purposes

Marginal Notes: these are notes found in the margin of the document which contain information relating to a particular section. They serve as aids to the reader by helping to locate sections based on particular themes or topics. For example, section 5 of the Economic and Financial Crimes Commission (Establishment) Act⁶ provides for the functions of the Commission, so the marginal note beside that section reads 'Functions of the Commission'.

Sections: in Nigeria, laws are divided into sections, which are further divided into sub-sections, which may further be broken into paragraphs, which may also be broken into sub-paragraphs. A section which contains all these will be a complex one, but these divisions will serve as guides for the reader of the document. Sections and sub-sections are usually numbered in Arabic numerals, paragraphs in letters and sub-paragraphs in roman numerals.

Provisos: a proviso is a part of a section or sub-section that qualifies a particular provision by stipulating a condition, and it usually begins with 'provided'. It tells the reader that the provision in question is dependent on something else which is contained in the proviso. Section 18 (2) of the Nigerian Communications Commission Act⁷ provides that

The Commission may accept gifts or grants of money or aids or other property from national, bilateral and multi-lateral organisations and upon such terms and conditions, if any, as may be agreed upon between the donor and the Commission **provided** that such gifts are not inconsistent with the objectives and functions of the Commission under this Act.

The draftsman is expected to know all these – and more, and the formats and techniques guide the subsequent reader of the bill, who is usually a lawyer or a judge trying to construe the meaning of particular sections. We shall learn more about this when we discuss interpretation of statutes.

THE LEGISLATIVE PROCESS

After the proposal has been prepared, it is presented to the legislative house where it is expected to be considered for legislation. Different political systems have different procedures for handling this stage. In Nigeria, government ministries send bills/proposals to the legislative house where it is to be considered, while private individuals and institutions present their proposals through a member of the House. This is similar to the situation in the United Kingdom, where cabinet Ministers may

⁶ Cap E1, Laws of the Federation of Nigeria 2004.

⁷ Cap N97, Laws of the Federation of Nigeria 2004.



introduce bills,⁸ unlike the United States, where only members of Congress are allowed to introduce bills as sponsors of such bills.

Nigeria has a bicameral federal legislature. Section 4(1) of the 1999 Constitution vests the legislative powers of the Federal Government in the National Assembly, which is to consist of the Senate and the House of Representatives. A bill may originate in either legislative house, and after it has been passed there, it is sent to the other House, where it must also be passed before it can be sent to the President for his assent. Therefore, in Nigeria, before a bill becomes law, at the federal level, it must be passed by the two legislative houses, and then sent to the President for his assent. However, where the President refuses to give his assent, the bill is sent back to the National Assembly, where both Houses must pass it into law, by a two-third majority of each House.⁹

Pursuant to section 62 of the 1999 Constitution, each House appoints technical committees to address issues in particular fields, such as, Agriculture and Rural Development, Communications, Health, Foreign Affairs, Petroleum, and so on. These committees deliberate on bills and proposals relating to their spheres of interest before such proposals are presented to the House for final deliberation. This is similar to the situation in the United States, where standing committees are appointed based on relevant subject-matters, and last for , unlike in the United Kingdom where standing committees are set up to consider particular bills.¹⁰

When bills have been brought to a particular house by a government department or a parliamentary sponsor(s), they first undergo a first reading where the bill is presented for mention. This is followed by the second reading, which involves a discussion of the principles governing the bill. The bill may be rejected at this stage if it is not believed to have a significant justification for legislation. The level of support given to a bill may also be a consequence of political affiliations and lobbying, and not necessarily have much to do with the content of the bill, as was noted in our discussion of the proposal stage.

After the second reading, when a bill has been accepted for consideration, it goes through the Committee stage, where the members of the relevant standing committee deliberate on it. This stage usually involves a thorough review of the bill, and sometimes a public hearing to invite opinions from interested members of the public. After the committee stage, the revised draft is presented before the House in what is called the Report Stage. Here, the revised bill is presented before the House for further deliberation. This stage is followed by the third reading, which is a

⁸ Note that there is a fusion of the powers of the different arms of the British government, so that Cabinet Ministers may also be members of the legislature, and therefore act in a dual capacity.

⁹ Section 58 of the 1999 Constitution

¹⁰ See Jones, Harry W., Kernochan, John M., and Murphy, Arthur W. (1980) *Legal Methods: Cases and Text Materials* (The Foundation Press; New York) at p.273.



final consideration of the bill in its conclusive form. When the bill has been passed by the required majority in the House where it originated, it goes through the same process in the other House.¹¹

The process of legislation is an important one, and this is why it comprises so many stages, to ensure that the laws which are produced by the legislature are thorough and effective in addressing the relevant issues that necessitated their enactment. The legislative process is different during military regimes; it is less tedious and not as thorough, which makes the passage of law easier, but not necessarily more effective.¹²

INTERPRETATION

After laws have been drafted and passed by the legislature, they become part of the legal system of the society where they have been made to operate. The laws are interpreted in courts of law, where lawyers and judges apply the general principles expressed in the law to specific cases. There are several ways in which legal practitioners may interpret the meaning of the laws before them, depending on the wording of the law, the circumstances under which it was made, or even the social context within which the law is expected to operate. Over time, lawyers and judges have come up with rules and tools to guide interpretation, and while these rules are not set in stone, they provide the interpreter with abstract tools for enhancing his/her job. The most widespread of these rules are the literal rule, the golden rule and the mischief rule.

The Literal Rule: this rule of interpretation urges the interpreter of the law to interpret words in their 'plain and natural' meaning, as this is what the lawmaker must have intended. The judge must therefore restrict himself to the words contained in the statute and interpret those laws literally, not taking into consideration any extraneous factors. This rule has been applied in cases such as *R v. Harris*,¹³ where the accused was not found guilty of stabbing, cutting or wounding, because she used her teeth to bite the victims, and her teeth were not considered weapons. A different section of the statute concerned in this case made reference to other acts such as shooting, and the court took this into consideration in arriving at its decision. Although the decision in the case may be seen as a narrow one, it can also be said to take into consideration factors other than the words being interpreted. This brings us to the next rule of interpretation.

The Golden Rule: This rule has been recognised as supporting the literal rule, and being applicable when that rule fails. The rule enjoins the interpreter to construe words in their ordinary meaning, unless where such ordinary meaning would lead to ambiguity or absurdity. Hence, the judge or the lawyer is expected to follow the literal rule, and where that would be ambiguous or inconsistent

¹¹ While section 58 of the 1999 Constitution covers the general legislative process, Section 59 establishes the process for the passage of an Appropriation Bill.

¹² See Yusuff, *Supra* at p. 216-7.

¹³ (1836) 7 C & P 446.



with the remaining sections of the statute, then a different meaning would be employed to enforce the intention of the lawmaker. In *R v. Harris*,¹⁴ the court considered another section in the same statute in arriving at its decision that biting did not constitute stabbing, cutting or wounding, under the statute. In this instance, the court relied on the ordinary meaning of the words. In *R v. Allen*,¹⁵ the accused married a relative under circumstances that would constitute bigamy, and he claimed that since the marriage was void under the statute, he could not be guilty of the offence. The court held that to accept such an interpretation of the law would render it ineffective, since bigamy would also make a marriage void. The court therefore departed from the literal meaning of the law and interpreted it in such a way that would not render it absurd or ineffective.

The Mischief Rule: *this rule was laid down in Heydon's Case*.¹⁶ The mischief which the law in question sought to resolve is to be considered when interpreting the law. In *Smith v. Hughes*,¹⁷ a statute made it an offence for prostitutes to loiter or solicit in a street or public place, so the prostitutes stayed indoors and signalled to customers from their windows, and the customers signalled back. The court, looking at the mischief which the law was enacted to address, held that a crime had been committed under the statute.

In addition to the above rules, there are other maxims which guide the interpreter in discerning the meaning intended by the lawmaker, based on the choice of words. These are:

Ejusdem Generis: where general words follow particular words, the general words are restricted to the class of the particular words. For example, where a law prohibits dancing, singing, acting and other arts, the term 'and other arts' will be restricted to the performing arts based on the list of particular activities provided before the general provision.

Expressio Unis est Exclusio Alterius: the express mention of one thing leads to the exclusion of all others. This means that where a law makes particular references, anything not included within those references will be excluded from the meaning of the provision in question. For example, where a statute provides that 'women and children will not be allowed to enter a bar', the mention of women and children is specific enough to know that the provision does not refer to men.

Nositur a Sociis: the meaning of a word should be interpreted from the meaning of other words with which it appears. Therefore, where a statute prohibits smoking and drinking, it will be presumed that 'drinking' refers to the drinking of alcohol.

¹⁴ Ibid.

¹⁵ (1872) LR 1 CCR 367

¹⁶ (1584) 3 Co. Rep 7a, 7b.

¹⁷ (1960) 1 WLR 830; (1960) 2 All ER 859



Lex non Cogit ad Impossibilia: the law should not be interpreted to command the doing of the impossible. This is similar to the golden rule of interpretation, as it urges the interpreter to avoid absurdities.

Ut res Magis Valet Quam Pareat : the law may have effect rather than be destroyed. This means that the courts, apart from ensuring that a law does not prescribe absurdities, will also ensure that he refrains from employing any interpretation which would make the law ineffective or inapplicable, especially where there is an alternative interpretation that would make the law effective. See *R v. Allen*.¹⁸

The court may also apply intrinsic or extrinsic sources in its interpretation exercise. Intrinsic sources include the preamble to a law (see *Heydon's Case*¹⁹), the long title, interpretation section, schedules and appendices. These are all parts of a statute or legislation that provide further information on context and meaning as relates to the statute or legislation in question. Intrinsic sources are important because they narrow down the scope of meaning of general terms based on the intention of the lawmaker embodied in that particular statute. Extrinsic sources, on the other hand, are tools for interpretation that are found outside the statute itself, and they include dictionaries, statutes of interpretation, established textbooks, and so on. These materials also assist the interpreter of a statute in finding the meaning of particular words or phrases.

It should be noted that interpretation is a very intense activity, and despite all the rules and maxims provided in legal texts, cases, and journals, the choice of how to interpret a word, phrase, section or any part of a statute lies with the interpreter, and is usually influenced by his/her perception of the relevant circumstances. Therefore, the rules serve merely as guides.

¹⁸ Supra

¹⁹ Supra

