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PERSPECTIVES ON LEGAL LANGUAGE AND REASONING IN NIGERIA TODAY: A JURISPRUDENTIAL APPROACH*

Abstract

Good language, sound logic and right reasoning constitute the life wire of any genuine legal theory and practice. Although this triad is of a philosophical tinge and ancestry, yet the elements constitute veritable tool for sound legal practice, legal studies, law making, and judicial interpretation. It is therefore necessary to reflect on the valued employment of this *instrumentum laboris* without which the role of law in a polity may adequately peter out. This task is peculiarly germane in the face of Nigerian democracy and human development in which the principle and practice of the rule of law cannot be dispensed with. Just this is the thrust of this paper. Critical analysis forms the gamut of the methodologically applied approach used in this study.

Introduction

It is not the thrust of this paper to prescribe the language in which law must be done or made. Therefore, this study does not intend to align with the Supreme Court of Nigeria in holding as it did in the case of *Ogunye v. The State*[1] that the language of court proceedings in Nigeria must be English even if the relevant parties and their witnesses, members of the bar and bench, and other people present in court hail from the same indigenous language group. Besides, this is despite the huge cost, on the part of the court, of getting an interpreter in order to meet the constitutional demand of fair hearing[2]. Nor does this paper set for itself the task of agreeing to or analyzing Section 55 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which holds that the business of the National Assembly shall be conducted in English and only when adequate arrangement has been

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[1] (1999) 5NWLR (pt 604) at 568.

[2] Section 36 (6)(e) of the *Constitution of Federal Republic of Nigeria 1999 (as amended)* provides that every person who is charged with a criminal offence shall be entitled to have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

made therefore can the House's transaction be in Hausa, Ibo and Yoruba. Our task is rather much more fundamental.

Hence, the aim of this paper is to discuss some characteristics of legal language, which though not peculiar and unique to law but nevertheless set it apart from ordinary language. In other words, this paper is concerned with how law uses language to communicate its specific objectives in any given circumstance. It deals with the use of language in legislation, case law, legal writing and legal logic. It will later focus on the propriety or otherwise of this special language *vis-à-vis* the role of law in a society. But before going into these considerations, it may be quite congenial to delineate, albeit briefly, what is meant by the terms 'language' and 'law'.

Meaning of Language

The word 'language' is adorned with shades of meaning. *Longman Dictionary of Contemporary English*[3] contains six connotations of the term. First, it is "the system of human expression by means of words". In this sense, the dictionary looks at language simply as a medium of symbolic communication among human beings. Thus, language becomes one anthropological window by which man is described as a rational being. Secondly, 'language' describes "a particular system of words as used by a people or a nation". It is this meaning of language that is represented by the Latin and French etymols, namely *lingua* and *la langue*, literally meaning 'tongue' in the sense of being a language of a people. Thirdly, 'language' refers to "any system of signs, movements, and so on, used to express meanings or feelings". According to this understanding, the word encompasses both the human and non-human linguistic and paralinguistic modes of communication among the relevant beings. Fourthly, 'language' can be used to describe "words or phrases that are impolite or shocking", as in phrases like 'bad language', 'strong language', etc. In the fifth sense, 'language' designates "a particular manner or style of expression" such as when one talks of 'poetic language' or 'philosophical language'. Finally,

[3] P. Procter (ed.), *Longman Dictionary of Contemporary English, Int'l Student Edition*, (England: Longman Group Ltd., 1978), p.617.

'language' as a term can be used to denote "the words and phrases of a particular group, science, profession, and so on". It is in the last two senses of the above connotations that we understand the word 'language' in this discourse. Here, language is seen more as Latin *oratio* as distinct from *lingua*. Hence, legal language as used in this write-up refers both to the particular style or mode of expression, and to the different, if not peculiar nature of the words and phrases as employed by the members of the legal profession and the legislature in the appropriate cases.

Definition of Law

It may be surprising and scandalous to non-lawyers to read that there is no unanimity among scholars and jurists about the meaning of law. This is precisely why there are several Schools of Jurisprudence whose special disciplinary areas focus on the fundamental philosophical questions of law. Such questions include: What is Law? Of what use is Law to man? Is Law different from morality? Must all laws be obeyed...? On the question of the nature of law, scholars are divided in their opinions. While some view Law as a creature of nature from which all laws, for validity, must issue; others hold that any law that does not derive from human sovereign authority by way of commands and backed up by sanctions cannot be referred to as law, properly speaking. Yet, others believe that Law emerges from the point of view of what the courts would do with respect to a particular legal problem, in which sense Law becomes the pronouncement of relevant courts. Also, we are not unaware of the perspective that insists that any valid law must conform with the custom, values and historical development of a people, strictly speaking. Hence, there are several theories of jurisprudence such as those of the Natural Law, Analytical Positive, Functional, Historical, Sociological, Realist, Marxist and Utilitarian Schools of Law, to say the least. Again, there has been a world of controversy with regard to the relations between Natural, Moral, Eternal, Divine and Human Law. Nor are the different modes of classification of law not fraught with complexities such as found in Public and Private Law, Civil and Criminal Law, Civil and Common Law, Substantive and Procedural Law, Common Law and Equity, etc.

However, for the purpose of this paper, suffice it to define Law as a body of rules designed or formulated to guide human conduct or action which are enforced among members of a given state or society. In this view, Law refers to man-made laws which are normative in character, dynamic in nature, territorially limited, many of which are backed up by sanctions, and contained in several sources such as the Constitution, other statutes, decided cases and the custom of the people. For all practical purposes, Law here refers to that of Common Law tradition dotted, as it were, with the adversarial or accusatorial system and the practice of binding precedents (*stare decisis*).

Some Elements of Legal Language and Reasoning

It is now appropriate for us to consider some instances of legal language with a view to identifying their special features and implications for legal reasoning. We shall take them one by one.

Legal Language as Specific

Language of Law can be highly specific. This normally takes place where the law wants to leave no doubt as to how it should be applied to the facts of a particular case. Examples of such specific legal language abound in many Nigerian statutes. For instance, while Section 15(1) of the *Matrimonial Causes Act*[4], mentioned irretrievable breakdown of marriage as the sole ground for petition by a party to a marriage for a decree of dissolution, Subsection (2) thereof outlines eight facts each of which can constitute such ground. They include:

(a) Where the respondent has wilfully and persistently refused to consummate marriage.

(b) Where since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.

[4] Cap M7, *Laws of the Federation of Nigeria*, 2004.

(c) Where since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

(d) Where the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

(e) Where the parties to a marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.

(f) Where the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

(g) Where the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under the Act.

(h) Where the other party to a marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for pressuring that he or she is dead.

The discussion of these facts is a subject matter of its own and hence outside the scope of this study. However, suffice it to state that the facts are exhaustive for the purpose of a petition for dissolution of a valid statutory marriage in Nigeria. Thus, the court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievable if, but only if, the petitioner satisfies the court of one or more of the above facts. No more, no less. The implication is that the language of the law is quite specific and leaves no doubt about what can constitute a fact of the basis for a divorce petition under the Nigerian Law. Similarly, Section 138(1) of the *Electoral Act, 2010* as amended[5] provides for the specific grounds, on which an election petition may be based, namely,

[5] *In pari materia* with Section 134 of *Electoral Act* 2002 and Section 145(1) of Electoral Act 2006.

(a) That a person whose election is questioned was at the time of the election not qualified to contest the election.

(b) That the election was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act.

(c) That the respondent was not duly elected by majority of lawful votes cast at the election; or

(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

With regard to the above provisions, the court has held in *Duokpolagha v. George*[6] that whatever is a ground for an election petition must fall within the adumbrated grounds; otherwise such a petition will be incompetent and worthless. After the 2003 General Election, in the election petition case of *Obasanjo v. Yusuf*[7], the Supreme Court grappled with the issue of whether an election petition could be based on a ground outside the provision of Section 134 of the *Electoral Act 2002* which is *in pari materia* with Section 145(1) of *Electoral Act 2006* and Section 138(1) of *Electoral Act 2010 as amended*. In the instant case, the petitioner at the lower court relied on a violation by the respondent of a constitutional provision which, he considered, and rightly so, a superior law. But the Supreme Court curiously after conceding the supremacy of the 1999 Constitution and the fact that the Court of Appeal has original jurisdiction to hear election petition by virtue of Section 239(1) of 1999 Constitution, and consequently to hear all matters related to the decision, held that since the Electoral Act specified grounds for an election petition, different rules will not apply in relation to a presidential election. Thus, an election petition that relied on a violation of a constitutional provision not included in Section 134 of the Act was therefore adjudged incompetent. This decision is as a result of the specific and exhaustive provision of the law on grounds for petition as contained in the Electoral Act in force. This is in spite of the fact, with respect, that the

[6] [1999] 2NWLR (pt. 236) at 444; *Obi v. Ezeweren* [1992] 2 NEPAR, 11.
[7] [2004] 9NWLR (pt. 877) at 144.

Supreme Court could have adverted to the idea that nothing should detract from the supremacy of the Constitution. The *ratio decidendi* could have been couched on other grounds.

Further, Section 1(2) of *Copyright Act*[8] provides for the works that shall be eligible for copyright which include literary works, musical works, artistic works, cinematographic films, sound recordings, and broadcasts. The implication of the specific language of the provision is that any other work that is not recognizable by the provision of Section 1(1) of *Copyright Act* would not be eligible for copyright even as there are other criteria in Subsections (2)(3) and (4) that will prevent a particular work, though included in the list, from being eligible for copyright. But, first and foremost, every copyrightable work must fall within the list enunciated in Subsection (1) of the Section.

More still, the Constitution is replete with such specific language in many of its provisions. For instance, after vesting the judicial powers of the Federation in the courts by virtue of Section 6(1), the 1999 Constitution still goes further to specify in Section 6(5) the various courts established for the Federation namely, the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, a High Court of a State, the Sharia Court of Appeal of the Federal Capital Territory Abuja, a Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory Abuja, a Customary Court of Appeal of a State, and such other courts as may be authorized by Law to exercise jurisdiction on matters with respect to which the National Assembly or a House of Assembly may make laws. The effect is that any other court outside these ones stipulated by Section 6(5) of the Constitution would not be vested with any judicial powers in spite of the general language used by Section 6(1) thereof. One, however, observes that the non-inclusion of tribunals in Section 6 raises doubt as to whether in practice tribunals do not exercise judicial powers or determine civil rights and obligations. It seems

[8] Cap C 28, *Laws of the Federation of Nigeria*, 2004.

the problem could not have arisen if the said Section 6 (5) (j) & (k) had read: "such other courts *and/or tribunals*.... " (Italics and addition mine).

No doubt, as we noted above, the use of specific language in certain provisions of the law is to guarantee that the application of the legal provision to particular situations and circumstances is certain, specific, sure and stable. In this sense, such a specific language precludes any form of prevarication or speculation. It leaves no doubt as to the scope and the extent of the application of the law.

Legal Language as Expressed in General Terms

In spite of the obvious need for Law to express its provisions in a considerable specific language manner, it would still be difficult to express all statutory or other rules in such a great and exhaustive detail. Certainly, the sheer volume of the resulting law would be unwieldy and somewhat lacking in focus. Besides, it is often not possible to anticipate all possible eventualities and draft laws to specifically meet them. Consequently, some statutory provisions are often pitched at a higher level of generality in the realization that they will apply to a wide spectrum of people or differently related but diverse situations and circumstances. Often, draftsmen encounter a problem of how to formulate a provision that will not be so specific or restricted in application as to overlook other possibilities or variation of circumstances that may arise in future. The panacea, no doubt, is the use of general language in the legal drafting so as to leave the application of the law open for further relevant situations. There are so many instances of this attitude in various statutes and case laws.

The above legislative attitude is manifested in the constitutional description of "gross misconduct" for the purpose of removal of a State Governor or Deputy Governor on the one hand, and the President or Vice President on the other hand as respectively provided for by Sections 188(11) and 143(11) of the Constitution of the Federal Republic of Nigeria 1999. Section 188(11), for instance, defines "gross misconduct" as "a grave violation or breach of the provision of this Constitution or a misconduct of such nature as

amounts in the opinion of the House of Assembly to gross misconduct". This definition follows *ipsissima verba* the one provided for by Section 143(11) with regard to the President or Vice President with the exception that the relevant legislative house is National Assembly. In these definitions of gross misconduct, it is observed that apart from the limb that sees it as "a grave violation or breach of the provision of this Constitution", the other limb that regards it as "a misconduct of such a nature as amounts in the opinion of the House of Assembly (or National Assembly) to gross misconduct" is pitched in a very high level of generality. The reason for this is not far-fetched. It is surely to keep the notion of gross misconduct in a fluid state so as to accommodate situations that are unforeseen at the time of making the law or to embrace all possible circumstances in which the relevant chief executive may act in a manner that is unbecoming or unbefitting of his office. However, in very recent times, some state legislative houses in Nigeria have abused the provisions in various processes of impeachment of State Governors. Relying on the fluid nature of the constitutional provision, which pitched the tent of determining what constitutes gross misconduct on their opinions, the state legislative houses used it as leverage on which they stood to witch-hunt their respective State Governors in favour of selfish interests. Some of the houses formulated and created all sorts of scenarios which they identified as gross misconducts and hung them on the neck of their Governors. Of course, due to insincerity in some cases[9] and lack of adherence to due process in others[10] on the part of the relevant legislatures, the courts upturned the impeachment and declared them unconstitutional. Yet, as it is said in Latin, "*abusus non tolit usum*" (abuse does not remove the use), it may be necessary in some situations to express certain provisions of the law in general terms.

In the same vein, the resolution of what amounts to "gross indecency" for the purpose of prosecuting the offence in Section 217 of the *Criminal Code*[11]

[9] E.g. *Mike Balonwu & Ors v. Peter Obi* [2007] 5NWLR (pt 1028) 494, 495, 501-515. See also *Peter Obi v. Mike Balonwu*. Unreported Suit No. O/559/2006, Anambra State High Court.
[10] E.g. *Dapialong & Ors v. Dariye & Anor* [2007] 8NWLR (pt 1036) at 239 SC; *Inakoju & Ors v. Adeleke & Ors* [2007] 4NWLR (pt 1025) 423 – 775 at 668 SC. See also A. Akeredolu, *The Supreme Court on Impeachment Proceedings*. (Ibadan: St. Paul's Publishing House, 2007).
[11] Cap C38, Laws of the Federation of Nigeria 2004.

is greeted with similar elasticity as in the above case. The section provides thus:

> Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years.

There is no doubt that in the Criminal Code provisions, "gross indecency" is not restricted to any one specific act between a male and another male. 'Gross indecency' is expressed in so general a manner that it would include not only outright homosexuality (sodomy) but also such acts as fondling, caressing or kissing a male person by another male person. Thus, "gross indecency" is used in a broad sense so as to include all possible relevant acts that in the eyes of a reasonable person of Nigerian society can amount to emotional attitudes that are unbecoming of a relationship between two males[12].

Furthermore, this manner of leaving open a piece of legal provision in order to meet a desired objective is agog in many a case law. A ready-to-hand example is found in the "neighbour principle" as enunciated in *Donoghue v. Stevenson*[13], which is a *locus classicus* for what it decided. In that case, the plaintiff bought a ginger beer drink in a bottle that was cocked from a certain retailer. He opened it and was drinking until he discovered some decomposed remains of a snail inside the bottle. The plaintiff who allegedly became ill as a result sued the defendant who was the manufacturer of the ginger beer drink. Contrary to what was thought hitherto, namely that the absence of contractual relationship between a manufacturer of a good and a consumer, as in the present case, would be fatal to a claim in negligence, the court held that the defendant who was the manufacturer of the drink owed a duty of care to the plaintiff who allegedly suffered illness after drinking the

[12] However, this idea of 'gross indecency' will be irrelevant in jurisdictions where homosexuality is legal.
[13] [1932] A.C. 562.

contents of a bottle of beer that contained decayed remains of snails. It is noteworthy that the *ratio decidendi* in the instant case has both specific and general application. The specific fact situation before the court certainly related to beer drink or even specifically to ginger beer drink. But if the interpretation were to be restricted to drinks or ginger beer drinks alone and specifically, it would be difficult to produce future case law decision on similar situations. Therefore, for the stability, development and growth of case law, the authority of *Donoghue* has been viewed in a higher level of generality. It has thus been taken as establishing that a manufacturer of consumer goods of all sorts owes a duty of care to the consumer and not merely the retailer who had a direct contractual relationship with the manufacturer. Hence, the manufacturer's contractual neighbour should no longer be thought to be restricted to the retailer. Rather the neighbourhood notion is extended to the ultimate consumer who might have never had any one-to-one contract with the manufacturer. This is thus the basis of the legal notion of the "neighbour principle" modelled as it were on the biblical "Parable of the Good Samaritan" that Christ used in responding to the question, "who is my neighbour?" by teaching that the neighbour is anybody in need irrespective of colour, race, nationality, sex, etc. (Lk.10: 29-37). In the same way, *Donoghue v. Stevenson* has extended the neighbour concept to the consumer of goods generally rather than limit it to the retailers or more poignantly the consumers of ginger beer drinks.

The above judicial attitude has been tested and applied in many Nigerian cases. Hence, in *Osemobor v. Niger Biscuit Co. Ltd.*[14], the plaintiff purchased at a supermarket a packet of biscuit manufactured and packed by the defendants. In the course of chewing a biscuit, she felt something hard in her mouth, which turned out to be a decayed tooth. As a result, she became ill and required medical attention. Holding the defendants liable in negligence, Kasim J. in the High Court of Lagos State said:

> I am satisfied that there was no probability of an intermediate examination of the biscuits before they reached the plaintiff,

[14] [1973] 7 CCHJ, 71.

> and I find myself unable to uphold the submission of the learned counsel for the defendants that she was bound to look at the biscuits before she put them in her mouth. A person who manufactures goods, which he intends to be used or consumed by others, is under a duty to take reasonable care in their manufacture, so that they can be used or consumed in the manner intended, without causing physical damages to person or property.

The implication is that the learned Judge sees the duty of care owed by the manufacturer extended to not only the supermarket retailer but also more importantly any consumer that may lay hand on the product. Thus, taking a further cue from *Donoghue's* Case, certain other extrapolations have been made: "Manufacturers" has been extended to include "repairers"[15], "assemblers"[16], and "retailers" who have to perform some work on the goods other than mere distribution (e.g. a dealer selling a car reconditioned by him)[17]. "Product" is not confined to food and drink but includes, for instance, industrial chemicals[18], underpants, cars, hair dye[19], etc. "Consumer" includes the ultimate user of an article[20], any person through whose hands the article may pass[21], and anyone who is within physical proximity to it[22]. It is, doubtful however, that the principle in *Donoghue's* Case extends the resultant damage beyond those caused to persons or property. According to Salmonds in his analysis of the *ratio* in *Donoghue*, it is quite probable that damages cannot be recovered in tort, as opposed to contract, for purely economic loss caused by defective products.[23] Similarly, in *Rynlands v. Fletcher*[24], it would be too wild to regard the strict liability principle enunciated therein to include damages caused by the escape of the accumulated non physical objects such as intangibles like noise and smells.

[15] *Haseldine v. Daw* [1941] 2 K.B. 343; *Herschtal v. Stewart & Allen Ltd* [1940] 1 K.B. 155.
[16] *Howard v. Furness Houlder Ltd.* [1936] 2 All E.R. 781.
[17] *Herschtal v. Stewart & Allen Ltd. (Supra).*
[18] *Vacwell Engineering Co. Ltd. V. B.D.H. Chemicals Ltd* [1971 Q.B. 88.
[19] *Watson v. Buckles* [1940] 1. All E.R. 174.
[20] *Grant v. Australian Knitting Mills Ltd,* [1936] A.C. 85.
[21] *Barnett v. Packer* [1940] 3 All E.R. 575.
[22] *Stennett v. Hancock* [1939] 2 All E.R. 578.
[23] Cited in G. Kodilinye & O. Aluko, *Nigerian Law of [illegible]*: Spectrum Books Ltd, 1999), 67.
[24] [1866] L.R. 1 Exch. 265.

In the instant case, the defendants employed independent contractors to build a reservoir on their land. The contractor carelessly omitted to block up some disused shafts on the site which communicated with the plaintiff's coal mine beneath the reservoir, so that when the reservoir was filled, water escaped down the shaft and flooded the plaintiff's mine. The defendant's conduct did not appear to come within the scope of any existing tort. They were not liable for trespass because the damage was not direct and immediate, nor for nuisance as the damage was not due to any recurrent condition or state of affairs on their land, nor for negligence since they had not been careless, and they were not vicariously liable for the negligence of their independent contractors[25]. However, they were held strictly liable for the damage on the basis of the following rule propounded by Blackburn J. and known as the rule in *Rynlands v. Fletcher:*

> The person who, for his own purpose (and in the course of non-natural user of his land), brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.

In the above direction, the term "non-natural user" is quite used in an elastic sense. Apart from not being "the ordinary use of the land or such a use as is proper for the general benefit of the community"[26], it has also been emphasized that 'non-natural user' is a question of fact and "all the circumstances of time and practice of mankind must be taken into consideration, so that what may be regarded as dangerous or non-natural may vary according to the circumstances"[27]. Hence, this flexible concept of 'non-natural user' is used to an advantage whereby it can be adjusted to meet changing social needs since what can be a non-natural user in 20th Century may not necessarily be so in the 21st. Because of this, the principle in

[25] *Rynlands v. Fletcher* was decided before the emergence of the principle that an employer may be liable for the negligence of his independent contractor where ultra -hazardous activities are involved.
[26] Per Lord Moulton in *Rickards v. Lothian* [1913] A.C. 263 at 279.
[27] *Read v. Lyons* [1947] AC 156 at 176.

Rynlands v. Fletcher becomes an illustration of such generality which language is often very germane for a given socio-legal objective.

There is no gainsaying that the entire doctrine of *stare decisis* and binding precedents is based on the generality principle as enunciated in the above cases. Thus, when the facts of an instant case are on all fours with other facts of a case already decided, not in the sense of having exactly the same material content but in being quite similar, the courts in common law jurisdictions are not free to depart from the relevant decisions of a higher court within the same hierarchy. This doctrine and attitude grounded, as it were, on the general language manner of case law is articulated in the Latin maxim "*stare decisis non quietur movere*", meaning "to stand by the decision and not to depart from it". Obviously, in spite of the difficulty in determining the correct extent of generality, what is clear is that most case law authorities should be viewed at some level of generality, which constitutes one important feature of legal language. It means therefore that whether in statute or case law, there is necessarily needed an element of practical judgment as to whether the law should apply to particular facts or to diverse though related facts. Be that as it may, the sometimes much needed attitude to express certain legal situations in specific or in general manner as the case may be always breeds tension between the generality of laws and the exigencies of a particular fact situation.[28]

Abstract Concepts in Legal Language

Another characteristic of legal language is the use of abstract concepts. Unlike the physical scientist who can give name to what he discovers, the lawyer as much as possible has to use the words that are already in use. Even at that, the words can be used to bear different meaning from their ordinary sense. Often, these words do not take their meaning from sensed experiences but are quite normative in character. They thus acquire technical and special meaning in Law. An illustration can be given with the concept of "Contract". History shows that early legal systems such as the Babylonian,

[28] J. Farrah & A. Dugdale, *Introduction to Legal Method*, (3rd Ed.). (London: Sweet & Maxwell, 1990), p.77.

Jewish or Anglo-Saxon did not know of a concept of contract under which parties were legally bound to perform promises. Rather they recognized merely that a physical exchange of goods for money would transfer possessions of goods from one person to the other. Their ideas were thus based only on what they could see and sense. No doubt, abstract concepts were introduced by the Greeks in the field of Mathematics and Philosophy especially through the Plato's Theory of Forms or Ideas. According to this doctrine, the forms or ideas are those changeless, eternal and non-material essences or patterns of which the actual visible objects we see are only poor copies. Thus, for Plato, the real world is not the visible world but rather the abstract, intelligible and ideal world.[29] Quickly, this form of conceptual thinking became absorbed in Roman Philosophy and Law, and then much later through the early universities into medieval English Law. This eventually enabled lawyers to regard particular types of relationships between parties as amounting to abstract concept of a "Contract" under which the promises of both would be legally binding. A good example of this scenario is the contract *for* sale as distinct from contract *of* sale of land. While the former involves a mere agreement to sell land, the latter deals with the outright sale of the land. In contract *for* sale of land, the purchaser acquires equitable interest in the property which is enforceable should the vendor fail to carry out his obligation to sell the property as agreed. Noteworthy is that at this level, the physical landed property in which legal interest would be acquired later at completion stage is not yet in consideration. Rather it is the abstract notion of contractual agreement itself that is the subject matter of the *res* at this level.[30]

Furthermore, another illustration can be made with the concept of the "Rule of Law". Over the years, the concept of the Rule of Law had acquired many connotations, which include the idea of the supremacy of the law, absence of arbitrary exercise of power, equality before the law or equal subjection of all classes to the ordinary law of the land administered by the ordinary law

[29] Plato's *Meno, Symposium, Phaedo, Republic and Phaedrus.*
[30] S.O. Imhanobe, *Understanding Legal Drafting and Conveyancing*, (Abuja: Secured Titles Publishers, 2002), p.130.

courts, and respect for fundamental human rights[31]. Therefore, the mere mention of the "Rule of Law" is quite summarizing of all the connotations delineated above. In the same manner, the concept of "Legal Personality" is indicative of the relevant person's rights, for instance, as registered company or incorporated trustee, to be regarded as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its business[32]. In other words, all these rights are duly represented in the abstract concept of "Legal Personality". Other similar concepts include "Company", "Law", "Ownership", "Possession", "Fee Simple", "Fee Tail", "Lease", "Principle of Legality", and so on.

No doubt, one obvious advantage of using abstract concepts in law is to achieve economy of words as the use of the concepts obviates the necessity to list out the entire details attendant to such words. This would certainly make for brevity, clarity and distinctiveness.

Frequent Use of Latin Expressions, Jargons and Archaisms

One obvious mark of the legal profession is the penchant for Latin expressions, legal jargons and use of archaic words and phrases. Actually, Latin was classically regarded as the language of the learned; and Law, Medicine and Divinity were also classically seen as the learned professions. This explains why there is much use of Latin Language in these disciplinary areas even up till today. For instance, in Medicine, many of the diseases and drugs were given Latin names. In Divinity (Theology), which is the science of God, most of the major and relevant treatises were originally composed in Latin Language. Hence, works of the theologians like Thomas Aquinas, St. Augustine, Bonaventure, Peter Lombard, Francis Suarez, Albert the Great, etc. were all written in Latin. Again, before the Enlightenment Period (17th

[31] E.C.S. Wade & G.G. Phillips, *Constitutional Law*, 6th Ed. (London: Longman, Green & Co. Ltd., 1960), p.58.

[32] See Sections 37 and 596 of *Company and Allied Matters Act*, Cap C20, Laws of the Federation of Nigeria 2004 for companies and incorporated trustees respectively.

& 18th Centuries), books on Philosophy[33], which discipline was at the time seen as the handmaid of Theology, were written in Latin Language. This practice even dovetailed into some areas of the physical sciences wherein such great works like the *Principia Mathematica* of Russell and Whitehead, *Principia* of Isaac Newton, *De Revolutionibus Orbium Caelestium* of Copernicus, etc. were all in Latin. Certainly, this prevalent use of Latin in the world of learning generally, especially in the Middle Ages was due to the enormous influence of the Church and the Holy Roman Empire in shaping world civilization and education. However, with the fall of the Holy Roman Empire, serious antipathy was developed not only to the authority of the Church but also to its official language, Latin. Many scholars now turned to their vernacular for the composition of their treatises. Rene Descartes wrote in French, John Locke wrote in English, David Hume wrote in English, Immanuel Kant wrote in German, and so on.

Be that as it may, Law has conservatively remained adamant in considerable use of Latin expressions in spite of the stiff opposition from some quarters of the legal profession. No doubt, there has been strong effort to discourage the use of foreign languages in the learning and practice of Law in England and America. The de-emphasis on use of especially Latin has been an important subject matter in Legal Drafting and Conveyancing - a course taught today in Nigerian Law School. Yet the irony of it all is that before the teacher finishes one or two sentences, he/she has already used two or three Latin expressions. For instance, while teaching Conveyancing Practice, such Latin words like *Habendum, testatum, reddendum, testimonium*, and so on do normally feature as very important parts of a deed. This is quite indicative of the unease in jettisoning *in toto* the use of Latin in legal writings and studies. What is more? Many principles of Law are well articulated in Latin maxims, which sonority and resonance in pronunciation seem to adorn them with added intellectuality. For instance, the entire principle of the Law of Agency is well summarized in the maxim "*qui facit per aliud facit per se*" which means that "he who performs an act through another does it by himself". Again the presumption of regularity as enshrined in Section 150 of Nigerian

[33] E.g. Hobbes' *De Clive* (1642), *De Corpore* (1655), *De Homine* (1658), etc.

Evidence Act[34] is well couched in the Latin maxim "*omnia praesumuntur rite esse acta*" (all is presumed to have been regularly done). Other popular Latin maxims used in Law include "*nemo dat quod non habet*" (no one gives what one has not), "*nemo judex in causa sua*" (no one is a judge in one's own case), "*audi alterem partem*" (hear both sides), "*caveat emptor*" (let the buyer beware), "*ex turpi causa non oritur actio*" (no action can arise out of an illegal deal), and so on. Certainly, these maxims are very precise, articulate, clear and sufficiently illustrative of the relevant principles of law which they represent. More Latin words and phrases that seem to be resilient in legal writings include '*prima facie*' (on the face value), '*inter alia*' (among other things), '*mutatis mutandis*' (with necessary changes), '*ratio decidendi*' (reason for deciding), '*ipso facto*' (by virtue of that fact), '*in pari materia*' (of the same similar material content), '*ultra vires*' (beyond powers), '*consensus ad idem*' (meeting of the minds), *ejusdem generis* (of the same genus), and so on. It is however observed that while many of the old Judges and lawyers who studied Latin pronounce these Latin expressions correctly and know their real meanings, the young ones tend to memorize them and make a mess of their pronunciations. One would think that the present practical insistence in the continued use of the expressions would have engineered the introduction of elementary Latin course in the Curriculum of Legal Education in Nigeria in order to at least assuage the pronunciation problem that certainly embarrasses many a member of the profession.

Furthermore, another legal language matter that needs to be mentioned at this juncture is the use of jargons or slangs consisting of special vocabularies that are not meant to be understood by those outside the legal profession. For example, a lawyer instead of saying "I have not been paid my legal fee" would say "My brief has not been perfected". Again, instead of saying "I am telling the truth" while in court, the lawyer will say "I am speaking from the bar". Other jargons include "I have a matter" instead of "I have a case in court", or "it is submitted that..." instead of "the court should hold that...." Moreover, a lawyer does not call a colleague in court by his name; rather he

[34] Cap E14, Laws of the Federation of Nigeria 2004.

refers to him as "my learned friend". In addition to the employment of jargons, is the frequent use of archaic English words such as thereto, thereafter, thereof, thereat, therein, hereinbefore, hereinafter, hereunder, therewith, aforementioned, hereinabove, hereunto, etc. This continued use of Shakespearean vocabulary clearly smacks of the conservatism and traditionalism with which the legal profession has over the years come to be identified.

Common Words with Unique Meanings in Legal Writing

It is not uncommon in legal writings to encounter common words used in very unique and technical sense. Use of examples may be quite helpful. Let us take the word 'month'. For all practical purposes of quit notices for recovery of premises in Land and Tenancy Law, the word 'month' has acquired a very technical connotation. Thus, a month is interpreted as a whole month inclusive of the first and the last day of any given month irrespective of the number of days of that particular month. According to this interpretation, a month is different from 30 or 31 days as the case may be. For instance, a landlord desiring to give a one-month quit notice to a tenant will do it in such a way that the first and last days of the month are inclusive. Therefore, a one-month quit notice served on 16th of August will, according to the interpretation, expire not on the 15th of September but on the 30th of September in the same year. This manner of interpretation appears to have derived from the decision in *Oyekoya v. G.B. Ollivant (Nigeria) Ltd*[35] where a notice of one month that spanned through 2nd of March to 16th of April was held to be invalid though it covered a period of 46 days. However, it would appear that the rationale for the decision in that case was that the parties had specifically by their agreement provided for that calculation of one-month notice to quit thereby displacing both the common law and the statutory interpretation of a month. The common law position as stated by the House of Lords in *Dodds v. Walker*[36] is that:

[35] [1969] 1 All NLR 80.
[36] [1981] 1 WLR 1027.

> A calendar month ends upon the day in the next ensuing month having the same number as that on which the computation began, but if the ensuring month has not the same number as that on which the computation began, then the month ends on the last day on the next ensuing month.

Applying this, a month starting from May 30 will end on June 30 and January 29 will end on February 28 if it is not a leap year. On the other hand, the statutory position is found in Section 18 of the *Interpretation Act*[37], which defines 'month' to mean "a calendar month reckoned according to the Gregorian Calendar". Gregorian calendar, which was introduced by Pope Gregory XII in 1582 AD, is also calculated in days[38]. By this computation, a month is said to be a time from any day of any month as adjudged in the calendar to a corresponding day in the next ensuing month less one and where there is no corresponding day, then the last day of the following month[39]. Therefore, a month calculated from November 30 will end on December 29. It is submitted that in the light of a provision of a statute that is a superior source of law, the principle of computation in the case of *GB Ollivant* would be inappropriate where the parties have not agreed on any length of quit notice in which case the statute applies automatically. Yet, by sheer force of convention, the principle in *GB Ollivant* became dominant for the purpose of computation of a month for quit notice in Nigerian Tenancy Law whether or not parties agreed as to length of notice. In the same way, 'a day' for the purposes of service of processes or filing is calculated to last from midnight to midnight. Therefore, if 21 days are required to file a notice of appeal against a judgment delivered at 1pm on 1st May, for instance, for the purposes of election petition, the time will begin to run not from that 1pm but from midnight following that time of judgment. In that sense, the 21 days will elapse at midnight preceding 23rd May.

Other instances of these common words with unique meaning include the words 'may' and 'shall' in legislation. Grammatically, 'may' is used to denote the permissive sense. In Law however, depending on the context and

[37] Cap I 23, Laws of the Federal of Nig. 2004.
[38] *Akeredolu v. Akinremi* [1985] 2NWLR (pt 10) 787; *Yasaba v. Donkin* [1998] 7 NWLR (pt. 556) 162.
[39] E. Chianu, *Law of Landlord and Tenant*, (Benin City: Oliz Publishers, 1994), p. 249.

usage, 'may' could be construed in a mandatory sense. In *Ude v Nwara*[40], the issue was whether the Attorney General could repossess land from a leasee whose lease had expired without recourse to courts. Allowing the appeal, the Supreme Court held that under Section 28(1) of the *State Land Law of Rivers State*, 'may' should be interpreted as mandatory to the effect that the Attorney General must obtain a court order to repossess the land. On the other hand, the word 'shall' where used in the first person grammatically denotes the future. But when used in the second and third persons, it denotes compulsion or obligation. For instance, "the court shall grant bail" means that it is obligatory for the court to grant bail. This approximates to the technical usage of 'shall' in Nigerian statutes under normal circumstances. However, the courts have declined in giving 'shall' a fixed meaning. Thus, depending on the context, 'shall' may be interpreted in the permissive sense. In *Bucknor-Macleans v. Inlaks*[41], Idigbe JSC while construing the provision of Section 79 of the *Registration of Titles Act* held:

> On a calm view of the entire section (i.e. Section 79) and after careful reading of Subsections (1) and (2) thereof together with Subsections (1) and (2) of Section 14 as well as Subsections (1) and (2) of Section 28 of the Act, I am of the firm view that the expression "shall" in Subsection (1) and (2) of Section 79 is directory and not mandatory.

In Australia[42], to circumvent this fluidity in the meaning of 'shall', statutes and especially private documents employ the use of 'must' if an obligation is intended. Other decided cases in Nigeria where the flexibility in the meaning of 'shall' was an issue include *Katto v. Central Bank of Nigeria*[43], *Okpala v. D.G. National Museum and Monuments & Ors*[44], *Essang v. B.O.N. Ltd.*[45], and so on. Furthermore, similar situations occurred in the interpretations of the meanings of the words 'and' and 'or' in statutes. Although grammatically, 'and' and 'or' are used conjunctively and disjunctively

[40] [1993] 2 SCNJ, 47.
[41] [1980] 8 – 11 SC 1 at 23.
[42] Eaglezon & Asprey, *63 Australian Law Journal* 75 cited in S.O. Imhanobe, *op. cit.*, 22.
[43] [1991] 9 NWLR (pt. 214) 126 at 147.
[44] [1996] 4NWLR (pt. 444) 587.
[45] [2001] 6NWLR (pt. 662) 384 at 397.

respectively, yet the context in which they are used may state otherwise. In the case of *Associated Artistes Ltd. v. Inland Revenue Commissioner*[46], the court had to interpret a clause in the memorandum and article of association of a company that provides "to present classical, artistic, cultural and educational dramatic works". While the appellant argued that the word 'and' should be read conjunctively, the respondent contended that it be construed disjunctively. Dismissing the appeal, Upjohn, J. held that the use of 'and' in that case should be interpreted disjunctively. Again, in the case of *Federal Stream Navigation Co. v. Dept. of Trade*[47], Lord Wilberforce stated that "...in Logic there is no rule which requires that 'or' should carry an exclusive force. Whether it does so depend on the context". Thus in *J.S. Tarka & Ors v. DPP*[48], the issue was the interpretation to be given to 'or' as used in Section 341(2) of the *Criminal Procedure Code Law 1960*. Reed, Ag. S.P.J. held:

> The Court's discretion under Section 341 of the Criminal Procedure Code to release on bail a person accused of an offence punishable with imprisonment for a term exceeding three years is not to be exercised unless *all* three of the conditions prescribed by paragraphs (a) (b) and (c) of Subsection (2) of that section exist. (Italics mine).

The implication is that 'or' as used in that provision is in the conjunctive sense. Hence, it appears that these seeming rearrangements in the meanings of these words considered above are made in order to carry out the intention of the legislature. In order therefore to ensure clarity and precision, it is required that keen legislative sense would use certain additional expressions that would preclude every form of ambiguity and equivocation. Therefore, to use "and" in a conjunctive sense, the word "both" should be added before the conjuncts. Similarly, the term "either" should appear before the disjuncts if the intention is to use "or" disjunctively. Other expressions that are sometimes subject to technical designation in legal writings include 'and/or',

[46] [1956] 1 WLR 752.
[47] [1974] 2 All E.R. 97.
[48] [1961] N.N.L.R 63; *R v. Eze* 19 N.L.R. 110.

'will', 'a', 'an', 'such', 'deem/deemed', 'less than/more than', 'within', 'from', 'on', 'in', 'where', 'when'[49] etc.

Language "Fallacies" in Legal Logic

Ordinarily, a language or emotive fallacy is an argument in which an error in reasoning is combined with some degree of persuasiveness. Language fallacies are distinct from formal fallacies, which are concerned with whether or not the conclusion follows necessarily from the premises in an argument. Language fallacies in relation to court proceedings constitute the gamut of this discourse. Our observation is hinged on the fact that what may appear to be errors in reasoning in ordinary conversation may, because of the special conditions imposed by legal process, prove to be good argument. Several examples of these special conditions are worth noting. First, where evidence of a certain kind or degree is essential to uphold a case, emphasis upon the absence of such evidence may be evidentially proper even as it might seem an appeal to ignorance (*argumentum ad ignorantiam*). Therefore, in criminal prosecution, failure to prove a case beyond reasonable doubt as required by Section 138(1) of the *Evidence Act* would normally lead to the acquittal of the accused whose innocence must be assumed in such absence of compelling proof to the contrary. In ordinary parlance, such reasoning would tantamount to *argumentum ad ignorantiam* since the ignorance of a fact does not necessarily imply its non-existence. Again, heavy reliance upon authority is a second special feature of legal reasoning. Thus, what might ordinarily seem a fallacious appeal to authority (*argumentum ad verecundiam*) may be appropriate and even compelling in Law. The reason for this is the importance of stability in the legal process especially with regard to the common law practice of binding precedents. Although *argumentum ad verecundiam* in ordinary logic is not committed merely by appealing to authority but by inappropriately doing so, yet according to Copi and Cohen "the special emphasis upon stability in a just legal system alters somewhat the standards of appropriateness".[50] Hence, the

[49] See generally S.O. Imhabobe, *op. cit.*, 17 – 29.
[50] I.M. Copi & C. Cohen, *Introduction to Logic* (9th ed.), Prentice-Hall of India Private Ltd., New Delhi, 2000, 605.

substantive rules of law ought not to be subjected to flux. Therefore, a rule arising from case law, that is, an authoritative interpretation of a statute by a higher court, governs the lower courts and may be consistently applied even when its application may appear awkward or harsh until such interpretation is overruled. But until then, it remains a very powerful authority that has no mean compelling force in legal arguments.

Thirdly, *argumentum ad hominem* (against the person) may in some legal circumstances amount to no fallacy. It is not uncommon that in some court trials, conflicts in testimony and evidence of witnesses may ensue and the judge is always required to make a finding in order to determine which set of testimonies to believe. Normally, this is settled through the process of cross examination by which a party may seek to discredit a witness who has given damaging testimony by exhibiting inconsistencies therein or the witness may be impeached by questioning the witness' honesty or integrity, or by exposing his ignorance or confusion about the matters at issue. These aims of cross-examination of a witness are articulated in Section 200 of the *Evidence Act* thus:

> When a witness is cross-examined, he may... be asked any questions which tend (a) to test his accuracy, veracity or credibility (b) to discover who he is and what is his position in life, or (c) to shake his credit by injuring his character....

It is precisely Paragraph (c) of this provision that permits *argumentum ad hominem* for the purpose of injuring one's character in order to shake his credit, an attitude that would ordinarily amount to a logical fallacy. Therefore, *argumentum ad hominem*, abusive or circumstantial is not always fallacious. In a court of law, it may be entirely appropriate and may prove an effective attack on the case of one's adversary.

Furthermore, *argumentum ad misericordiam* (appeal to pity) is not regarded as a fallacy in legal logic when it is directed to the judge, after conviction of an accused in a criminal trial in an effort to win greater leniency in punishment. This appeal is what is technically known as *allocutus*. Hence, the poverty or misery, for instance, of the accused at the time of committing

the crime may have no effect or relevance in determining whether or not he was guilty, but may be aptly weighed in determining the severity of punishment to be meted out in the case of non mandatory sentences.

Finally, one can argue that *argumentum ad baculum* (appeal to force) is the backbone of criminal legislation. Although very well meaning and responsible citizens of a State need no threats of punishment in order to obey the criminal laws of their state properly enacted by a duly authorized legislature; yet to ensure that the laws attract general obedience especially by deviants, punishment for disobedience is normally threatened by the State. Thus, persons fearing the punishment that is threatened may be deterred from committing crimes which result is certainly useful to the relevant society. Apart from the threats associated with criminal punishments attached to the definition of offences in criminal legislation, other instances are public reminders such as "Armed Robbers Land in Grave", "No Parking", "Tow Away Zone". All these and more constitute instances of situations where legal logic marks itself out from ordinary philosophical logic where fallacies are generally lumped as errors in reasoning unfit for any piece of argument, spoken or written.

Critical Responses

The development of language is perhaps the greatest endowment on human nature. It is the supreme event of human history. Whether written or spoken, language expresses human thought. In other words, thought and language are two sides of a coin. Both realities are symbiotic and inextricably bound with each other. When man thinks, he does so in a language and language itself is the vehicle of thought. The contemporary German philosopher, Martin Heidegger reflected a lot on the nature of language. Thus, for him, "language is the home of being".[51] It is "the act of violence by which being is revealed and gathered in its togetherness"[52]. All these underscore the importance of language in the entirety of human endeavour.

[51] M. Heidegger, *On the Way to Language*, (London: Image Books), pp.424 – 425.
[52] *Ibid.* 142.

Certainly, one essential role of language is communication. Human thoughts, feelings and directives are communicated or reported to others through the medium of language. Thus, the pivot on which any critical assessment of legal language will gravitate would be whether or not by means of it adequate communication of legal thought unto the desired objectives is ensured. It may therefore be germane to, albeit briefly, take the propriety or otherwise of some of the issues discussed above in relation to the role of law as an instrument of social engineering.

First and foremost, the need to express certain provisions of the law in specific or general terms is a function of social expediency. Hence, it all depends on the informed intention of the lawmaker. As noted above, if the intention is to not leave any doubt as to how the law should apply to the fact of a particular case, then specificity will be the hallmark of the legislation in case of the law made by the legislature or the *ratio decidendi* of a case in respect of a judge-made law. But if the desire were to leave open-ended the piece of law in order that it might accommodate varied circumstances that may arise in future, then it would be well advised to phrase the law in somewhat general terms.

Secondly, it is our considered view that the use of abstract concepts in legal reasoning and practice is a matter of the development of the science of law, which development is similar to those of other disciplinary areas. In Mathematics, for instance, there was a progressive development from a more concrete to more abstract categories. Thus, while Geometry deals with the physical figures, Arithmetic abstracts from the figures and considers the abstract numerical quantity of the physical figures. Yet a further abstraction is encountered in Algebra whereby alphabets are used to denote not just a number but also any number of the geometric figure. This development is certainly a growth in abstraction. Similarly, in most of the physical sciences, studies and discoveries show that the subject matter of science is undergoing a shrinking from the more concrete to the more recondite. In Einstenian Physics, space-time continuum has become the added dimension to the traditional Newtonian dimensions of length, width and height. Again, with the development of the computer, what hitherto was carried out manually or

by machine has now gone digital. Philosophy as a course of study recognizes three levels of abstraction, namely, physical, mathematical and metaphysical abstraction. Detailed discussion of all these is surely beyond the scope of this paper. But suffice it to show that the use of abstract concepts in law is an instance of what obtains in the entire field of the epistemological conditions of human knowledge. Man knows and understands his object of knowledge by abstracting from the sensible and the mobile entity. It is therefore inevitable that the use in law of the abstract concepts, some of which are mentioned above will continue insofar as law is treated as a human science.

Moreover, the use of Latin expressions, technicalities, fictions, jargons and archaisms, is only a function of the historical development of legal study and practice. These features will be useful or useless in accordance with whether or not they succeed in reaching the desired target. No doubt, language is an instrument of communication, and any science is only beneficial to the people if it is expressed in the language that aids easy communication. It is in this sense that we consider it a misnomer for some medical practitioners to fake bad handwriting when prescribing drugs for patients to prevent them from seeing the names of the drugs. Law, if it is at all everyday science dealing with everyday problems should therefore be expressed in ordinary language of everyday use. Hence, if a piece of a particular legal document or speech is meant for public consumption, it would certainly make only little sense to suffuse it with expressions that smack of esotericism and mystery. For instance, documents like deeds, statutes, certificates of occupancy, title documents, and other documents evidencing contracts which are often prone to interpretation by lay people ought to be composed in very simple and ordinary everyday language for easy construction. But apart from this public need, the truth has also to be said that just like any other professionals, lawyers tend to create within the ordinary language certain esoteric or technical expressions of their own. Sometimes, this is not a matter of elegance or pride, as many non-lawyers would think; rather it is a necessity that helps the law to attain a greater degree of precision and definition than is obtained or needful in ordinary life. Thus, in this matter, reason would be the guide. The question whether the language of law adequately

communicates with the people to whom the law applies cannot however be allowed under relevant circumstances to overshadow the role which specialist language plays in the application and growth of any legal science. It seems that legal jargons or phrases have meaning only in the context of the legal rules and practice that go to form the legal framework.

Finally, it may be necessary to say a word or two on the peculiarities of legal logic. We observed that what constitutes fallacies in ordinary logic sometimes do not necessarily do so in Law. Why the discrepancy? It has to be remembered that at no point in human history is the development of any science a finished product. There is always room for improvement. This observation is at the basis of Karl Popper's[53] Theory of Falsifiability according to which the best one can arrive at in any field of human science is provisional truth, that is, verissimilitude rather than *veritas*. Each science undergoes revision and sometimes "paradigm shifts", to use the language of Thomas Kuhn.[54] The traditional fallacies which we alluded to are only those fashioned by Aristotle (384-32 2BC) as articulated in his *De Organon*. Long since, later developments have created other models of logic whose results sometimes run parallel or even contrary to those of traditional Aristotelian logic. A good example of this is the modern, mathematical or symbolic logic as developed through the efforts of Leibniz (1646-1716), George Boole (1815-1864), De Morgan (1806-1871), A.N. Whitehead (1861-1942), B. Russell (1872-1970), etc. Besides, transmuting what ordinarily would have been fallacies into well nigh excellent arguments in Law may be an instantiating realization of that oft-quoted maxim, "life is larger than logic". Hence, if by means of the peculiarities of legal logic truth, justice and equity adorned with the garb of a human face are achieved in the legal process, then it would not make much sense to castigate legal reasoning simply because it fails to dance to the tune of ordinariness.

[53] K.R. Popper, *Objective Knowledge: An Evolutionary Approach*, (Oxford: The Clarendon Press, 1972), 14, 47 – 48, 52 – 60.
[54] T.S. Kuhn, *The Structure of Scientific Revolution*, (Chicago: University of Chicago Press, 1970), 69 – 90.

Conclusion

In the words of Samuel Taylor Coleridge, "language is the armoury of the human mind; and at once contains the trophies of its past and the weapons of its future conquests".[55] On the other hand, Nathaniel Hawthorne in his *American Notebook* regards human language as "little better than the croak and cackle of fowls, and other utterances of brute nature, sometimes not so adequate".[56] These apparent opposing views undergird the ambivalence with which people treat human language. The picture of legal language is by no means different. While some people admire the legal profession because of the allegedly esoteric and technical nature of its language, others detest it just for that same reason. But for us, the acid test of its propriety or impropriety is its ability or failure to be an instrument of thought and communication at any given circumstance, and whether or not it aids Law to arrive at its desired objectives, namely, justice and truth. It therefore seems that it is the exigency of each particular situation that will determine the language most apt for the all-important social role of law.

[55] Cited in Copi & Cohen, *op. cit.*, 107.
[56] *Ibid.*