LAWRIT JOURNAL OF LAW

LAW, LOGIC AND LANGUAGE: THE THREE MUSKETEERS OF JUSTICE

ADEDAYO MICHAEL
UNIVERSITY OF LAGOS
adedayomichaelalexander@gmail.com

ABSTRACT

The Court is said to be the arbiter of justice and order. Knowing that justice is largely subjective, one is therefore tempted to test or interrogate how the Court achieves or grasps such a concept for the purpose of practical application. This adventure is undoubtedly interesting as it exposes one to how the Court arrive at certain seemingly interesting decisions. This paper takes the view that language, logic, and law are the three devices that the Court apply in its quest to ascertain justice when parties submit disputes before it.

1. INTRODUCTION

It is widely believed – and rightly so - that the Court occupy a strategic and essential position in every democratic state. It is also commonplace that a state – democratic or otherwise – that is without a system of law would eventually succumb to disorder and chaos, and ultimately, descend into the abyss, mirroring the primordial state of human organization which Thomas Hobbs rather simply described as "short, nasty, and brutish".[1] Hence, in every democratic state where a system of law – and government - necessarily exist, the role of the third arm of government is indispensable. The judiciary guarantees the sanctity of laws and democratic principles and also undertake its role, alongside the other arms of government, in the performance of certain obligations such as the maintenance of harmony and order through the administration of justice. However, for justice to be fairly administered and receive a public stamp,[2] certain instruments are used by the Court. It is humbly submitted that the three essential instruments in the administration of justice are law, logic, and arguably, language. The object of this paper is to discuss these three instruments and show how they are indispensable in the administration of the essential but elusive concept – justice.[3]

⋆Adedayo, Michael, undergraduate of Law at the University of Lagos. Contact information: Adedayomichaelalexander@gmail.com; +2348131235344.

1. "Thomas Hobbes: Solitary, Poor, Nasty, Brutish, and Short", Yale University Press London, 2013, available at: https://yalebooksblog.co.uk/2013/04/05/thomas-hobbes-solitary-poor-nasty-brutish-and-short/

[2] See *R v. Sussex Justices, ex parte McCarthy ([1924] 1 KB 256, [1923] All ER Rep 233]* where *Lord Atkin* and *Lord Hewart* submitted that justice should not only be served but be apparent and admitted to having been appropriately served.

[3] The concept of justice is elusive because there are several conceptions of justice. It is also subjective as evidenced by the multiple conscience problem. See Plato, *the Five Great Dialogues*, Classics Club, 1942, Book I, p.221-253.

2. THE GRAND PHILOSOPHICAL QUESTION: WHAT IS LAW?

It is only appropriate that a conception of justice from a legal viewpoint begins with an inquiry into *what is law*? After all, justice is a fragmented concept that can only be viewed in bits via lenses, one of which is the law. Law has no generally accepted definition and the question, *what is law*? is both a troubling and boring philosophical question, even to a lawyer. Well, this is not exactly disappointing because of the commonplace knowledge that law is one of those concepts that are usually defined from limited and subjective perspectives. Nevertheless, the definitions provided by various schools of thought exist and are quite helpful in having a grasp of what law is from minute lenses. These schools of thought defined law from their own personal experiences. Additionally, factors like level of education and profession influenced these definitions.[4]

From the perspective of the positivists, law is a command made by the sovereign being which is binding upon his subjects because it is enforced by sanctions. This conception does not necessarily hold because not every person obeys laws because of sanctions.[5] First, the fact that deviants exist despite the existence of laws backed by sanctions is a classic case against the presumption that subjects fear the power of the sovereign and sanctions. Second, this definition presupposes the existence of a modern impossibility - a definite

[4] Obilade, A.O., *The Nigerian Legal System*, London: Sweet & Maxwell, 1979, xxxii, 294 p.23
[5] Ibid.

sovereign. Modern principles of governance such as popular sovereignty, democracy, separation of power, and rule of law preclude the existence of a definite sovereign, making the theory unworkable.

The pure theorists, however, opine that law is a body of norms that exist in a hierarchy and the highest norm in the hierarchy is the *grundnorm*.[6] Usually, the modern equivalence of the *grundnorm* is the Constitution, the *fons et origo*.[7] It is however argued that this conception of law is problematic because it is difficult, if not impossible, to determine the *grundnorm* when there have been several displacements of the determiner of the legal order, making every subsequent determiner of the legal order the *grundnorm*. For example, military incursions into government in Africa, including Nigeria, are deemed synonymous with revolutions that change and replace the Constitution with Decrees - which are the highest body of law in military regimes.[8] And it is of course, logically and intellectually inconsistent for the sake of the theory to say the *grundnorm* changed.

As for the sociological school of thought, the law is dependent on the society - not a sovereign; and the effectiveness of a law is measured by the degree of societal adherence.[9] Eugene Ehrlich, the foremost proponent of the theory, says "the centre of gravity of legal

---

[6] Sanni, A., *Introduction to Nigerian Legal Method*, Obafemi Awolowo University Press Limited, Ile Ife, Nigeria, 2nd and enlarged edition, 2006, p. 11.
[7] Mowoe, K.M. *Constitutional Law in Nigeria,* Lagos: Malthouse, [Rev.ed] ed, 2008.
[8] Op cit., Sanni, p.12; The Court in Lakanmi v. A.G. Western State (1970) SC.58/69 also deliberated on the question of whether military regimes mark revolutions that do not recognise the Constitution or otherwise.
[9] Op cit., Obilade,

development lies not in legislation nor juristic science nor in judicial decisions but the society itself."[10] But it is noteworthy that the law is what shapes societal behaviour, not otherwise.[11]

The functionalists and the realists place much emphasis on the court of law and argue that the law is what the court says and that a judge has to be objective in administering justice.[12] These are not exactly devoid of conceptual imbalances because, although laws made by legislators are subject to judicial interpretation, most rules are seldom the subject of litigation.[13] Moreover, judges are humans and cannot be completely exempt from the natural inclination to be biased because of personal affiliations and preferences.

However, beyond the lasting criticisms levelled against these theories of law, there is at least one reason why the definitions and conceptions of these schools of thought are unsatisfactory in the context of answering the grand philosophical question. That is, none of them is a unified, objective, and working definition of law. On the contrary, they are subjective mental pictures that certain persons got from their personal experiences. Just like the proverbial elephant, the law is a whole figure that no one blind man could describe from his standpoint with all accuracy – and reasonably too, with all authority. So, has the last word been said? No!

Traditionally, theorists define a concept using characteristics peculiar to it, its essential features, and features that are general to

---

[10] Fisher, B.D, *Introduction to the Legal System - Theory, Overview, Business Applications*, West Publishing Co., 1997, p.7.
[11] Op cit., Sanni, p. 20.
[12] Ibid, p.19.
[13] Op cit., Obilade.

its class.[14] This is type of definition is a definition by *genus and difference*[15]. Arguably, the wide adoption of this method of definition is because of its general applicability and workability as opposed to other types of definition. Nonetheless, attempts at defining law by genus and difference will only complicate matters as one of its four cardinal rules is, ironically, "restrictive"[16]. The rule states that only relevant characteristics of the object up for definition should be stated. This makes definition by genus and difference unsuitable in this case. This is because all the features of law are essential if one is looking to provide a definition that is perfect and deserves no further inquiry into what law is.

Secondly, there is no "conventional" connotation of what law is, so how does one select the relevant characteristics when an acceptable set of characteristics are yet to be agreed upon? Moreover, various definitions of law exist partly because theorists place varying or no value on some characteristics of law. So, to the extent where no generally accepted definition exists, it means the most relevant characteristics of the concept that should be included in a general definition have not been agreed upon. Although this point is debatable on the basis that working definitions of law exist; nonetheless, it is noteworthy that those definitions are at best *ad hoc* definitions and their workability does not translate to acceptability. Speaking of *ad hoc* definitions, which are deeply rooted in one's

[14] Copi, I.M., and Cohen, C., *Introduction to Logic*, Macmillan Publishing Company, 9th edition, 1994, p.189

[15] Ibid, p. 189. It is also called definition by division, analytical definition, *definition per genus et differentiam.*

[16] Ibid. One of its rules of definition states that a definition cannot be too broad or too narrow.

understanding of the "purposes" of law, it is also noteworthy that the debate about whether the law has to be purposive or otherwise[17] is endless.

Considering how conceptually and practically broad law is and how diverse views on what features are essential in conceptualizing law already exist, it is humbly argued that a definition by even the Almighty genus and difference would do no good in ending the ancient quest for a final solution to the old philosophical question. And although various operational or working definitions of law exist, they are *ad hoc* and none of them pass for a perfect, objective definition that ends all definitions.

From the foregoing discussion, one thing can be said though. It can be said that truly, the concept, law, is indeed elusive. Perhaps Okunniga had this under consideration when he said that, "nobody including the lawyer has offered, nobody including the lawyer is offering, nobody including the lawyer will ever be able to offer a definition of law to end all definitions."[18] The perfect definition of law cannot be offered by anyone, not the philosophers, and not even those who perpetually worship in the temple of justice – and that is not much of a shame. Therefore, the great philosophical question will be transferred to the next generation of philosophers and legal

[17] Fuller, L.L., *The Morality of Law* (rev. ed) New Haven, 1969, p. 15, cited A. Sanni, *Introduction to the Nigerian Legal Method*, Obafemi Awolowo University Press Limited, Ile-Ife, Nigeria, 2nd and enlarged edition, 2006; Fuller, L., *Lon L. Fuller, Positivism and Fidelity to Law- A Reply to Professor Hart*, Harvard Law Review , 1958, 71(630), 661-64.

[18] Op cit., Sanni, p.20

scholars for contemplation. But for now, one should rather concentrate on how the law is applied in Court.

3. LAW BEYOND THE BOUNDARY OF CONCEPTUAL OBJECTIVITY: STEPPING INTO COURTS' REALITY

Although law is a concept that is impossible to clearly define, during juridical processes, law is applied subjectively[19]. The definition adopted in Court – despite being subjective - is preferred to those provided by theorists because their definitions have not been placed on the wheels of realism and pragmatics but mostly serve as descriptive guides. The Court applies law in a more instructive, prescriptive, and consequential way.

To the Court, law does not necessarily have to be conceived in all its eminence for it to regulate human communities as an instrument of social engineering. That would be tantamount to placing technicalities over substance and purpose. Every modern community has what they consider its body of rules, and of course, rules become law when the idea of obligation is involved.[20] It is however difficult to think of rules without obligation, even one as simple and base as the suggestion of non-violation of a norm or rule. That is, the rule that says 'thou shall not kill' is a law because it places a negative obligation on the recipient to *not* kill. The obligation here is inherent in the rule. The base obligation is "avoid killing" which is almost inseparable from the rule itself. Some rules are however

[19] The concept of objectivity in this exposition is philosophical. However, with regards to the court of law, it is more concerned with the practicality of objectivity in judicial processes. See Adaramola, F., *Basic Jurisprudence*, Nayee Publishing Co. Ltd, 2003, p.318-19.
[20] Op cit., Obilade.

more complex than that and even outline the consequences of breach. It is therefore reasonable to think that, in whatever form these rules exist, whether formal as with laws or informal as with customs, beliefs, traditions, and practices, they are standards of behaviour in that community. Hence, the Court does not have to linger for a Divine Book that provides a perfect definition of law to descend from Heaven before understanding that law regulates human conduct, and as such, apply existing rules that satisfy this simple purpose. So, somewhat, within the universe of the Court, law is what the Court says it is.[21] Hence, law should be construed in a manner that implies a preoccupation with the administration of justice during Court proceedings because after all, "justice is sometimes taken to be synonymous with, or equivalent to law."[22]

4. JUSTICE IN LAW: WHAT MATTERS?

What is Justice? Is a question that the wisest of ancient Greek philosophers grappled with but could barely explain. Even Lord Denning, the erudite and globally celebrated, had no idea what justice is and is said to have concluded that justice is not temporal but eternal, it is not something we can see. Nevertheless, the erudite justice said that the closest we can come to defining justice is to say it is what the right-minded members - those who have the right spirit

[21] Op cit., Sanni, p.20

[22] Giorgis and Campbell, *Justice- An Historical and Philosophical Essay*, University Press, Edinburgh, (1952) 1st ed., p.1, cited in Sanni, A., *The Nigerian Legal Methods*.

within them- in the society say is fair.[23] According to Lord Denning, these are lawyers - and by extension, judges.

From the perspective of the Court and every person who approaches the Court for final legal answers that, apparently, nature, sometimes the legislature, and the society cannot provide, justice is what the Court says it is – after of course, doing due diligence using its three surgical instruments to dissect the matter. Therefore justice is construed as 'proper administration of laws in jurisprudence, the constant and perpetual disposition of legal matters or disputes to render to every man his due.'[24] Worthy of mention is the fact that justice, just like law, can be viewed subjectively by different persons under different circumstances (multiple conscience problem). However, to preserve its sanctity in administration, two legal principles accompany the concept of 'natural' justice, namely, *audi alterem patem* and *nemo judex in causa sua*, which are loosely interpreted as follows: (a) both parties must be heard; and (b) a person cannot be a judge in his own case, respectively. It is submitted that the essence of these principles is to add some degree of objectivity to the administration of justice.

Practically speaking, however, both legal principles barely limit the subjectivity bedevilling the realization of true justice. Despite

[23] Extract from the Book "The Road to Justice" which prints collection of addresses given by Lord Denning while visiting Canada and United States of America as the guest of the Canadian Bar Associations and the American Bar Associations with the approval and consent of Lord Denning of it being published in the Volume, Post Centenary Silver Jubilee Celebration 1866-1991 (Volume-II) High Court of Judicature at Allahabad < https://www.allahabadhighcourt.in/postcentenary/RoadOfJustice.html> Accessed Jan 18 2023.

[24] Black's Law Dictionary, 7th ed., West Group St. Paul Minnesota, 1999, p.599

hearing both parties and being disassociated from the case, a judge may be swayed by other factors like colour, disposition, race, inter alia, thereby interpreting and applying the law in an inappropriate way. This is based on the understanding that the judge is a human and cannot be some God-stage uninfluenced umpire as expected. Therefore, another instrument heavily relied on by the Court for balance is the old, cold, mechanical device – logic.

5. THE INTERSECTION OF LOGIC AND LAW

According to Aristotle, one of the most useful instruments in the Court is logic.[25] Legal logic, or legal reasoning, is defined as the systematic method of making logical constructions using legal rules and analysis. It is adopted by judges, adjudicators and lawyers when presenting legal arguments, referencing authorities, showing causal and legal relationships, making decisions, applying legal rules and principles, and in pronouncing judgments. This instrument is used by legal practitioners, especially in Court. Other instruments complement legal reasoning, they include legal language, legal rhetoric, and legal rules and principles.[26] All these aid the legal practitioner or judge in presenting logically valid and convincing legal arguments. And of course, for logic to apply, facts must exist. 'Facts' take the status of premises in this context. Premises – or facts, so to speak - are the building blocks of a legal argument. A legal argument is a body of facts, propositions, or premises (and legal

[25] Although there might be oppositions to the supposition, or affirmation, so to speak, that logic and reasoning are indistinguishable, it is very much factual. The only primary difference between reasoning and logic is that reasoning centres on personal opinions that could be reasoned out whereas formal logic is strictly based on rules.

[26] Op cit., Sanni, p.118-121

authorities) postulating, declaring or establishing a legal determination or conclusion. Since arguments are supposedly reasoned out, a legal argument is analysed using reason and logic to determine its veracity and persuasive weight.

Traditionally,[27] method of reasoning is divided into two forms, namely, deductive and inductive reasoning. Actually, inductive reasoning is more relevant than deductive reasoning in Court.[28] This is because facts must first be determined in trial courts; and in establishing them, causal arguments that are based on probability, and scientific methods of an essentially inductive nature come first. Nonetheless, both methods are deemed useful to the legal profession.

Deductive reasoning that takes the form of a categorical syllogism is a method of reasoning in which a specific conclusion of an argument is deduced from two premises - namely the major and minor premises; and from which the conclusion must follow by necessity.[29] The major premise is a piece of general knowledge, a popular fact, a universal truth, or an axiom. However, the legal equivalence of these are fundamental objectives, general principles, legal rules or standards, exceptions to a principle or rule, a purpose of law, provisions of a statute, case law decisions or facts, or anything that is generally or domestically recognized by or as law within a geographical boundary – and beyond, in some cases.

The minor premise is, judging from logical conventions, a fact of the case in question. It can also be a reasonable deduction from the facts

[27] Proceeding on the understanding that legal reasoning and legal logic are interchangeable in terms of form, structure and validity.
[28] This is probably because facts are constantly disputed, not laws.
[29] Op cit., Sanni, p.121; Copi op cit.

and the major premise, a hypothesis, a supporting idea or a debatable legal principle that is related to the major premise and necessitates the logicality of the conclusion. The conclusion is the final legal point one makes to complete a legal argument.[30] A deductive argument is either valid or invalid. An argument is valid when its conclusion follows necessarily from its faultless premises and invalid when any of its premises are false, thus making the conclusion impossible to follow logically.[31] The form popularly adopted by this method of reasoning is called categorical syllogism[32]. That is, there can only be two premises and one conclusion in a single argument and each premise must contain two terms that are used in the argument.[33] The following is a classic illustration of what a categorical syllogism is:

P1: There shall be grave consequences for anyone who violate the Criminal Code

P2: Mr. Taye violated the Criminal Code

C: Therefore, Mr. Taye will suffer grave consequences

There are usually three terms in an argument, namely, the major term, the minor term, and the middle term. The major term is the

[30] See Sanni's analogy on deductive reasoning in p.122.
[31]The informal fallacies that could be committed when the premises do not necessitate the truth of the conclusion include non sequitur, converse accident, the fallacy of division and *ignoranchio elenchi*. Additionally, in logic, truth and validity are two different concepts. Logic is mostly concerned wirh validity. Not all the conclusions of a valid syllogism are true and not all premises of a syllogism may be true but such syllogism may remain logically sound and valid.
[32] Copi and Cohen, op cit. The most popular form of deductive reasoning is categorical syllogism. However, there are several other forms of deduction like sorite, enthymeme, etc.
[33] Op cit., Carl and Cohen.

one that occurs as the predicate of the conclusion and in this case, 'grave consequences'. The minor term is the one that occurs as the subject of the conclusion and in this case, 'Mr Taye'. The middle term is not contained in the conclusion but must be contained in the two preceding premises and in this case, "the Criminal Code". A close observation would reveal that each premise contains two terms and the conclusion too is no exception.

However, reasoning cannot always be deductive because not all arguments are deductive; not all lay claim on demonstrating the truth[34] of their conclusion as following necessarily from their premises; and certainly, not all emanate from a general fact (law). These types of arguments only have conclusions that are 'probable', 'probably true' or 'reasonably possible'. An argument in this category provokes inductive reasoning which is a less strict method of reasoning that is based on the balance of probability (or probable inference), causal relation, and analogy.[35] Well, it is less formal in the sense that its form is not strict like that of a categorical syllogism. It does not have a particular number of premises that is mandatory to establish a conclusion.

Furthermore, an argument of this form unlike a deductive argument is not tested based on validity - or invalidity.[36] An inductive argument is only tested in terms of the degree of support its premises lend to its conclusion. This method of reasoning is from a particular idea to a general conclusion, the exact opposite of the deductive

[34] Ibid.
[35] Ibid, p.601.
[36] Ibid.

method. It is constructive rather than deductive[37] and is usually used in the legal profession to show how precedents, case laws and decisions are similar, dissimilar, or inconsistent and inapplicable altogether.

The most obvious flaw of this method of reasoning, particularly in the legal profession, is that there are different circumstances (facts) that could cardinally differentiate a judgement in one case from another. Moreover, the decision or judgment of a previous case may not necessarily be binding in another case because the analogy is inappropriate or unsuitable, even when both cases are factually identical to an extent.[38] Hence, for judicial precedents to be binding in another case, certain material facts must exist in both, and these material facts must be identical by all means.

6. LOGIC: INVARIABLY COLD-BLOODED OR TEMPERABLE AS REQUIRED?

The essence of these two methods of reasoning is for a judge to arrive at a calculated, rational decision, not simply some personal, unfounded decision of his own. The judge's decision has to align with reason and the laws of logic. However, this obligation is not exactly always binding or strict, there are exceptions, for the sake of justice. In cases where reasoning and logic are arbitrary, unreasonable, inapplicable, or where both will not serve the major purpose of law, which is justice, they will be duly underused. Therefore, after applying logic as duly required in a given case,

[37] For example: (P1) Animals are mortals; (P2) Humans are mortals; (P3) Alexander is a human and a mortal; (C) All humans are animals.
[38] The concept of distinguishing and practical justification.

judges base their final decisions on practical reasoning, which revolves around the following considerations:

(a) whether the decision is in agreement with existing legal rules and principles;
(b) whether it agrees with public policies;
(c) whether it is reasonable to a reasonable person; and
(d) whether justice is served.[39]

It is observed that what amounts to public policy, in the perspective of domestic courts, are usually what is considered consistent with the notions of morality and justice, that is, norms that are widely held[40]. But again, public policy may also be what the Court understands it to be. Anyhow, the multiple conscience problem as a hindrance to the attainment of justice cannot possibly be a problem in every case. In some cases, public policy is as simple as a widely accepted norm, therefore, it does not matter what a particular person or group of persons believe, so long a larger number of people accept the decision to be consistent with a norm. But this brings to the fore a question: is the threshold of acceptance important in the administration of justice? It is argued that law – and by extension justice- is more effective – and accepted – when it conforms to the 'moral feeling'[41] of a greater number of people in a given community. After all, the societal force of a people must be reckoned with in court decisions lest the court performs the exact opposite of its intention, the overthrow of public order and harmony because there is a chance

[39] Op cit., Sanni, p.128.
[40] Gilles, P., *Enforcement of International Arbitration Awards – the New York Convention*, International Trade Law and Business Law Review, 2004, 19, 39-40
[41] Op cit., Obilade.

that the people would revolt in response to a judgment they find disturbing and contrary to established norms – and especially, public morality. It is therefore arguable that public policy is equal to public morality and public norms.

For this purpose, practical reasoning trumps cold logic which does not necessarily consider the elements of public policy. In principle, practical reasoning is a reliable method of justification in cases where deductive and inductive reasoning are too formal and less helpful. The essence of practical reasoning is to attain justice and equity without prejudice. As observed in *Chinwendu v Mbamali*[42] justice should not be sacrificed on the altar of technicalities (which can be likened to the strict rules of logic).

7. LANGUAGE IN THE COURT: JUSTICE OR NOTHING?

Language can be likened to a magical wand or the weapon of a vicious, angry god; it is capable of birthing clarity, watering ambiguity, and grasping justice - and sometimes, nothing - depending on how it is used and in what context. When used brilliantly, language will yield intended outcomes; it can also be manipulative or deceptive. On the contrary, careless use will breed pointless misunderstandings, ambiguities, and lasting disputes.[43] The primary-most uses of language are informative, expressive, and directive. Meanwhile, forms of language are four, namely declarative, interrogative, imperative, and exclamatory. The uses of language can be distinguished from the forms of language in that uses of language

[42] (1980) LCN/1108(SC)
[43] Copi, I.M., Cohen, C., and McMahon, K., *Introduction to Logic,* Pearson New International Edition, 4th edition, 2014, p. 68-69.

are implemented via its forms.[44] That is, the use of language in a way that is intended to inform or direct an audience can also be interrogative, declarative, and exclamatory. The various possible combinations that result therefore equip language with different functions, suitable for different situations and contexts. Now, it is the job of the lawyer (and judge) to know what function of language is most effective in pursuing justice - or when it pursues nothing but the interest of their clients because after all, the duty of a lawyer is to make sure that the interest of his client is eloquently and well represented, not justice or truth, that is for the judge to find[45].

Language has several functions but importantly, it can express emotions and report facts simultaneously. Basically, language is used to convey beliefs, which can be emotional or factual, both of which, independently or collectively, have impacts on the attitudes of both listeners and speakers. Disputes normally arise from ambiguity, belief, or attitude but sometimes, some disputes arise out of linguistic misunderstandings.[46] In the event of a dispute, what must first be done is to identify the nature of the dispute. There are three types of disputes that can potentially arise from disagreements arising from attitude, belief, or ambiguity.[47] The first is the obviously genuine dispute where disagreement is usually in attitude and not facts. For example, if A believes that Lagos is in the South West and B denies this, there is a genuine disagreement but a good map will readily resolve the dispute.

[44] Ibid.
[45] Denning, op cit., p.1.
[46] Copi et al, op cit., p.79.
[47] Ibid.

The second is one in which the conflict is apparent but not genuine. Disagreements in this category are resolved by agreement about what some words or phrases mean or should mean. In a law court, it is difficult to see how lawyers will conveniently come to an agreement about what certain words or phrases mean when there are authorities to support both interpretations and when their case rests solely on one of either interpretation. Lord Denning is reported to have criticized this practice among lawyers on the ground that they do not necessarily advocate in the interest of justice anymore but made themselves "technicians" who find escapes in the meanings of words and phrases.[48] Hence, the burden has to pass to the judge, who will decide what the word or phrase means, especially when determining the meaning of such word or term is necessary.

The third category involves disagreements which are usually verbal but really genuine. That is, a misunderstanding about the use of terms may be involved but when that disagreement is resolved, there remains a disagreement that exceeds the meanings of the words. All these disagreements can arise in court. Sometimes, judges and lawyers have to define terms in a way that strip them of verbal disagreements and parties sometimes disagree over how certain words should be interpreted or construed by the court.

Notably, disagreements as to facts also arise in court, especially at the appellate stage, which is where lawyers try to discredit or extract facts from witnesses through the skillful use of language and rhetorical questions. It is notable that sometimes, lawyers use emotional language and inductive and cognitive reasoning while

[48] Denning, op cit., p.1

interrogating witnesses to convince the jury to take a certain view or interpretation of witnesses' utterances and conduct.

The emotional inclinations of certain words may be overlooked if their informative function carries more weight.[49] That is, language can be emotive but informative and logically sound to the extent that the emotional provocation that follows may be ignored. So, it is accurate to conclude that emotive language is welcomed in some contexts, say, in a court. This view influenced Justice John Harlan to say:

> Much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the message sought to be communicated. . . . and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.[50]

Nonetheless, it is argued that the extent of the use of emotive language in Court also depends on the nature of the case and the

[49] Ibid, p.70.
[50] R. G. Wright, *An Emotion-Based Approach to Freedom of Speech*, Loyola University Chicago Law Journal, 2003, p.429. Available at: http://lawecommons.luc.edu/luclj/vol34/iss2/4 Accessed 18 January 2023.

whether a party is a plaintiff or defendant. For example, in a human rights violation or infringement case by a state, the attorney representing the state will most likely apply cold, practical reasoning and facts in justifying the intrusive actions than arguments backed by emotions. Meanwhile, the attorney representing the victims will most likely rely heavily on logic and emotive language to incite the emotions of the judges and make them see the extent of the violation or infringement.

Emotive language is even more dangerous when the issue in question has to do with morality, for example, the morality of abortion. Disputes on subjects such as this incite or trigger so emotions in both the speaker and the audience and can distort their rational thinking. This is perhaps why logicians strive to use language in a way that is devoid of emotional meanings, for instance, symbols. But lawyers are not only logicians but advocates that can determine their client's quality of life; hence, any tool that guarantees a favourable outcome (whether justice or otherwise) is justified. This is perhaps why lawyers see language as a very important tool that determines important outcomes and feasts on technicalities of its use or misuse.

Speaking of technicalities, the language of the law (legal language) is perhaps one of the most technical professional languages in existence. The language is a tradition that has been maintained for a long time.[51] The use of archaic English words, Latin, and French maxims, repetition of common words or phrases, use of special

[51] Op cit., Sanni, p..117.

imports for common words, etc., are evidence of the transferred and cherished tradition of common law.

Another interesting feature of legal language, especially as used in statutes, is that it is general and broad, applying to a wide array of situations.[52] This means that law is worded to apply to a large spectrum of people and in different circumstances. While the rationale behind this is reasonable, sometimes, a statute cannot foresee peculiar circumstances; hence, the Court assume the position of restricting its interpretation for the purpose of the facts of the case or creating exceptions from the general rule (language). Where situations are reversed, the Court may find it necessary to expand the scope of a limited law to apply to a broader set of facts.

Additionally, legal language is also known for its incorporation of abstract terms or common terms used in rather remarkable ways. Lawyers are said to have invented new concepts from common day-to-day words of ordinary business people. These concepts include "contract", "company", "rule of law", "legal personality" and others. While these words have ordinary meanings, they have special implications in the legal universe.

It is practically difficult to detach advocacy from rhetoric. According to Plato, rhetoric is "the art of winning men's mind with words".[53] Hence, it is rational to say that language is the building block of rhetoric. With regard to how the Court operate, rhetoric is a well-consulted tool. The purpose of rhetoric in Court is to present convincing arguments effectively. According to Aristotle, there are

[52] Ibid, p.113
[53] Ibid, p.119.

two types of rhetoric, namely deliberative and forensic rhetoric. Forensic rhetoric is applied by lawyers and does not necessarily have to embody the reason for a certain viewpoint but only to the interest of who they happen to represent. However, for deliberative rhetoric, the judge is obligated to explain why he is assuming a certain position and he does so using elements of persuasion. Aristotle thinks the noblest of the two types of rhetoric is the deliberative style.[54]

As already noted, llanguage has diverse purposes in Court. It may be used persuasively, it may be used to direct or command actions and inaction, incite emotions, convince, persuade, describe, explain and it may be used to inform and instruct. These are the strict and mechanical applications of language. Emotive language has a powerful influence on the Court and justice. Emotive language is appeals to human emotions and invokes pity or otherwise. It is believed that emotive languages have the potential to trigger the consideration of extra-judicial factors and circumstances. Advocates and judges are humans after all; they may be swayed by legal technicalities and emotive languages or impressive demonstrations. Generally, the use of certain expressions or examples in an argument may be termed fallacies; however, in law, this writer observes that it would seem a special consideration is given so that what would have been called a logical fallacy in ordinary discourse is not criticized or rebutted on the basis of classical fallacies. Therefore, the fallacies that may have been committed when using emotive language are overlooked in law. The rationale behind this bias is probably one

[54] Ibid, p.119

that favours the ascertainment of justice, the primary objective of law.

Perhaps emotive language is not barred in Court because it may trigger equity which may actually produce reasonable and justifiable decisions in cases where the law is arbitrary or unclear. However, most times, especially when the dictates of existing laws are not vague and pass the tripartite test, logic precludes consideration of emotive languages and decisions that may emanate from such. This is in consonance with the theory of formal justice and certainty of the law.[55]

So, can one say that language also has an impact on justice? To answer this question in the simplest of fashion, one just has to imagine why good lawyers win cases for clients who definitely deserve punishment in the eyes of justice - or the public, so to speak. This means that, although the Court has the duty of pursuing justice, advocates that come before it and the quality of their persuasiveness, the depth of their legal analysis, and their command of language have a huge influence on whether justice or nothing is caught after the pursuit. This is perhaps why Sanni suggested that a serious-minded lawyer must constantly look to improve his mastery of language and word usage.[56]

8. CONCLUSION

To understand how much justice is worth and how all these instruments are objects of justice, one should consider Justice

[55] Obafemi Awolowo v. Federal Minister of Internal Affairs (1962) 4 NCLR 261 FCA.
[56] Sanni, op cit., p.119.

Oputa's submission in *Laoye v Federal Civil Service Commission*[57], where he asserted that justice is the major objective of law and it can be ascertained by the ascertainment of truth which can be ascertained through the instruments of the Court in an open trial. It is submitted that the instruments referred to by the learned Justice include legal logic, legal language and legal rules; and apparently, their importance in court proceedings cannot be overemphasized. This paper has shown how these devices are really important to the Court of law in its quest to ascertain justice. It can be said that this quest is indeed a tumultuous one, with lots of difficulties and hindrances along the way, but with the help of these three musketeers, through centuries after centuries, the Court has been able to come close to achieving its objective in any proper human community.

[57] 1989 SC.202/87.