

Practical Perspectives Towards The Right Of Law Lecturers To Private Practice In Nigeria

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Abstract:The debate as to whether law lecturers in public service should be made to practise law has been in the front burner for a while now. Is the right of a law lecturer on full time employment in a tertiary institution in Nigeria restricted or denied from private practice? This paper examined the historical analysis of the right of law lecturers to private practice in Nigeria. The paper delves into the practicability of law lecturers involved in private practice within the extant legal framework in Nigeria. The author partitioned the arguments for and against the right of law lecturers to private practice into some theories and the postulations of these theories are elucidated in this paper. The paper examined the legal framework in the recent past, the present and make recommendations for the future.

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I. INTRODUCTION

The role of a lecturer in any tertiary institution cannot be over emphasised. The lecturer is a role model both to his students and the society at large. Law as a profession tilts heavily on tradition and ethical conduct. The law lecturer must be an embodiment of good conduct, candour and teaching skills towards producing an ethically compliant lawyer. The law lecturer is first and foremost a lawyer with the knowledge of law. Expectedly, he must have practised law or be practising law before he can teach law with impact on his students. Where he does not practise what he teaches, he may be archaic since dynamism is the art of law practise and law making. The law lecturer is not just a theorist but must be involved in the practical application law to the society. The phrase 'private practice' entails an act of carrying out legal practice privately. It could also mean management of private law firm rendering legal service. The law lecturer being an employee is bound by the terms of contract of employment between him and his employer. This paper will examine the legal framework for the position of law lecturers in public service and the extent of their involvement in private practice in Nigeria. The paper will make recommendations on the practicability of this discourse and its effect on the students of law across our universities and the totality of the legal education system in Nigeria.

Before venturing into further discourse in this paper, it is apposite to define some major concepts or phrases. Who is a legal practitioner? Section 24 of Legal Practitioners Act 2004 defines a Legal Practitioner as a person entitled within the provision of this Act to practise as a barrister and solicitor either generally or for the purpose of any particular office or proceedings.²In furtherance of the above, section 2(1) of the Legal Practitioners Act provides that a person shall be entitled to practice as a Barrister and Solicitor if and only if, his name is on the roll. Public service was defined in the same section as having the same meaning in the Constitution of the Federal Republic of Nigeria 1999. Section 318 of the constitution defines public service of the federation as:

“Public Service of the Federation” means the service of the Federation in any capacity in respect of the Government of the Federation and includes service as:

- (a) Clerk or other staff of the National Assembly or of each House of the National Assembly;
- (b) Member of staff of the Supreme Court, Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the Federal Capital Territory, the Customary Court of Appeal of the Federal Capital Territory; or other courts established for the Federation by this Constitution or by an Act of the National Assembly;
- (c) Member or staff of any commission or authority established for the Federation by this Constitution or by an Act of the National Assembly;

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²Veepee Industries Ltd v Fadina (2012) 36 W.R.N. 172 at 175; Okafor & Others v Nweke & Others (2007) 3 SCNJ 185

- (d) Staff of any Area Council;
- (e) Staff of any statutory corporation established by an Act of the National Assembly;
- (f) Staff of any educational institution established or financed principally by a government of the Federation; and.”

Our focus in this paper is the definition under section 318 (1) (f) above which relates to staff of any educational institution. The public service of a State was also defined in the same vein as it applies to States created by the Constitution.³In the light of the above, it is obvious and not in contention that staffers of educational institutions belong to the public service and are as such public servants. The poser therefore is: being public servants, are they expected or permitted to be in private practice?

Historical Analysis of Right of Law Lecturers to Private Practice

Between 1962 - 1990s, there was dearth of lawyers in Nigeria when juxtaposed with the periodic increase in the population of Nigeria. This culminated in scarcity of law lecturers compared to the standard expected of a Faculty of Law within the period earlier stated.⁴

Badejogbin lends credence to this position when she opined that these constitutional prohibitions had the unpleasant effect of precipitating a brain drain of law lecturers from a good number of academic institutions. There was a mass exodus of highly qualified and scholarly law lecturers from tertiary institutions of learning who left to set up very lucrative law firms. The pittance they received as remuneration for occupying professorial seats hardly provided sustenance for them.⁵Badejogbin while comparing what is obtainable in Nigerian and Namibia further opined that the Faculty of Law at the University of Namibia was greatly understaffed as the lawyers preferred to be employed on part-time basis in order to supplement their remuneration through private practice while the same scenario played out in Nigeria in the 1980s.⁶

At this juncture it is apposite to examine the position under the 1979 Constitution. Section 277 of the 1979 Constitution is on all fours with section 318 (1) of the 1999 Constitution with respect to definition of public service. It should be noted that the Constitution under the past military regimes has always been under attack by way of modification via military decrees.

In addition to the above, the constitution provides a code of conduct for public servants. The fifth Schedule to the Constitution defines public officers under Part II as including:

15. All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils.⁷

It is settled from this provision that law lecturers in private universities are exempted from the provisions of the fifth schedule on the Code of Conduct for public office holders. The repealed Rules of Professional Conduct for Legal Practitioners 1979 made pursuant to Legal Practitioners Decree 1975 under the hand of the former Attorney General of the Federation: Augustine Nnamani, Rule 30 forbids members of the Bar from practising as a trader while engaged in practice as a lawyer. Such trade must be of the nature which the

³“public service of a State’ means the service of the State in any capacity in respect of the Government of the State and includes service as:

- (a) Clerk or other staff of the House of Assembly;
- (b) member of staff of the High Court, the Sharia court of Appeal, the Customary Court of Appeal; or other courts established for a State by this Constitution or by a Law of a House of Assembly;
- (c) member or staff of any commission or authority established for the State by this Constitution or by a Law of a House of Assembly;
- (d) staff of any local government council;
- (e) staff of any statutory corporation established by a Law of a House of Assembly;
- (f) staff of any educational institution established or financed principally by a government of a State; and
- (g) staff of any company or enterprise in which the government of a State or its agency holds controlling shares or interest;

⁴ In an article written by Kayode Ketefe, Mr. Akingbehin of the Faculty of Law, University of Lagos argued thus: There was a time when there was mass exodus of law lecturers and medical practitioners from teaching at the university. The Federal Government made a sort of compromise by making a law to exempt the law lecturers and medical practitioners from restriction to practice. That law is still in existence and valid. See https://groups.google.com/forum/#!topic/usaafriadiologue/2uXO_Yh12H4 accessed 4 June 2018. Article by Kayode Ketefe All Nigerians public varsity lecturers operate law firms illegally- 1999 Constitution

⁵Badejogbin R. Law Lecturers and Private Practice. CALS Review of Nigerian Law and Practice Vol. 1(1) 2007. Page 3

⁶ University of Namibia 1998 Information book

⁷ Fifth Schedule, Part I further defines public office as "public office" means a person holding any of the offices specified in Part II of this Schedule;

Bar Council may declare to be incompatible with practice as a lawyer or tending to undermine the high-standing of the profession. The trades declared incompatible with legal practice by the Bar Council at that time were as follows:

All forms of trading.

"Trading" includes all forms of or participation in any trade or business, but does not include, -

- (a) Membership of a board of directors of a company which does not involve executive, administrative or clerical functions;
- (b) Secretary of a board of directors of a company or of a general meeting of a company;
- (c) Being a shareholder in a company.
- (ii) Salaried employment in an exclusively legal capacity in a firm or company other than a law firm, or under a person other than a legal practitioner, a public authority, a statutory corporation, or a University.
- (iii) Salaried employment with a law firm or a legal practitioner other than in respect of legal practice.

Sub c (ii) above allowed the practice of a lawyer in a university engaged in an exclusively legal capacity. This is interpreted to mean university legal officers in the Legal Services Department within a narrow construction but may include other staffers of the university who are lawyers and practise law by teaching or otherwise. Excluding lecturers from private practice in the courtroom and mandating them to pay annual practicing fee seems to be a contradiction in terms. The payment of practising fees by lawyers in the academia will be for what practice if they are restricted from legal practice? Rule 31 of the old RPC takes it further. It provides:

In general a member of the Bar, whilst a servant or in salaried employment of any kind, should not appear as an advocate in any Court or tribunal; but the following shall not be deemed to constitute a member of the Bar, a servant or in salaried employment:

- ii. Employment as a legal officer in any Government Department or a statutory corporation or a University;

Applying the specialibusgeneralia rule, there is specific mention of the capacity in which a lawyer may be allowed to practise as a member of the Bar. The poser is: who is a member of the Bar? Persons duly called to the Bar are members of the Bar.

The 1979 constitution has the same provision with the 1999 constitution with respect to Code of Conduct for public officers. According to the Code:

A public officer shall not engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall apply to any public officer who is not employed on full time basis⁸

It is apposite to further examine this provision of the Code of Conduct in this respect and give it the literal meaning it deserves. Paragraph 2(b), Part I of the Fifth Schedule to the 1999 Constitution provides:

Without prejudice to the generality of the foregoing paragraph, a public officer shall not-

- (a) Receive or be paid the emoluments of public office at the same time as he receives or is paid the emoluments of any other public office; or
- (b) Except where he is not employed on full time basis, engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.

The focus of this discourse is on paragraph 2 (b) as stated above. The active words of the provision use the words 'management or running'. Paragraph 2 (a) does not make it illegal for a public officer to receive emoluments from any other private office or private practice. Applying the literal rule of interpretation, a public officer cannot be the Chief Executive Officer of any private business to either manage the business or run it. He may be attached to the business in any other capacity going as a consultant, a technical partner and he is entitled to be paid. This is not without a caveat. The caveat is that paragraph 1 expressly states that a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities. The personal interest of a public officer in his public office must not conflict with his private business. The poser therefore is: how practicable is this? It is our view that this is practicable with proper planning of tasks and delegation of duties as it relates to private practice.

⁸ Part 1, Paragraph 2 (b) of the 5th Schedule to the 1979 Constitution. See also the case of *Ebiesuwa v Commissioner of Police* (1982) 3 NCLR. 339

The above provision was judicially tested in the case of *Akinwunmi v Diette-Spiff*⁹ where the court that the involvement of Mr. Lagun, a legal practitioner and a member of the Oyo State House of Assembly, in private practice is unconstitutional. Unini¹⁰ opined in this respect that the 1979 constitution by extension speaks of not just a profession, but trade and business with an exception only of a servant on part time basis before the 1979 constitution was suspended.

Previously, the position of a legal practitioner who is a public officer from 12th December 1984 vis-à-vis private practice was governed by Section 1 of Regulated and other Professions (Private Practice Prohibition) Decree 1984. With some exceptions, the Decree prohibited private practice for legal practitioners who are public officers. It provided as follows:

For the purpose of this Decree but subject as herein after provided, private practice in relation to any scheduled profession includes the rendering of or render to any other person (not being the employer or any other person normally entitled in the course of his official duties to receive such service) any service related to the profession concerned whether or not after his normal hours of work or on work free days for money's worth or for any other valuable consideration and, without prejudice to the generality of the foregoing includes in particular:

- a) The performances of all descriptions relating to the profession concerned including the rendering of advice or provision of consultant service connected with or relating to the profession concerned; or
- b) The issue of certificate, the certification of documents or any other matter concerned with the issue or certification of documents connected with or relating to any of the aforementioned services; or
- c) The establishment of any undertaking either by the professional concerned or in partnership, or in any form of association with any other person (whether or not himself a public officer) for the provision of any of the service or matters referred to in this subsection.

However, subsection (3) provides that notwithstanding any provision of this section, it shall be lawful for the professional concerned, apart from during the course of his normal official duties to render any of the services referred to in subsection (2) of this section:

- (a) To himself.
- (b) To any person in any emergency.
- (c) To any person (whether corporate or incorporate) authorized either generally or specifically by the Government to receive the services of that professional for the time being or, where a period is specified, for that specified period;
- (d) Where such services are rendered free of charge to any of the following, that is:
 - (i) Any member of the family of that professional;
 - (ii) Any charitable organization or another person on purely humanitarian grounds; and
 - (iii) Any professional association to which he belongs.

Section 2 of the Act provided for penalties for contravening these provisions as follows:

- a) 1st offender is liable to N2, 000.00 fine or 1 year imprisonment;
- b) 2nd offender is liable to N5, 000 or 2 years imprisonment;
- c) 3rd offender is liable to 3 years imprisonment without option of fine.

In addition, the legal practitioner shall have his name struck off the roll. The offender shall be tried in the Federal or State High court. There is no appeal under this Decree. Certified copy shall be sent to the President within 15 days of judgment for confirmation or otherwise.

Some years back, the Edo State High Court sitting in Benin on the 27th of April 2009 delivered ruling on a Motion on Notice filed by the Attorney General of Edo State on behalf of the 1st, 2nd and 5th Defendant/Applicants in *Mr Lawrence Ogieva and 6 Others v Comrade Adams Aliu Oshiomole, Executive Governor of Edo State and 6 Others*¹¹ The court held:

“I have looked at the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999 and I see that the Regulated and other Professions (Private Practice Prohibition) Decree No. 34 of 1984 as one of the enactments that was repealed... the next issue is the effect of the said repeal on the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) Order (No. 2) of

⁹ (1982) 3 NCLR 342

¹⁰ Unini Chioma, *The Legality of Law Lecturers in Public Institutions engaging in Private Practice*. <https://thenigerialawyer.com/the-legality-of-law-lecturers-in-public-institutions-engaging-in-private-practice/> accessed 20 October 2018

¹¹ SUIT NO: B/3/08/2009

1992...I have already held that Decree No. 63 of 1999 expressly repealed the principal Act. In doing so the repeal was made subject to Section 6 of the Interpretation Act which provides:

6. Effect of repeals, expiration, etc. (1) The repeal of an enactment shall not... (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment”

Akintayo disagreed with the above decision on the grounds that the decision did not take into consideration applicable and relevant laws which bears directly on the issues before the court. He argued further that the decision is against the current decision of the Supreme Court on the subject matter and that the respondent lack the locus standi to raise the issue.¹²

The court further in relying on the decision in *Abdullahi v Military Administrator, Kaduna State*¹³ concluded that:

“There is no doubt that the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) Order (No. 2) of 1992 is a subsidiary instrument within the meaning of the expression in Section 37 of the Interpretation Act and consequently a law within the meaning of laws under Section 18(1) of the Interpretation Act Cap. 192 LFN 1990....the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) Order (No. 2) of 1992 is an existing law by virtue of Section 315 of the Constitution”

However, in 1992, an exemption was made for law lecturers vide the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) Order 1992.¹⁴The rationale for the exemption was perceived to be due to the dearth of law lecturers in the 1980s and early part of 1990s vis-à-vis the seemingly low remuneration of the public officers. Lawyers in private practice seems to be better off in terms of economic fortunes and thriving range of legal services which lawyers engage in. The provision of the Fifth Schedule Part I item 2 (a) and (b) of the 1999 Constitution in our opinion is prejudicial because of the above stated exemption law. The law exempting law lecturers from private practice has not been expressly repealed by the Constitution though it is suggested that section 315 (1) (a) of the 1999 constitution ought to preserve it as an existing law.¹⁵

Falana opined:

When it started, the understanding is that allowing lecturers to do a form of practice would enrich them and put them in a position to impart the current trend of the law in the students. But the form of the practice allowed by the law was for the lecturers in each of the state and federal universities to have a consortium for legal consultancy, not for individual lecturers to have private chambers.¹⁶

While agreeing with Falana on one hand, we disagree with him to the extent that the right of a lawyer to practice law is statutory having been licensed to practice law as a barrister and solicitor of the Supreme Court of Nigeria by virtue of section 8 of the Legal Practitioners Act 2004. The restriction in our view is as contained in Rule 8 of the Rules of the Professional Conduct for Legal Practitioners 2007 wherein the RPC forbids a law lecturer from appearing in any court or tribunal for his employer. Rule 8 (1) provides:

(1) A lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a court or judicial tribunal for his employer except where the lawyer is employed as a legal officer in a Government department.

It is our submission that it is legal officers in the Universities and other allied government institutions that can render advocacy services for their employers. In *Akeredolu v. Mimiko*¹⁷ an allegation of breach of Code of Conduct was made against a Professor of Law who was in employment as a law lecturer. The Election Petition Tribunal declined any judicial comment or decision on the issue but rather referred the opposing counsel to the Code of Conduct Tribunal. In confirming the position on appeal, the Court of Appeal, per, Oredola JCA held that the Tribunal was right not to have been drawn into making any judicial pronouncement on the issue. The Court of Appeal further confirmed the position that only the Code of Conduct Tribunal can take

¹²Akintayo, A., Lecturers and Private Practice: A Rejoinder. Available at www.thenigerianlawyer.com accessed 21 October 2018

¹³(2004) 5 NWLR Pt. 866 at 232,

¹⁴(No.2) Order of 14.9.92

¹⁵For further reading see Article by R. E. Badejogbin, Law Lecturers and Private Practice. *CALS Review of Nigerian Law and Practice* Vol. 1(1) 2007. See the Supreme Court case of *Ahmed v. Ahmed* 2013 (12) SCM (Pt.2) 55; (2013) 15 NWLR (Part 1377) 274 which discussed the current position of Law Lecturers.

¹⁶https://groups.google.com/forum/#!topic/usaafri dialog ue/2uXO_Yhl2H4 accessed 4 June 2018. Article by Kayode Ketefe All Nigerians public varsity lecturers operate law firms illegally- 1999 Constitution

¹⁷[2013] All FWLR [Pt. 700] 1340

cognizance of any alleged breach, and not the regular courts of law. The line of thought has been the trend by our courts over the years.¹⁸

Current Trends and Dynamics of Law Lecturers in Private Practice

The proponents of a ban on law lecturer from private practice are of the view that private practice will deprive the students of law the attention and full concentration of the law lecturer to his academic duties.

How healthy is private practice for the office of a law lecturer? We think it is healthy because the courtroom and field work are a vital part of the teaching of law due to the dynamic nature of law as a vocation. To what extent would a teacher of surgery successfully teach surgery without practical in a teaching hospital? The courtroom in some cases is the teaching laboratory for the law lecturer. It is better the students receive practice – oriented knowledge from an experienced practitioner than taking down notes from theoretical laws, the application of which the lecturer does not know by experience. It is often said that experience is the best teacher.

The Supreme Court in the case of *Ahmed v Ahmed*¹⁹ laid the issue of jurisdiction to adjudicate perceived breach of the provisions of the Fifth Schedule of the Constitution to rest. An aspect of the facts of the case which is of interest to this topic is that the appeal of the appellant to the Court of Appeal was also dismissed. The Notice of Appeal filed by the appellant at the Court of Appeal and his appellant's brief were signed by Mr. M. K. Dabo, who at the material time was a lecturer at the Nigerian Law School, Kano campus. Based on this fact, the respondents challenged the competence of the appellant's appeal at the Court of Appeal on the ground that the said Mr. M. K. Dabo being in employment as a public officer in the public service of the Federation was a person disqualified from practicing law, and a such rendered the processes filed by him null and void. The Court of Appeal however declined to decide that question. The Supreme Court dismissed the appeal and held that the Fifth Schedule to the 1999 Constitution has by its paragraph 12 provided for what would occur in the event of any violation of the provisions of the Fifth Schedule by public officers, that is to say, as a follow-up of any breaches of the Code. The Supreme Court went further: the paragraph provides that any allegation that a public officer has committed breach of, or has not complied with the provisions of the Code, shall be made to the Code of Conduct Bureau. The provisions are unambiguous and so construed literally mean that any breach of any provision of the Fifth Schedule to the 1999 Constitution or matters of non-compliance with any provisions of the Code shall (meaning that it is mandatory i.e. must be made to the Code of Conduct Bureau that has established its tribunal with the exclusive jurisdiction to deal with any provisions under the Code).²⁰

In a recent decision of the Court of Appeal in *Ebere and others v IMSU and others*,²¹ a decision that was handed down on the 16th May, 2016, the Court of Appeal confirmed the common trend in the following words:

It is however, common knowledge that most law lecturers in law Faculties in Nigerian Universities who teach law also operate private law chambers at the same time. There had been diametrically divergent views on the issue of whether law lecturers are under the law permitted to practice law as private legal practitioners or not. Although most of the lecturers who operate law chambers believe they are doing so legally by virtue of a Decree called *Regulated and Other Professions (Private Practice Prohibition) (Law Lecturers Exemption of Lecturers) Decree No 2*, which was signed into law by the former President Ibrahim Babangida, in 1992.²²

It is apposite to argue that management and running of a business is different from appearance for litigants in court by virtue of section 8 of the *Legal Practitioners Act 2004*. If we concede that *Regulated and Other Professions (Private Practice Prohibition) (Law Lecturers Exemption of Lecturers) Decree No 2 of 1992* has been repealed by the *Consequential Decree No 63 of 1999*. We submit that the right of audience before courts to defend himself or another under section 36 (6) (c) has not been modified to deny a legal practitioner who has paid his annual practicing fee in line with rule 9 of the *Rules of Professional Conduct 2007* from appearing before any court or tribunal in Nigeria. It is further argued that the provisions of section 8 of the *Legal Practitioners Act 2004* has not been modified or amended in any respect. They are extant laws which entitle a

¹⁸ This was equally the same decision in *Ogbuagu vs. Ogbuagu* [1981] N.C.L.R 690. ; *Ahmed vs. Ahmed* [2013] LPELR-21143 SC; and *Ebere & Others v. IMSU & Others* [2016] LPELR-40619[CA]

¹⁹ (2013) 15 NWLR (Part 1377) 274. Also, the case of *Ogbuagu vs. Ogbuagu* [1981] NCLR 690 which was decided on the same issue but under the 1979 Constitution

²⁰ *Ahmed vs Ahmed* (Supra) at p. 329, paras A-F. The earliest case on the jurisdiction of the Code of Conduct Tribunal was in *Nwankwo v Nwankwo* (1995) 30 LRCN where it was reiterated that the jurisdiction in respect of the assets declaration or matters affecting public officers in their official conduct is on the tribunal. A non - public officer is not subject to the jurisdiction of the Tribunal.

²¹ [2016] LPELR-40619[CA]

²² Ibid

legal practitioner to either act as a barrister or a solicitor as the case may be. This also extends to the right of the legal practitioner appear for his family members, relations or work pro bono and in relation to any person in any emergency. The legislative intent of the Fifth Schedule in paragraph 1 and 2 (b) of the 1999 Constitution is to prevent conflict of interest in line with assigned tasks. It is not to discourage a public officer from using his skills to improve his social and economic status.

Kana opined that the courts all the way to the Supreme Court have ruled that only the Code of Conduct Tribunal can interpret the provisions of the Code of Conduct for Public Officers⁶ and to legally determine when an individual is in breach of a code of conduct or not. He argued further that In the event of such a judicial interpretation of the section by the appropriate tribunal, the interpretation must still be carried out within the context and in the light of the fundamental and jurisprudential function of lecturers and researchers, this is what has not yet been undertaken, and for as long as it remains so, there is nothing preventing lecturers from offering expert services for either honorarium or fees during their leisure or free time, particularly where such service further and deepens the experience and competence of such a researcher and does not conflict directly or indirectly with their duties.²³

At this juncture, it is apposite to streamline the arguments for and against law lecturer's entitlement to practice law in line with the following approaches or theories being put forward in this paper:

a) The Practical Impact Theory

This theory postulates that the teaching of law must be from a well experienced and practice – oriented law teacher. It is better to draw this analogy. Assuming one of the Federal Government universities employs Mr. Yemi who graduated with a First Class Honours as a Graduate Assistant in the Faculty of Law. Mr. Yemi did his National Youth Service Corp in another Faculty of Law owned by a State Government and was assigned tutorials in Law of Evidence or Family Law. Having not been in the practice of law, his impact on the students of law will be limited compared to a law teacher of not less than 10 years of practice experience. Aside from this, the experience required for the teaching of law must be continuous. Recently, the Criminal Procedure Code is being jettisoned across states of the Federation for the Administration of Criminal Justice Act (ACJA). A Criminal Law lecturer in the University or Criminal Litigation lecturer at the Nigerian Law School who has never practised with the newly enacted ACJA may suffer from inadequacies in smoothly applying these provisions in the classroom while engaging his students.

Ojukwu opines that although the “Nigerian Law School is supposed to be a school of practical studies, but with no properly formulated objective it is impossible to determine if its outcomes are meeting any set goals.”²⁴ If the Nigerian Law School is supposed to be a school for vocational legal education, the lecturers in the Nigerian Law School ought to be exposed to the best of practical lawyering skills. Where this is not the case, there is bound to be repeated crisis and deficiency in legal education training in Nigeria.

b) The Beneficial Approach Theory

This theory postulates that whatever lawful benefits which may accrue to a law teacher who went the extra mile to practice law and seek for additional income should not be denied him. The pertinent question to ask is whether the law teacher is well remunerated under the Consolidated Universities Academic Salary Scale (CONUASS) in Nigeria? We do not think so. It is a settled fact that inflation in Nigeria is on a progressive increase while demand for periodic upward review of the welfare package of academics in our tertiary institutions by the Academic Staff Union of Universities (ASUU) is always a herculean task before it can be granted. It is our view that rendering of consultancy services within the spare time of a law teacher and enriching his knowledge base owing to exposure to legal practice is not a threat to the system as long as the employer and the students are not short-changed.

In situations where the employer such as a few State Government and private universities owes salaries and allowances for over three months, an alternate source of income such as farming or rendering of consultancy services may be justifiable reasons why the law lecturers should be allowed to explore private practice. Kana is of the view that it will spell doom for the future of education the day lecturers are prevented from promoting their knowledge and product of their ideas.²⁵

²³ Kana A., All Teachers can Practice and act as Consultants for Free or for a Fee: The Case of Law Practice by Law Teachers. Being a Paper presented at the 2015 Annual General Conference of the Nigerian Bar Association (NBA) on the 25th of August, 2015 in the International Conference Centre, Abuja. Page 5

²⁴ Ojukwu Ernest, “Crisis of Legal Education in Nigeria: Need for Reform or attitudinal Change? in Niki Tobi ed. A living Judicial Legend: Essays in Honour of Justice Karibi Whyte (CON) (Lagos, Florence & Lambard, 2006) p. 249 at 252.

²⁵ Ibid. Kana

c) The Clinical Legal Education Approach Theory

The current trend across the globe for legal education is a robust engagement in clinical legal education. The law teacher allows and exposes his students to learning by practice. Issues and question will arise from field work engagement of the students which will compel a law teacher to hone his skills to properly guide and demystify theories studied in the classroom. Simulations, moot and mock trials, client interview and counselling, individual or group presentations and other do it yourself approaches is what the students of law in the 21st century needs to fully appreciate the application of legal theories and concepts. The law teacher himself must be well grounded in the use of clinical legal education before he ventures into teaching his student. Since we cannot allow a person who has not flown an aircraft before to teach a student in the aviation school how to fly one, it is not an encouraging trend to discourage or ban a law teacher who teaches the practice of law from practising same.

Having examined the theories above in favour of allowing law lecturers to practise law, it is important we consider the rationale for discouraging or disallowing law lecturers from the practice of law. They are as follows:

a) The Conflict of Interest Theory

A law teacher is in a contract of employment with his employer. This contract of employment will have its terms and conditions which must not be breached by both parties in order to avoid dire consequences. This theory argues that it is practically impossible to serve two masters effectively and efficiently. It is further argued that more time will be devoted to the contract of employment and that the task of the law teacher is so demanding to allow for any extra hour to engage in any form of private practice of law or render any consultancy service. It is opined that the students demand availability of the law teacher for advisory and other allied services in the course of their studies. The argument of this theory flows from paragraph 1 of the Fifth Schedule to the 1999 Constitution which provides that a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.

Kana argued that the provision of Paragraph 2b of the 5th Schedule to the 1999 constitution is general and makes no reference to teachers or lecturers, but just public officers. He continued: while we do not intend to belabour the contention of whether lecturers in public institutions are public officers or not, the actual question begging for answers is the true purpose of the paragraph, and if it is aimed at regular civil servants who may want to run businesses simultaneously with their governmental duties at the risk of conflict of interest; as against the lecturers' standard duty to the community which entails knowledge gathering and dissemination to the immediate classroom/students and the world at large.²⁶ Simple attempt at application of Paragraph 2b of the Code of Conduct in its literal form exposes a clear challenge of ambiguity. The determination of whether such strictly professional engagement and consultancy by teachers regarded as "outside work" by British academics can be regarded as business. Without prior amendment of Rule 030425 of the Public Service Rules 2009, the Federal Government of Nigeria recently banned medical practitioners in the various health institutions across the country from engaging in private practice except farming.²⁷

b) The Compatibility and Marriage Theory

The compatibility and marriage approach postulates that it is not compatible to teaching of law to engage in active legal practice at the same time. The theory argues that teaching is a vocation on its own and it entails rigorous research. It is further postulated that it is not a marriage of convenience to engage in law practice and full time teaching of law at the same time. Questions abound over the propriety of having to teach and practice law at the same time makes up for the tag of 'jack of all trades' who masters none. This perspective views the situation from the standpoint that venturing into law practice by law teachers makes them lose concentration in one aspect. It is either the legal research of academics suffers for it, or the legal practice is compromised.²⁸ The situation of practice in Nigeria without specialties even makes the matter worse. Law

²⁶Abdulkarim A. Kana, All Teachers can Practice and act as Consultants for Free or for a Fee: The Case of Law Practice by Law Teachers. Being a Paper presented at the 2015 Annual General Conference of the Nigerian Bar Association (NBA) on the 25th of August, 2015 in the International Conference Centre, Abuja. Page 5

²⁷ Vanguard Newspapers of 12 October, 2018. Why FG banned medical doctors from private practice. Read more at: <https://www.vanguardngr.com/2017/10/fg-bans-medical-doctors-private-practice/>. Accessed 24 October, 2018. Also available via Daily Trust. 'FG to Bar Doctors from Private Practice. Available via <https://www.dailytrust.com.ng/fg-to-bar-doctors-from-private-practice.html>. Accessed 24 October, 2018

²⁸James S. T. & AbdulHafeez, Prohibition of Private Practice by Law Teachers in Nigeria: A Critique.

lecturers may end up practicing as a general legal practitioner in almost all aspects of the law.²⁹ Ojukwu opined thus:

I have compared books and articles written by teachers in practice and teachers of the classroom only and there is a deep gully between the two. The classroom teachers are simply not real in most cases. I have been in active legal practice as a law teacher at the university for 15 years and I know the difference.³⁰

In the above context, Ojukwu is of the view that the gully between the teachers in active practice and the teachers in the classroom should be filled with a combination of both for the betterment of the system. Oba believed Active legal practice does not easily admit of other diversions nor does also, an active academic career. The law teacher who is also fully engaged in private practice will not progress beyond being at best, a “local champion”. There is or should be a world of difference between papers by lawyers in the academics and those by lawyers engaged in active practice. Papers by academics are supposed to be more incisive, analytical, comprehensive and original than those by practicing lawyers who are supposed to draw more on their experience, which experience are also raw materials for those in the academics.³¹ Oba argued further that There is no doubt that experience in active legal practice is useful for a law teacher, but combining active legal practice with law teaching is not the answer. Law teachers who are also engaged in active practice are just like part-time law teachers with all the attendant disadvantages but on full pay.³²

According to Obamuyi, the Regulated and Other Professions (Private Practice Prohibition) Act 1990³³ defines public officer or servant as any person who holds office in the public service of the Federation or a State within the meaning of the Constitution of the Federal Republic of Nigeria.³⁴ Accordingly, section 1(1-2) of the Act, states that “. . . no public officer shall, as from the commencement of this Act, engage in or continue to engage in private practice in or in connection with any scheduled profession, whether or not after his normal hours of work or on work free days, for money or money’s worth . . .” However, some categories of officers in professional callings, like the teaching profession, were exempted from the provisions of the Act, and can now operate their profession in line with laid down rules.³⁵

It should be noted that Universities and other tertiary institutions are excluded from the operations of the Civil Service Rules and the Public Service Rules. Rule 030425 of the Public Service Rules 2009 after the 1999 constitution has come into effect provides that:

In accordance with the provisions of the Regulated and other Professions Private Practice Prohibition Act, (Cap.390) Part II, no officer shall engage in private practice. However, exemptions shall be granted to private Medical Practitioners and Law Lecturers in the Universities.³⁶

Although it is trite that where this Rule conflicts with any provision of the 1999 constitution, such Rule shall be null and void to the extent of its inconsistency.³⁷ The distinction to be drawn is that the Rule did not state that Medical Practitioners and Law Lecturers shall manage and run private businesses but shall engage in private practice. There seems to be no conflict between the provisions of the 5th Schedule to the 1999 constitution on the Code of Conduct for Public Officers in this respect and the exemption granted by the Public Service Rules 2009. Lecturers and research consultants in tertiary institutions by their job descriptions, except where a specific term and condition of service stipulates limitations, are usually advised to continue to acquire practical experience for the good of the students they teach, and for the growth and development of knowledge, for societal development.

c) Occupational Stress Theory

This theory postulates that the poor working condition of a law teacher makes him work under stress. Poor electricity supply to offices and lecture halls is still a recurring decimal in the day to day activities of a law

²⁹ Z Adangor 'Globalization of Legal Practice in Nigeria: Challenges and Obstacles' *Journal of Law, Policy and Globalization* [2016] Vol 51. p. 4

³⁰ The interview by Gbolahan Gbadamosi captioned “Advertisement by legal practitioners may soon be legalised in Nigeria says Ojukwu” *The Guardian*, Tuesday, July 20, 2004 at p. 77.

³¹ Abdulmumini A. Oba, *Towards Regaining Learning and Correcting Leanings in the Legal Profession in Nigeria. CALS Review of Nigerian Law and Practice* Vol. 1 (1) 2007. Page 9

³² See the disadvantages of part-time law teaching in William Twining, *Academic Law and Legal Development* (Taylor Lectures, 1975) (Lagos: University of Lagos, 1976) at pp. 53 - 56.

³³ Cap 390 Laws of the Federation of Nigeria

³⁴ Obamuyi T. M., *Combining Entrepreneurship with Public Service in Nigeria: Effects on Occupational Stress, Family Relations, and Organizational Commitment*. Available at www.cscanada.org accessed 15 June 2018. *Canadian Social Science* Vol. 7, No. 4, 2011, pp. 219-229 at p. 2

³⁵ *Ibid*

³⁶ Rule 030425 of the Public Service Rules 2009

³⁷ Section 1 (3) of the 1999 constitution

teacher in Nigeria. Constant travels to workplace owing to far distance from their residence to the campus and multi campus system where a law teacher teaching in a Faculty of Law may also travel outside the campus to another campus of the school to teach students taking a module of Law contribute to increase in stress. In the same vein, there are law lecturers on sabbatical leave, visiting lecturers to other universities and acting as external examiner and resource persons to colloquia, conferences, seminars, supervision of postgraduate work and longevity of time spent in personal research and family obligations and pressure are activities which we are sure endangers the life of the law lecturer. The occupational stress approach is of the view that adding legal practice to the above activities will be too demanding and stressful for the wellbeing of law lecturers.

II. CONCLUSION

The law teacher is expectedly a legal practitioner and entitled to practise law having being called to the Nigerian Bar. There is nothing in the RPC to restrict him from the practise of law as a law lecturer except where the law lecturer intends to appear for his employer. This is definitely not acceptable by the clear letters of Rule 8 of the Rules of Professional Conduct for Legal Practitioners 2007. The privileges and restrictions which apply to other categories of legal practice and legal practitioners apply to the law teacher. This paper concludes by emphasizing that restricting law lecturers to the classroom without practical exposure is dangerous for legal education in Nigeria. It is a case of a surgeon teaching surgery students from the textbooks without application of the textbook to live cases. The casualties would be the consumers of the surgical services and the society at large. This paper advocates an amendment of the 1999 constitution towards preserving the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) Order (No. 2) of 1992. The paper urges reforms towards the Beneficial Impact theory as canvassed and elaborated above. A class action is suggested by the Nigerian Association of Law Teacher (NALT) at the Code of Conduct tribunal in case anyone still doubts the legality of the right of law lecturers to private practice in Nigeria.

Omoniyi Bukola Akinola "Practical Perspectives Towards The Right Of Law Lecturers To Private Practice In Nigeria "IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 11, 2018, pp. 32-41.