LEGAL METHOD

A Teaching Version — Prof Samba Online University of Nigeria

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IMPRINT

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Formats: this book stands as a PDF on the university's Law Library page, with DOCX and Markdown masters held in the university's records.

How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — What Law Is and Where It Is Found

Legal method is the craft of finding, reading, and using law. This first chapter maps the sources: legislation, case law, custom, and the materials that persuade.

The sources of law

Law is found in legislation — the constitution, statutes, and subordinate legislation; in case law — the decisions of the courts; in customary law — the living law of communities, proved and applied under its conditions; and in received law — the common law, equity, and statutes of general application inherited from the colonial connection, so far as they remain in force. The lawyer's first skill is knowing which shelf a question lives on.

Beneath the binding sources stand the persuasive: textbooks, journals, foreign decisions, and the opinions of jurists — authority by quality, not by office.

Legislation's family

The constitution stands supreme; Acts and Laws of the legislatures follow; subsidiary legislation — regulations, rules, orders, bye-laws — fills the details under delegated power. Each has its citation, its commencement, and its amendment history, and the method student learns to trace a provision's current form through amendments as a surveyor traces a boundary.

A statute is read in its current, amended state — never in the form a textbook happened to print.

Case law and precedent in outline

Courts decide cases, and their decisions bind beyond the parties through the doctrine of precedent: the ratio decidendi — the reason necessary to the decision — binds courts below in the hierarchy; obiter dicta persuade. The doctrine, and the techniques of distinguishing and overruling, are the subject of the chapter ahead.

Customary law is proved as fact — by evidence of the custom — until it has been so often proved that courts notice it judicially; it must not be repugnant to natural justice, equity, and good conscience, nor incompatible with statute, to be enforced.

The lawyer's map

Method begins with classification: is this a statute question, a precedent question, a custom question, or a mixture? The classification chooses the tools. Most real problems are mixtures, and the craft lies in keeping each element under its own rules while the answer is assembled.

Worked example

A dispute turns on a market custom and a statute that seems to touch the same ground. The method student does not ask which is 'stronger' in the abstract: the custom is proved by evidence and tested against the repugnancy and incompatibility rules; the statute is read in its current form; if the statute, properly construed, covers the ground incompatibly, the statute prevails — and if it does not, the custom governs its own field. Sources are not rivals; they are territories with a surveyed border.

Discussion questions

• Name the four sources and the persuasive materials.

• Why must a statute be read in its current amended state?

• How is customary law proved, and what two tests must it pass?

Chapter summary

In this chapter you have studied the following ground. Legal method is the craft of finding, reading, and using law. On the sources of law: Law is found in legislation — the constitution, statutes, and subordinate legislation; in case law — the decisions of the courts; in customary law — the living law of communities, proved and applied under its conditions; and in received law — the common law, equity, and statutes of general application inherited from the colonial connection, so far as they remain in force. On legislation's family: The constitution stands supreme; Acts and Laws of the legislatures follow; subsidiary legislation — regulations, rules, orders, bye-laws — fills the details under delegated power. On case law and precedent in outline: Courts decide cases, and their decisions bind beyond the parties through the doctrine of precedent: the ratio decidendi — the reason necessary to the decision — binds courts below in the hierarchy; obiter dicta persuade. On the lawyer's map: Method begins with classification: is this a statute question, a precedent question, a custom question, or a mixture? The classification chooses the tools. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Reading Statutes

Statutes are the lawyer's daily bread, and they are read by rules. This chapter teaches the interpretation approaches, the internal and external aids, and the presumptions.

The approaches

The literal rule reads words in their ordinary meaning; the golden rule modifies the literal where it produces absurdity the legislature cannot have intended; the mischief rule asks what defect the statute was passed to cure and construes it to suppress the mischief; the purposive approach, ascendant in modern courts, reads the text in light of its purpose from the start. The approaches are a spectrum of one craft: fidelity to the enacted meaning.

The constitution is read by its own canons — generously, as a living document, its provisions not cut down by the narrowness suitable to a taxing statute.

Internal and external aids

Internal aids live in the Act itself: the long title, the preamble, headings, marginal notes, interpretation sections, schedules, and punctuation in modern practice. External aids stand outside: dictionaries, the prior law, reports that preceded the Act, and — cautiously and by jurisdiction's rules — parliamentary debates.

The interpretation Act of the jurisdiction supplies standing definitions and rules — words importing the masculine include the feminine, the computation of time, the effect of repeal — and the method student reads it early, for it is the statutes' own dictionary.

Presumptions

The courts presume the legislature did not intend to alter the common law beyond what it says, to legislate retrospectively in penal or burdensome matters, to oust the courts' jurisdiction without plain words, to bind the state without naming it, or to legislate contrary to the state's international obligations. Each presumption yields to clear words; each protects a value the courts will not see taken by implication.

Ejusdem generis — general words following particulars take the particulars' colour — and its cousins, noscitur a sociis and expressio unius, are the working canons of the list and the phrase.

Reading a section

The discipline: read the whole Act's structure first, then the section; identify its operative words, its definitions, its provisos and exceptions; ask what each word adds — for the legislature is presumed to waste none; then apply to the facts, testing the result against the statute's purpose and the presumptions. A section read alone is a section half-read.

Worked example

A bye-law penalises 'vehicles in the market square', and a trader wheels a barrow of goods through it. The canons go to work: 'vehicles' in its context among cars and lorries in the preamble's mischief — motor traffic endangering the market — and the purposive reading together suggest the barrow, a vehicle in the dictionary's widest sense, stands outside the mischief the law was made to cure. The answer is argued from text, context, and purpose together, not from the dictionary alone.

Discussion questions

• Name the four interpretation approaches.

• What does ejusdem generis do?

• Why is a section read within the whole Act, never alone?

Chapter summary

In this chapter you have studied the following ground. Statutes are the lawyer's daily bread, and they are read by rules. On the approaches: The literal rule reads words in their ordinary meaning; the golden rule modifies the literal where it produces absurdity the legislature cannot have intended; the mischief rule asks what defect the statute was passed to cure and construes it to suppress the mischief; the purposive approach, ascendant in modern courts, reads the text in light of its purpose from the start. On internal and external aids: Internal aids live in the Act itself: the long title, the preamble, headings, marginal notes, interpretation sections, schedules, and punctuation in modern practice. On presumptions: The courts presume the legislature did not intend to alter the common law beyond what it says, to legislate retrospectively in penal or burdensome matters, to oust the courts' jurisdiction without plain words, to bind the state without naming it, or to legislate contrary to the state's international obligations. On reading a section: The discipline: read the whole Act's structure first, then the section; identify its operative words, its definitions, its provisos and exceptions; ask what each word adds — for the legislature is presumed to waste none; then apply to the facts, testing the result against the statute's purpose and the presumptions. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Reading Cases — Precedent at Work

The common law's engine is precedent. This chapter teaches how to find a case's ratio, how to distinguish, and how the hierarchy binds — the skill the fourth video of this university demonstrates.

Ratio and obiter

The ratio decidendi is the proposition of law necessary to the decision on the material facts. Everything else — illustrations, wanderings, propositions on facts not material — is obiter dictum: persuasive in proportion to the court's eminence and the reasoning's quality, binding on no one. Finding the ratio is the case-reader's central skill: state the material facts, state the decision, and the reason connecting them, no wider than the connection requires.

Where several judges give several reasons, the ratio is the narrowest ground supporting the decision on which the majority's reasoning converges — an exercise the appellate reader performs with care.

The hierarchy

The supreme court binds all below; the appeal court binds the high courts and, ordinarily, itself, subject to its stated exceptions; the high court binds the courts beneath it. A lower court faced with binding authority follows it, however wrong it thinks it — the hierarchy's discipline is what makes precedent law rather than literature. Departure belongs to the court that made the rule or stands above it.

The supreme court may depart from its own previous decisions when right to do so — sparingly, for certainty is itself a legal value, and the litigants of yesterday ordered their affairs by yesterday's law.

Distinguishing and other techniques

A precedent is escaped lawfully by distinguishing: showing a material factual difference that takes the case outside the ratio. It is weakened by showing it was decided per incuriam — in ignorance of binding authority or statute — a plea received with reluctance. It is confined by later courts reading its ratio narrowly, and extended by reading it broadly; advocacy lives in these readings.

The case report is the precedent's vehicle: headnote, facts, arguments, judgments. The headnote is the reporter's summary — a finding aid, never the authority; the judgment's own words govern.

How to read a judgment

Read in order: the facts as found, the procedural history, the issues, the reasoning, the order. Note the court, the date, and the bench — authority has an address. Extract the ratio in one sentence; test it against a changed fact; file the case under the doctrine it governs. This is the read-watch-practise of the university's fourth lesson, in print.

Worked example

A precedent holds a market association liable for its porters' negligence 'in the market's operation'. A new case concerns the same association's clerk defrauding a trader in a private side deal. Distinguishing is the road: the material facts — course of the enterprise's operation — differ, the ratio does not reach the side deal, and the case is decided on its own principles. The precedent is honoured precisely by not stretching it.

Discussion questions

• Define ratio decidendi and obiter dictum.

• Why must a lower court follow authority it thinks wrong?

• What does per incuriam mean, and how is the plea received?

Chapter summary

In this chapter you have studied the following ground. The common law's engine is precedent. This chapter teaches how to find a case's ratio, how to distinguish, and how the hierarchy binds — the skill the fourth video of this university demonstrates. On ratio and obiter: The ratio decidendi is the proposition of law necessary to the decision on the material facts. On the hierarchy: The supreme court binds all below; the appeal court binds the high courts and, ordinarily, itself, subject to its stated exceptions; the high court binds the courts beneath it. On distinguishing and other techniques: A precedent is escaped lawfully by distinguishing: showing a material factual difference that takes the case outside the ratio. On how to read a judgment: Read in order: the facts as found, the procedural history, the issues, the reasoning, the order. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Legal Reasoning

Lawyers reason by deduction from rules, by induction from cases, and above all by analogy. This chapter teaches the forms of legal reasoning and their honest limits.

Deduction, induction, analogy

Deduction applies a rule to facts within it — the statute's syllogism. Induction gathers a principle from a line of cases. Analogy — the common law's heartbeat — argues that because the decided case and the present case share the material features, they should share the outcome. Every analogy is vulnerable at the same joint: are the shared features the material ones?

Policy reasoning stands behind the forms: courts consider consequences, coherence with neighbouring doctrine, and the administration of justice. The honest advocate names the policy; the dishonest one dresses preference as logic, and good tribunals can tell.

Argument's structure

A legal argument states the issue, the governing rule, the application to the facts, the answer to the other side's best point, and the conclusion. The order matters: an argument that answers objections before making its case has built its house on its neighbour's land.

Authorities are marshalled by weight: binding before persuasive, recent and higher before old and lower, the ratio before the dictum. A single binding authority outweighs a shelf of commentary.

Fallacies to avoid

The fallacies of the law student are a known family: begging the question — assuming the classification in dispute; the false analogy —

resting on immaterial resemblance; the appeal to the dictionary — treating a word's range as its legal meaning; and the floodgates shout — invoking consequences without showing they follow. Name them in others' arguments; purge them from your own.

Certainty should be claimed only where the law has it. The mark of the trained lawyer is knowing which questions are open, and saying so with the arguments marshalled on both sides.

Thinking like a lawyer

The habit beneath the techniques: separate fact from law, issue from issue, the decided from the arguable; read the instrument before the commentary; ask who bears the burden and what the remedy is. These reflexes, practised on every problem, are legal method itself — the subject of this book is not information but formation.

Worked example

Counsel argues that because a bicycle was held a 'carriage' under an old statute, a drone is an 'aircraft' under a new one 'by analogy'. The tribunal probes the joint: the material features that made the bicycle a carriage — the statute's road-safety purpose and the bicycle's road use — are absent in the drone's case under a statute aimed at passenger aviation. The analogy fails where analogies should be tested: at the materiality of the resemblance.

Discussion questions

• Name the three forms of legal reasoning.

• Where is every analogy vulnerable?

• What is the honest advocate's treatment of policy?

Chapter summary

In this chapter you have studied the following ground. Lawyers reason by deduction from rules, by induction from cases, and above all by analogy. On deduction, induction, analogy: Deduction applies a rule to facts within it — the statute's syllogism. On argument's structure: A legal argument states the issue, the governing rule, the application to the facts, the answer to the other side's best point, and the conclusion. On fallacies to avoid: The fallacies of the law student are a known family: begging the question — assuming the classification in dispute; the false analogy — resting on immaterial resemblance; the appeal to the dictionary — treating a word's range as its legal meaning; and the floodgates shout — invoking consequences without showing they follow. On thinking like a lawyer: The habit beneath the techniques: separate fact from law, issue from issue, the decided from the arguable; read the instrument before the commentary; ask who bears the burden and what the remedy is. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — Legal Writing

Law is written before it is spoken: opinions, letters, pleadings, briefs, judgments. This chapter teaches the writing craft — structure, plainness, and the ethics of citation.

Structure first

Every legal document answers its reader's questions in the reader's order: What is this about? What do you conclude? Why? What follows? The opinion letter, the pleading, and the brief differ in dress, not in skeleton. Write the skeleton first — headings that state conclusions, not topics — and the document is half-written.

Facts are stated before law, chronologically, without argument smuggled in as adjectives. A fact section that argues has failed at both tasks.

Plainness

The plain style is the professional style: short sentences where the matter is hard, defined terms used consistently, the active voice, and no word that a precise shorter word can replace. Legalese — 'hereinafter', 'the said', the doubled synonyms of frightened drafting — survives from an age that was paid by the word; the modern lawyer is paid for clarity.

Precision is not the enemy of plainness but its substance: 'on or before 5 June' is both plainer and more precise than 'in due course'.

Pleadings and briefs in outline

Pleadings state the material facts each party will prove — not the evidence, not the law — so that the issues stand defined before trial; a pleading that wanders produces a trial that wanders. The brief of

argument marshals authorities by weight, states the opposing case fairly, and asks for defined orders. Fairness to the opposing case is not generosity; it is the credibility on which persuasion runs.

Citation follows the jurisdiction's style: case name, year, report, court — accurately, for a miscited authority, discovered, damages more than the point it supported.

The ethics of writing

The writer of legal documents owes duties: not to misstate an authority, not to suppress binding authority known to him in the submissions where candour is owed, not to put words in a witness's mouth in a draft statement. The pen is under the same oath as the tongue.

Worked example

A draft opinion opens with three pages of the client's virtues and reaches the question on page four. The rewrite inverts it: the question in the first line, the short answer beneath it, the facts in a page, the analysis after. The client reads the same law and finally understands it — structure is not cosmetics; it is the advice becoming usable.

Discussion questions

• What order does every legal document follow?

• Why is fairness to the opposing case a persuasive asset?

• What does the pleader state — facts, evidence, or law?

Chapter summary

In this chapter you have studied the following ground. Law is written before it is spoken: opinions, letters, pleadings, briefs, judgments. On structure first: Every legal document answers its reader's questions in

the reader's order: What is this about? What do you conclude? Why? What follows? The opinion letter, the pleading, and the brief differ in dress, not in skeleton. On plainness: The plain style is the professional style: short sentences where the matter is hard, defined terms used consistently, the active voice, and no word that a precise shorter word can replace. On pleadings and briefs in outline: Pleadings state the material facts each party will prove — not the evidence, not the law — so that the issues stand defined before trial; a pleading that wanders produces a trial that wanders. On the ethics of writing: The writer of legal documents owes duties: not to misstate an authority, not to suppress binding authority known to him in the submissions where candour is owed, not to put words in a witness's mouth in a draft statement. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Legal Research

Research finds the law that reasoning uses. This chapter teaches the research road: from the problem to the current, verified authority.

The research sequence

Begin with the problem's classification; go to a textbook or encyclopaedia for the map; then to the primary sources — the statute in current form, the cases in their reports; then verify currency: amendments, appeals, overrulings. Research that ends at the textbook is a summary of someone else's research, with their date upon it.

The citator's discipline — checking a case's subsequent history — is research's conscience: an overruled case cited is a wound self-inflicted.

Sources in the library and online

Law reports, statute volumes, journals, and databases each have their finding aids: indexes, tables of cases, digests. The researcher learns each tool's coverage and date, for a search is only as complete as its tool. This university's Law Library stands as the first shelf; the courts' and legislatures' own publications stand behind it.

Foreign and comparative materials — the wing of this library devoted to Britain and America — are used with the method of the comparison studies: to illuminate, never to substitute for, the home authority.

Recording research

Keep the research trail: the question, the sources searched, the authorities found, the currency checks, with dates. The trail lets the work be verified, updated, and handed over — and in practice it is the difference between a library and a pile.

A research memorandum states the question, the short answer, the authorities by weight, and the open points. It is the opinion in embryo, and it follows the writing chapter's structure.

Worked example

A student finds a perfect case for his proposition in a journal article — decided nine years ago. Currency checking shows the case was reversed on appeal the following year, on the very point. The article was accurate when written; the law has moved. Research ends not when an answer is found, but when the answer is verified as still the law.

Discussion questions

• What is the research sequence?

• Why is the citator's check called research's conscience?

• What does a research memorandum contain?

Chapter summary

In this chapter you have studied the following ground. Research finds the law that reasoning uses. On the research sequence: Begin with the problem's classification; go to a textbook or encyclopaedia for the map; then to the primary sources — the statute in current form, the cases in their reports; then verify currency: amendments, appeals, overrulings. On sources in the library and online: Law reports, statute volumes, journals, and databases each have their finding aids: indexes, tables of cases, digests. On recording research: Keep the research trail: the question, the sources searched, the authorities found, the currency checks, with dates. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 7 — Revision: The Method Map

The closing chapter rebuilds the craft: sources, statutes, cases, reasoning, writing, research — one method in six movements.

The whole in one view

Confronted with any legal problem: classify it among the sources; find the governing materials; read them by their own rules — the statute by interpretation, the case by ratio, the custom by proof; reason by deduction, induction, and tested analogy; and write the answer in the reader's order, verified as current. That sequence, become reflex, is the lawyer.

Revise by practice, not by rereading: take one problem a day through the whole sequence, in writing, against the clock. Method is a muscle.

The student's formation

This book's companions complete the formation: the Nigerian Legal System for the map of institutions, the subject volumes for their doctrines, the Study Skills volume for the student's own management. Method without subjects is an empty hand; subjects without method are an unsharpened blade.

Go now to the sources themselves. The craft is learned at the statute's page and the judgment's paragraph, and nowhere else.

Worked example

A final exercise runs the whole sequence in miniature: a landlord's notice is challenged. Classification: statute and case law. The statute's current text is found and construed; the leading case's ratio extracted; analogy tested against a neighbour case; the answer written question-first and verified against the latest amendment. Six

movements, one page — method at working speed.

Discussion questions

• Recite the six movements of the method.

• Why is method practised, not reread?

• What do method and the subject volumes give each other?

Chapter summary

In this chapter you have studied the following ground. The closing chapter rebuilds the craft: sources, statutes, cases, reasoning, writing, research — one method in six movements. On the whole in one view: Confronted with any legal problem: classify it among the sources; find the governing materials; read them by their own rules — the statute by interpretation, the case by ratio, the custom by proof; reason by deduction, induction, and tested analogy; and write the answer in the reader's order, verified as current. On the student's formation: This book's companions complete the formation: the Nigerian Legal System for the map of institutions, the subject volumes for their doctrines, the Study Skills volume for the student's own management. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — What Law Is and Where It Is Found

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The sources of law; Legislation's family; Case law and precedent in outline; The lawyer's map. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A dispute turns on a market custom and a statute that seems to touch the same ground. The method student does not ask which is 'stronger' in the abstract: the custom is proved by e..."

Problem 2 — Reading Statutes

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The approaches; Internal and external aids; Presumptions; Reading a section. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A bye-law penalises 'vehicles in the market square', and a trader wheels a barrow of goods through it. The canons go to work: 'vehicles' in its context among cars and lorries in th..."

Problem 3 — Reading Cases — Precedent at Work

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Ratio and obiter; The hierarchy; Distinguishing and other techniques; How to read a judgment. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A precedent holds a market association liable for its porters' negligence 'in the market's operation'. A new case concerns the same association's clerk defrauding a trader in a pri..."

Problem 4 — Legal Reasoning

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Deduction, induction, analogy; Argument's structure; Fallacies to avoid; Thinking like a lawyer. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "Counsel argues that because a bicycle was held a 'carriage' under an old statute, a drone is an 'aircraft' under a new one 'by analogy'. The tribunal probes the joint: the material..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

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