

ARE FULL-TIME LAW TEACHERS ENDANGERED SPECIES?

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Abstract

Full-time law teachers have received several attacks and criticisms from members of other professions or what may be technically called “scheduled professions”. Any movement a law teacher makes outside his official routine work, will attract comments even from amongst his colleagues that he has gone to court or other private practice. A full-time law teacher who is denied the privilege of testing his ingenuous opinions, arguments, submissions or postulations will be miserable and in our view will retard scholarship and growth of our legal jurisprudence. Prohibiting a law teacher from engaging or continuing to engage in the practice of law is like a scientist barred from his medical laboratory. He becomes not only miserable, uncomfortable, but also unfulfilled and a fortiori, an endangered specie. In this paper, the writer shall examine the intractable circumstances, a law teacher finds himself and how the law has intervened following the enactment of the Regulated and other Professions (Private Practice Prohibition) (law teachers, Exemption) No. 2 order 1992 which insulated and exempted law lecturers from the quagmire. This mental exercise is aimed at improving the quality of legal education and training of lawyers in Nigeria by the efficient and judicious combination of the two: teaching and practice of law.

With the enactment and coming into effect of the Regulated and other professions (private Practice Prohibition) Act’ on the 12th day of December, 1984, public officers were expressly prohibited from engaging in or continuing to engage in private practice or in connection with any scheduled profession. The scheduled professions or calling are Architecture, Accountancy, Dental Technology, Engineering, Estate Management, Law, Medical Technology, Medicine and Dentistry, Midwifery and Nursing, Pharmacy, Psiotherapy, Quantity Surveying, Radiography, Surveying, Teaching, and Veterinary Medicine.

Under section 1(2) of the Act, “private practice” in relation to any scheduled profession connotes the rendering of or offering to any other person (not being the employer or any other person normally entitled in the course of his official duties to receive such services) of any service relative to the profession concerned whether or not after his normal hours of work or on work free days, for money or money’s worth or for any other valuable consideration. This includes in particular (a) the performance of services of all descriptions relating to the profession concerned including the rendering of advice or provision of consultancy services connected with or relating to the profession concerned; (b) the issue of certificates, the 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 other form of association with any other person (whether or not himself a public officer) for the provision of any of the services or matters earlier enumerated. It shall however be lawful for the professional concerned, apart from during the course of his normal official duties to render any of the services to himself, or to any person in an emergency, or to any person (whether corporate or unincorporated) authorized generally or specially by the government to receive the services of that professional for the time being or, where a period is specified, for that specified period. The professional concerned is also authorized to render service free of charge to any member of his family, charitable organizations or professional associations which he is a member or to any other person or group of persons purely on humanitarian grounds.

A “public officer” within the purview of the Act means any person who holds office in the public services of the federation or a state within the meaning of the constitution of the Federal Republic of Nigeria. On the other hand, a professional” means any practitioner of or any person entitled to practice any scheduled profession under the Act provided that “professional concerned” shall be constructed accordingly. Criminal sanctions are prescribed for any public officer who engages in or continues to engage in private practice in contravention of the provisions of the Act. Thus, such a person is guilty of an offence and liable upon conviction for the first offence to a fine of ₦2000.00 or imprisonment for one year. Upon conviction for the second offence, he shall be liable to a fine of ₦5,00.00 or imprisonment for two years while conviction for a third offence attracts a three year imprisonment term without option of a fine and such a public officer convicted for a third offence shall have his name and particulars removed from the register or struck off the roll by the appropriate disciplinary body or tribunal or where there is no such tribunal, by the relevant professional association as the case may be. The Federal High Court, High Court of a State or the High Court of the Federal Capital Territory Abuja are concurrently vested with the original jurisdiction to try offences under the Act. No appeal shall lie from a decision of the

court under this Act but the Registrar of the court which has awarded the conviction shall within fifteen days after delivery of such judgment forward certified copy thereof to the President for confirmation or disallowance. An order of the president confirming or disallowing a conviction shall have effect according to its tenor.

The trite provisions of the Regulated and other professions (Private Practice Prohibition) Act, 1984 has been discussed extensively above to show that a public officer engaged in the practice of law will expressly subject etc her oppressive, draconian and counter - productive provisions. More relatedly to the topic under discussion, public officers engaged in the practice of law as full-time law lecturers were subjected to the provisions. The law prohibiting practitioners of law engaged in full time law lecturing from engaging or continuing in private practice has always been considered as an unwarranted inhibition insulating the teaching of law from rapid and sustained growth. It was a pitfall that adversely affected the quality of law teaching and legal practice as it denied the full time law teacher the hallowed privilege of testing his ingenious opinions, arguments or postulations in the courts of law. The court of law affords the advocate the opportunity of subjecting his views to the superiority of legal reasoning and force of logic which in the end helps him to acquire forensic legal expertise and knowledge. With the provision of the Act, the law teacher prohibited from engaging in or continuing in the practice of law is like a scientist barred from his laboratory. He is miserable and an endangered species. The question of exemption of law teachers from the suffocating clutches of the Act was one that drew unprecedented controversy.

Iloegbune, a distinguished advocate and learned academic, had in 1988 specifically examined the arguments in support and opposition of the grant of an exemption to law teachers. He stated that arguments in favour of banning law teachers from engaging in the practice of law have proceeded mainly from ignorance and motives of professional jealousy and greed. It is argued that it is unfair to allow law teachers to have benefit of both worlds, earning salaries from their teaching and at the same time competing with their colleagues in full-time practice for briefs. Again, it is argued that if law teachers engage in law practice, their work and students will suffer neglect. Allaying the fears of these critics, Iloegbune, respectfully but forcefully dismissed the arguments as begging the question. He submitted that the real issue is whether empirical experience which law practice engenders will enhance or reduce the quality of teaching. In answer, he affirmed that there is no doubt that it will enhance the quality as the practicing law teacher is enabled to garnish his teaching with his own court room experience. In so doing he teaches the students the "Living and functional" law of the land and not obsolete and over ruled principles of law. The possibility of an extra-income arising from such practice, or of such practice resulting in competition with full-time practitioners are both side issues. As to extra - income, you cannot stop a

man eating from licking his mouth for fall outs. If law practice results in increased income for the law teacher, this is good for him for it not only makes him stay longer in the job, but also will induce others to join him. As to competition with full-time practitioners, the truth is that a legal practitioner who fears competition thereby declares himself incompetent and undeserving of any protection. It may be added in support of Iloegbune's view above that engagement in private practice does not automatically guarantee that the practitioner will earn income. It still requires diligent application based on the sharp intellectual and professional, instincts and skills of the advocate. The Act prohibiting law teachers from engaging or continuing in private practice was described as oppressive, retrogressive and counter-productive. It was therefore urged in the strongest terms by the members of Nigerian Association of Law Teachers that law teachers should be allowed to engage in private practice.

Exemption from Private Practice Prohibition

By the Regulated and other professions (Private Practice Prohibition) (Law Lecturers Exemption) (No. 2) order 1992 made in the exercise of the powers conferred on the President and Commander - in chief of the Armed Forces, Federal Republic of Nigeria under section 1 (5) of the Regulated and other professions (Private Practice Prohibition) Act 1984, it is provided that, with effect from the 14th day of September 1992, a public officer engaged in the practice of law as a full time law lecturer is exempted from the provisions of the Regulated and other professions (private Practice Prohibition) Act.

In the light of the foregoing, it is now settled that public officers engaged in the practice of law as full-time lecturers in the Universities,, Polytechnic, Nigerian Law School, and allied academic and research institutes are insulated from the erst while provisions of the Act prohibiting them from engaging or continuing to engage in private practice. The Impressive specified and clarity of the Regulated and other Professions (Private practice prohibition) (Law Lectures Exemption) (No. 2) order, 1992 must be perceived in the main as the actualization of the cumulative effort of the members of the Nigerian Association of Law Teachers to gain a deserved exemption. Without fear of re-opening the argument as to the merits or demerits of the exemption, it is my humble view that the need for the prohibition never arose in the first place and the current exemption from the prohibition amounts to righting a wrong decision.

The pertinent question at this juncture is, to what extent can the exemption from private practice prohibition granted law teachers be utilized to ensure improved quality of legal education and training in Nigeria. Put differently, in what significant ways can the Bench and the Bar help to ensure that the dearth of qualified and experienced law teachers in our legal education system is stemmed? The writer does not possess the

propensity to provide panacea to these questions. However, a humble attempt will be made in the concluding part of this work to suggest methods of evolving answers to the nagging questions in the firm belief that the legislator and policy maker may find them useful and valuable.

Conclusion

The legal profession has always been a beleaguered profession sneeringly, Ignorantly and gibingly referred to as a “Society of men bred up from their youth in the art of proving by words multiplied for the purpose, that white is black and black is white according as they are paid”. Whatever the critical attitude of the public there is no substitute for the legal profession whose history is synonymous with the history of man’s search for a good legally ordered development.

The law teacher is the *fons at origo* of the legal profession. He has the onerous and compelling responsibility of ensuring that only persons of proven ability and integrity are admitted to practice at the bar. Professor Glanville Williams stipulates that ideally, a person seeking to become a law teacher at top level should not only be outstandingly able but also have some practical experience of the profession and some published or approval writings to demonstrate his ability in research. But few applicants have all these points to recommend them, so most law teachers are appointed without having had practical experience. In Nigeria today, because of the refusal of most experienced lawyers to join, as well as absence of a law or regulation compelling them to join, legal education is virtually left in the hands of new wigs and neophyte master degree holders.

There is an ongoing debate about the adequacy of training offered to law students within the various law faculties and at the Nigerian law school. It has been opined that the legal profession is being flooded with mediocre and ignoramuses” Leading to the general outcry about post call poor performances by present day lawyers. There is also the view that the products of Nigeria’s system of legal education are more or less legal technicians in that by training they had been proficient only in the arid principles of law. Indeed justice P.K. Nwokedi, Chief Judge of Anambra State (as he then was) at the 27th Annual Conference on Nigerian Association of law Teachers had this to say –

The Legal profession and especially the Bench is disturbed at the prevailing standards in the profession. The facilities for the production of lawyers in almost all the Universities are not adequate; and yet even from these, hundreds of law graduates are turned out every year. Some of our Universities have even mounted evening courses where already

tired, exhausted and hungry pupils listen to complication and subtle legal concepts and distinctions.

The Learned chief judge (as he then was) profoundly admitted that the law teacher in any legal system lays the foundation of the legal education of members of the profession at all levels and acts as watcher on the development of the law both inside and outside the courts. He exhorted law Teachers thus:

You bear a special responsibility to the nation as regards the quality of lawyers you produce. The legal profession depends on you to ensure that the best quality materials are produced by you. Malleable materials are presented to you to be turned into legal practitioners. The quality of lawyers you produce determine the quality of legal practice and now of the lower bench. Those lawyers in due course mature to be appointed High Court Judges and Justices of the Court of Appeal and Supreme Court. It is a carry over of the quality materials, we who were trained overseas like most of you were, are becoming an endangered species of the legal profession. The future belongs to your products.

For how long more are we going to wait before we perceive the danger signal? The future of legal education in Nigeria is threatened. The goose that lays the golden egg may soon die off. A conscious effort must therefore be made to ensure that the learning and teaching of law will be both vertical and horizontal covering knowledge and education in fields other than law – A lawyer ought to receive round education so that he ceases to be insular and provincial. In this day and age when a great deal of emphasis is placed on the multi-disciplinary approach to intellectual pursuits, members of the legal profession and in particular those gaddled with the responsibility of instructing potential entrants into the profession should be encouraged to cultivate a deep and abiding interest in the affairs of man in society. An ignorant judge on the bench is a tragedy in that ignorance of the judged is the calamity of the innocent. By necessary extension one may add that ignorance of the law teacher is the bane of the law student in particular and legal profession at large.

To ensure that the dignity of the law teacher resides on firmer foundations of honesty, intelligence, sound knowledge of the law and rules of procedure, it is suggested that the bench and the bar must be involved in the training and grooming of law students. To this end, a regulation must be made compelling these category of senior, Learned and experienced jurists, advocates and distinguished members of the bench and the bar to take compulsory teaching assignments in the law faculties namely: Senior Advocates of Nigeria, Serving and retired justices of the Supreme Court and Court of Appeal as well as judges of the High Court; Attorneys - General of the

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Federation and States; Directors of public prosecution; Directors of civil Litigation. This may appear a tall order. But it may not be out of place to demand that these accomplished gurus should do something to preserve the profession that unarguably did so much for them. Furthermore, they are in a better position to guard against the admission to the profession candidates who are not fit and proper to be lawyers as the ethics, norms, values and nuance of the legal profession reside in their bowels.

Autonomy of the various law faculties in the University as well as increased funding of same are also related issues. There is no gainsaying the fact that a modern well equipped law library is a sine qua for legal education. The interaction in learning is infinite. Too much learning never makes a lawyer mad.

It is believed that the exemption granted law teachers will be maximally harnessed to improve the quality of legal education in Nigeria. Experienced lawyers are therefore encouraged to join and redeem the thinning clan of teachers, more especially now Nigeria law school is decentralized as we have branches at Enugu, Kano, Adamawa, Bayelsa and Abuja. Yet they function as one with Abuja as the administrative Headquarters. All these aimed at improving the quality of legal education and training of lawyers in Nigeria.

References

Section 1(1) of the Regulated and other professions (Private Practices and Provision Act) 1984.

See Column A of the schedule to the 1984 Act made under section 1 (4) as amended from time to time

Section 1(3) (a), (b) and (c). Regulated and other professions (Private Practices and Provision Act) 1984.

Section 1(4) Regulated and other professions (Private Practices and Provision Act) 1984.

See Section 5 Regulated and other professions (Private Practices and Provision Act) 1984.

Section 2(2) (a), (b) and (c) Regulated and other professions (Private Practices and Provision Act) 1984.

Section 2(3) Regulated and other professions (Private Practices and Provision Act) 1984.

Section 3(1) Regulated and other professions (Private Practices and Provision Act) 1984.

Section 3(2) Regulated and other professions (Private Practices and Provision Act) 1984.

Section 3(3). Please note that under section 4 of the Act the question whether any provision of chapter iv of the constitution of the Federal Republic of Nigeria is being or would be contravened by anything done in pursuance of the Act shall not be enquired into by any court of law. This obnoxious clause ousting the jurisdiction of the court has provoked considerable criticism from eminent jurists, lawyers and academic commentators. See generally Dr. Olu Onogoruwa, "The Judiciary in the third Republic", being the text of a paper presented at the 1991 Annual Conference of the Nigeria Bar Association held at Owerri, Imo State 26th – 31st August page 2.

Dr Charles Iloegbune, (1989). President NALT, being an address delivered at the opening session of the 27th Annual conference of the Nigerian Association of Law

Teachers held at Enugu on April 10th 1989, published in the proceedings of the 27th Annual Conference of the N.A.L.T. page 3.

The Nigerian Association of Law Teachers founded over thirty three years ago is the umbrella organ of law teachers drawn from the faculties of law in the various Universities in Nigeria, Nigerian Law School, Nigerian Law Reform Commission, Nigeria Institute of Advanced Legal Studies and other allied institutions.

For an engaging discussion of the portmanteau phrase “The Bench and the Bar” see Professor D. A. Ijalaye, (1991). The legal profession and the third Republic, Being an Address delivered on the occasion of the 1991 Annual Bar Conference held at Owerri, Imo State from Monday 26th to Friday 30th August 1991 page 2.

Credited to Dean Swift, The great satirist, and quoted by Dr. Olu Onagoruwa, “The judiciary in the third Republic.

Dr. Olu Onagoruwa, The Judiciary, in the third Republic.

Professor D. A. Ijalaya, “The legal profession and the third Republic.

Glanville Williams, (1982), Learning the law Stevens & sons, London, page 219.

Professor D.A. Ijalaya. The problem is not limited to Nigeria. For instance a legal correspondent of the Times, disquieted by reports from judges and senior lawyers that standards among young barristers were declining, attended Magistrate’s Courts and Crown Courts in the London area in order to find out for himself. He reported as follows I was appalled. It was not just that so many young barristers seemed incapable of forming a grammatically correct English sentence (and I am not talking about “Immigrant” lawyers) ... I was present on two occasions when counsel managed to forget the crime with his client had been charged... “see generally Glanville Williams, also B.A. Ibiroko’s (former director Nigerian law school) Interview on the subject in law fair, May 28 – June 11, 1990.

Being an Address delivered by Hon. Justice P.K. Nwokedi, on the occasion of the opening ceremony of the 27th Annual Conference of the N.A.L.T., held at Enugu on 10th April 1989. Page 11. See generally Professor D.A. Ijalaye.

See generally Professor D.A. Ijalaye.

An address by Kayode Eso J.S.C. (In his capacity as the chairman Body of Benchers) to the lawyers called to the Bar on 11th May, 1989. cited with approval by Professor D.A. Ijalaye.

Please note that by the Rules made by the legal practitioners privileges committee the rank of Senior Advocate of Nigeria may in exceptional circumstances be conferred on academic members of the profession if the applicant has distinguished himself through teaching and/or published works by making substantial contributions in the field of law and jurisprudence. See generally The Legal practitioners Act 1979 as amended.