

ALL TEACHERS CAN PRACTICE AND ACT AS CONSULTANTS FOR FREE OR FOR A FEE:

THE CASE OF LAW PRACTICE BY LAW TEACHERS¹

¹ The actual title assigned to me is “The Case for Private Practice by Law Teachers”. I substituted Private practice with “Law Practice” because private practice may apply to other professions but law practice is more definitive and describes better what law teachers do.

☒ Abdulkarim A. Kana Ph.D, is the Ag. Dean, Faculty of Law, Nasarawa State University, Keffi and the President Designate of the Nigerian Association of Law Teachers (NALT).

Abdulkarim A. Kana Ph.D*

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.

INTRODUCTION

The National Executive Council (NEC) of the Nigerian Bar Association (NBA) was recently moved by the Executives (Exco) to adopt the newly introduced stamps and seals for legal practitioners in Nigeria pursuant to the Rule 10 of the Rules of Professional Conduct (RPC) which states as follows;

10. ----- (1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department or ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.

(2) For the purpose of this rule, “legal documents” shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, 2

memoranda, reports, legal opinions or any similar documents.

(3) If, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub-rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.²

² Rule 10 of the Rules of Professional Conduct For Legal Practitioners 2007.

³ A cursory study of the entire RPC and Legal Practitioners' Act and particularly Rule 10 of RPC reveals no such classification. It only empowers the NBA to approve the stamp and seal before use. The law does not confer the power to produce the Stamp and Seals on the NBA, but merely power to approve.

The leadership of NBA also convinced the Honourable Chief Justice of Nigeria (CJN) to issue a notice to all courts in Nigeria not to recognize any process not bearing the approved stamp and seal. The impression created to the NBA congress, the NEC members, and also the Honourable CJN was that aside from been a requirement of the Rules of Professional Conduct and the Legal Practitioners Act; introducing the stamp and seal will forestall further illegal practice of law by quacks and impostors.

However, the seals introduced were varied/ classified by colours green for "private practitioners", black for government lawyers and in-house solicitors, and red for law teachers. The law did not provide for these classifications, it is clearly an innovation.³

For reasons best known to the NBA executive, a directive appears to have been issued to NBA branches not to issue green seals to law teachers but red seals, and also that the red seals are not to be used on regular court processes because as they concluded, law teachers are on 3

salaried employment and not entitled to practice. But one wonders why issue seals at all to law teachers whether red or any colour for that matter since the seals cannot be used for any stated purpose.

This needless debate generated by the present regime of the Nigerian Bar Association on the entitlement of Law Lecturers to practice law and act as consultants calls for a response in order not to mislead not only lawyers, but members of the general public on this rather simple matter that has long been put to rest in the course of our developmental process as a profession.

It is necessary to state clearly at this stage that the objective of this paper is to clarify the position that at the moment, there is no law precluding not only law lecturers from law practice and consultancy, but all lecturers whether in public or private institutions from acting as consultants in their respective areas of expertise either for free or for a fee.

THE PERSPECTIVE

The argument of the disentanglement of law teachers to practice or not to practice is premised on the following grounds.

1. The provisions of paragraph 2 (b) of the Code of Conduct for Public Officers in the 5th Schedule to the Constitution of the Federal Republic of Nigeria.
2. The provisions of Rule 8 of the Rules of Professional Conduct 2007.

With all due respect, these are false and faulty premises. It is a position taken without a proper appreciation of the law when superimposed on reality and public interest.

Paragraph 2 (b) of the Code of Conduct for Public Officers states;

...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...⁴

⁴ Par 2 (b) of the Code of Conduct for Public Officers 5th Schedule to the Constitution of the Federal Republic of Nigeria.

⁵ Rule 1 (2) of the Entitlement to practice as Barrister and Solicitors (Federal Officers) Order 1992 defines the categories of federal civil servants that can practice as Barristers and Solicitors.

The question is whether the above provision limits the traditionally and globally known duties and responsibilities of lecturers in salaried employment either in private or public institutions by precluding the lecturers and all other teachers from engaging in research and collecting a fees for it, offering consultancy service and collecting a fees for it, publishing a book and selling it, undertakings as resource persons and collecting fees for it, engaged as experts or scientist to carry out specialized research or discoveries for a fee while on permanent employment of a publicly owned educational institution.

The provision of Paragraph 2b is general and makes no reference to teachers or lecturers, but just public officers. 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 servants⁵ who may want to run businesses simultaneously with their governmental duties at the risk of conflict of 5

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. 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.

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.⁷

⁶ as enshrined in the 5th Schedule to the Constitution of Nigeria 1999 (as amended).

⁷ See the case of Ahmed v Ahmed (2013) LPELR-21143 (SC).

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 teachers and researchers, this is what has not yet been undertaken, and for as long as it remains so, there is nothing preventing teachers 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. The law couldn't have tempered with the age old basic tenets of the teaching profession which involves academic freedom of thought and dissemination of knowledge. It is absolutely and certainly not foreseeable that any competent tribunal will interpret the provision of Paragraph 2b of Code 6

of Conduct for Public Officers in a way that will constrain academic freedom and intellectual franchising which includes professional consultancy whether legal or other professional forms of consultancies. It will spell doom for the future of education the day lecturers are prevented from promoting their knowledge and product of their ideas.

Law Practice involves in a representative capacity appearing as an advocate or drawing up papers, pleadings or documents, or performing any act in connection with proceedings before a court or body, board, committee, commission or officers constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof. It is also part of a lawyers' vocation to render expert opinions on matters of law and to be engaged as a consultant by public or private bodies to render professional services including drafting of legal or administrative documents, statutes, regulations, etc.

Lecturers are not the traditional or regular civil servants whose further restrictions are provided for in the Civil Service Rules. It is not an accident that Universities and other tertiary institutions are excluded from the operations of the Civil Service Rules and the Public Service Rules.⁸ Lecturers and researchers in higher institutions by their job descriptions, except where a specific term and condition of service stipulates limitations, are encouraged to continue to acquire practical experience for the good of the students they teach, and for the growth and development of knowledge, for the betterment of the society.

⁸ See the Public Service Rules of Nigeria and the Civil Service Rule of most of the states in Nigeria. See also Entitlement to practice as Barrister and Solicitors (Federal Officers) Order 1992 defines the categories of federal civil servants that can practice as Barristers and Solicitors. 7

All disciplines like pure science, medicine, pharmacy, engineering, architecture, education, social science and other humanities have long come to this realization and as such, have ignored such literal interpretation of paragraph 2b of Code of Conduct for Public Officers because in fact, for lecturers in all these professions, there is a general consensus that such professional engagement whether for fees or free, enhances the practical experience and exposure of the lecturer placing the lecturer on a better form to deploy both the knowledge, skill and experience in the furtherance of knowledge of the respective discipline.

The law couldn't have prevented teachers from publishing their books and selling, accepting to act as resource persons or consultants in workshops, conferences, seminars and courts for a fee or honorarium; helping to draft legislation and court rules, and advisory services to government and private agencies for a fee, for as long as it does not conflict with their time and official interest; and does not contradict their terms and condition of service as employees, and the employment contract does not prevent such practical engagement.

Indeed, legal education is very much like medical education where students require hands-on exposure to knowledge. In the nearest future, faculties of law will be like teaching hospitals where the most serious cases are taken to be solved by the most skilled practitioners.

Paragraph 2b of the Code of Conduct for Public Officers clearly sets to prevent conflict of interest in business transactions where a civil servant is involved, and also clash of time between the time available to his duties and time he allocates to his private business. Most law lecturers do not engage in full time practice of law, but occasional cases arise that require 8

either their expertise or of some special interests, or to further their curiosity and expand their experience and frontiers of knowledge. The provision of the Code of Conduct for Public Officers is in line with the legal concept of public accountability; that Public officers shall remain honest and shall not misuse or misapply public funds. They are not expected to enrich themselves by the advantage of their access to public funds and authority.⁹ The lecturer by the nature of his job description has absolutely no access to public funds and authority, he only researches and teaches, and grooms future leaders and professionals. The idea behind the law couldn't have been to curtail the responsibilities of teachers to the communities.

⁹ See Ojukwu Ernest, Entitlement to Practice as a Legal Practitioner in Nigeria: A Comment. Published in Nigerian Law Review 1994 pg. 124 to 132.

¹⁰ See Section 31 Rules of Professional Conduct in the Legal Profession, Legal Practitioners Act Chapter 207 Laws of the Federation of Nigeria

The law never intended to classify law lecturers as civil servants or persons under salaried employments under the strict restrictions that an interpretation of paragraph 2b of Code of Conduct for Public Officers may present. Paragraph 31 (a) (iv) of the Rules of Professional Conduct 1967 and amended in 1979 exempts a lecturer in law from those restrictions where it states;

31. (a) In general a member of the Bar, whilst a servant or in salaried employments 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 salaried employment:

...(iv) employment as a lecturer in law.^{10 9}

The Rules of Professional Conduct 2007 however, removed completely any mention of the law teacher, and went on to expand the entitlements of other lawyers in salaried employment by restricting them from representing their employers only. It appears that such in-house lawyers or lawyers in salaried employment can represent other clients other than their employers except where their term of employment clearly prevents them.

In spite of this leverage to practice law, very few law teachers engage in practice. There are currently an estimated 60,000 lawyers in practice in Nigeria, only about 1000 are law teachers and just about 100 of the law teachers engage in court room advocacy but almost all law teachers engage in one form of legal consultancy or the other. Out of about One Hundred Thousand Lawyers trained and called to Nigerian Bar since the inception of legal profession in Nigeria, only about two thousand have been law teachers, constituting 2% percent of all lawyers, but the teachers account for more than 80% of law textbooks and legal academic resource in Nigeria today.

PRINCIPLE OF INTERPRETATION OF THE CONSTITUTION

The principle of interpretation dictates that public interest and policy is taken into consideration in interpretation of statutes. The Supreme Court in the case of BRONIK MOTORS LTD & ORS VS WEMA BANK LTD finds;

"A Constitution is a living document, (not just a statute) providing a frame work for the governance, of a country not only for now but for generations yet unborn.

In 10

construing it, undue regard must not be paid to merely technical rules for otherwise the objects of its provisions as well as the intention of the framers of the Constitution would be frustrated." Per Nnamani, JSC11

11 Bronik Motors Ltd & ors vs Wema Bank Ltd page | 1 electronic citation: ler[1983] sc 110/1982 other citations: (1983) 1 SCNLR 296; (1983) ANIR (272)
12 ELECTRONIC CITATION: LER [2012] SC 480/2011, SC-11/2012 CONSOLIDATED

¹³ Just Cause may have arising if the specific subject was subjected to deliberation and the framers had clearly intended to stop law teachers or other teachers from professional engagements. This is unlike the regular civil servants for whom the Par. 2b may have been directed at.

The Supreme Court reiterated its position on the need to take into consideration prevailing circumstances in interpretation of constitutional provisions. See the case of OCHEJA EMMANUEL DANGANA VS HON. ATTAI AIDOKO ALI USMAN & ORS¹² where the court states;

"In the interpretation of the constitution a judge should not only rely on the provisions of the constitution but also on our historical development as a people and the history before the constitution was enacted" PER RHODES-VIVOUR JSC
The history of teaching in tertiary institutions reveals that law teachers are known to engage in law practice. The Constitution could not have been enacted to among other things abrogate an age old tradition without a just cause¹³. The court will not interpret the provision of the Constitution without taking into consideration the prevailing realities and the objective of the law. Public policy and interest is also a factor. That is what is used to determine the intention of the framers of the Constitution. As earlier mentioned, the framers couldn't have intended to curb and curtail academic freedom to seek more practical and theoretical knowledge and skill, and the global best practice in the academia where lecturers merchandise knowledge and 11

intellectual property as a means of developing more knowledge, and encouraging themselves to continue to seek for ideas through intellectual breakthroughs and knowledge disseminations.

THE STAMP AND SEAL

It is obvious that the introduction of the stamp and seal was not aimed at quarks and impostors, but at teachers. It is discriminatory and contrary to the provisions of the constitution of Nigeria,¹⁴ and the Rules of Professional Conduct. Actually, it is more realistic and practicable to prevent unauthorised persons from practising by sending the list of those entitled to practise to the courts. This list can be updated every time names are added to or removed from the rolls. This is simple and straightforward.

¹⁴ The discrimination of law teachers by the introduction of the seals aimed at preventing teachers from law practice is contrary to Section 42 of the Constitution.

Rule 10 of the Rules of Professional Conduct states;

10. ----- (1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department or ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.

(2) For the purpose of this rule, "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, 12

memoranda, reports, legal opinions or any similar documents.

(3) If, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub-rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.

It is my humble view that nothing in this rule empowers the NBA to use the stamp and seal to disentitle a qualified legal practitioner to practice law. This position has been reinforced time without numbers in many cases like OGBUAGU V OGBUAGU¹⁵, OLOYO V ALEGBE¹⁶ AHMED V AHMED¹⁷,

¹⁵ (1981) 2 NCLR. 680

¹⁶ (1982) 3 NCLR. 346

¹⁷ (2013) LPELR-21143 (SC)

In OGBUAGU V OGBUAGU, Mr. Okey Achike was a full-time staff member of the University of Nigeria. He appeared for one of the parties in a divorce case petition and an objection was raised against his appearance that he had breached the Code of Conduct laid down in the Constitution among other similar provisions and subsequently that the court should not grant him a right of hearing.

In rejecting this objection, the Enugu High Court presided over by Araka C.J, reviewed in the laws and stated;

“...it is also my view that right of audience in court is governed by the Legal Practitioners Decree, 1975. The Code of Conduct for Public Officers apply solely to 13

public officers and has nothing whatsoever, in my view, to do with right of audience in court...

“...it is clearly my view that as long as the name of¹⁸ a legal practitioner remains on the roll it is wrong to deny him right of audience in court. The procedure for removal of names of legal practitioners from the roll or to deny a legal practitioner right of audience in court is clearly set out under the Legal Practitioner’s Decree, 1975. It is only for non-payment of the yearly practising fee that a court can only deny a legal practitioner whose name is on the roll the right of audience in Court. The Legal Practitioners Decree, 1975, does not provide for any other circumstances for denying a Legal Practitioner the right of audience in court apart from the direction of the disciplinary committee or by implication from the constitution, as a result of an Order by the Code of Conduct Tribunal.”

18 (1981) 2 NCLR. 680

In the same vein, in *OLOYO V ALEGBE*, the Benin High Court presided over by Justice Ogbobine had rejected a similar objection against the appearance in court (and while leading other lawyers) for himself as the speaker of the Bendel State House of Assembly. When objection was raised as to the appearance of Mr. Alegbe, the court held as follows;

“I do not think it is right for any court to disqualify a Legal Practitioner from practicing his profession, except on very sound grounds set out under the Legal Practitioner’s Act and other enabling law and regulations made to that effect”. 14

In the case of **AHMED V AHMED**¹⁹, the Supreme Court made exhaustive ruling on this, where the court clearly declared while declining the objection to disentitle a law lecturer from appearance as follows;

¹⁹ Supra

²⁰ Ahmed v Ahmed (Supra)

²¹ Supra

“...I do not see how any ordinary regular courts save the Tribunal established under the code could have assumed the power to interpret and enforce these provisions albeit in furtherance of its (i.e. the regular court)...”²⁰

The Supreme Court in the case of AHMED V AHMED²¹ affirmed that the paragraph 2b of the Code of Conduct for Public Officers 5th Schedule of the Constitution requires to be interpreted by the Code of Conduct Tribunal. Suffice to state that since the inception of the 1999 Constitution, lecturers including law teachers have engaged in academic consultancies and professional practices without objections from the Code of Conduct Bureau, that is mainly because of the clear understanding that the Bureau has of the intent of the framers of the constitution that Paragraph 2b is not intended to limit and curb the duties of university lecturers including law teachers; And the consequences that such interpretation would have on quality of teaching staff especially in our public universities if interpreted in a manner that tampers with the age old practice and tradition of teaching that requires practical experiences.

On the matter of qualification to practice by legal practitioners, I will agree wholly with the submissions of Professor Ernest Ojukwu SAN that; 15

“...the primary legislation that disqualifies any person whose name is on the roll from acting as Barrister and or Solicitor officially or in private are sections 8 (2) of the Legal Practitioner’s Act, which deals with payment of practicing fee and S. 256 (2) of the 1979 Constitution dealing with judicial officers...”²²

22 Ojukwu Ernest, Entitlement to Practice as a Legal Practitioner in Nigeria: A Comment. Published in Nigerian Law Review 1994 pg 124 to 132.

It is to be concluded therefore that once a person is called to Nigerian Bar, has paid his practicing fee, there should be nothing that stops him from professional practice except of course if some conditions of contract of service limits the individuals entitlement as in the case of the Civil Service Rules/ Public Service Rules or any contract of employment or terms of service as duly signed and agreed upon by the practitioner.

Rule 8 of the Rules of Professional Conduct²³ is also very clear, where it states; 8. ----- (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.

(2) A lawyer, whilst a servant or in a salaried employment, shall not prepare, sign, or frank pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinion or similar instruments or processes or file any such document **for his employer**.

(3) A director of a registered company shall not appear as an advocate in court 16

or judicial tribunal **for his company.**

(4) A lawyer in full-time salaried employment may represent **his employer** as an officer or agent in cases where the **employer** is permitted by law to appear by an officer or agent, and in such cases, the lawyer shall not wear robes.

(5) An officer in the Armed Forces who is a lawyer may discharge any duties devolving on him as such officer and may appear at a court martial as long as he does so in his capacity as an officer and not as a lawyer.²⁴

²⁴ All underlined emphasis mine.

The watchword here is **for his employer** which clearly qualifies the intention of the law preventing in-house lawyers from personally handling briefs of their employers. The objective of this provision is to guarantee source of employment for external counsel in order to check monopoly and a situation where companies would rather employ lawyers and place them on salary only to be handling their cases based on the fixed salary instead of paying professional fees. Nothing in this provision prevents law teachers/lecturers from law practice. Rule 7 of the Rules of Professional Conduct also helps us to understand and construe paragraph 2b of the Code of Conduct for public officers in that it describes what constitutes business especially for lawyers. The full text of the Rule is as follows;

7. ---- (1) Unless permitted by the General Council of the bar (hereinafter referred to as the “Bar Council”), a lawyer shall not practice as a legal practitioner at the same time as his practice any other profession. 17

(2) A lawyer shall not practice as a legal practitioner while personally engaged in ---

(a) the business of buying and selling commodities;

(b) the business of a commission agent;

(c) Such other trade or business which the Bar Council may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession.

(3) For the purpose of this rule, "trade or business" includes all forms of participation in any trade or business, but does not include-----

(a) Membership of the Board of Directors of a company which does not involve executive, administrative or clerical functions;

(b) being secretary of a company; or

(c) being a shareholder in a company.

I submit that law practice is not regarded as a business but simply as practice by legal practitioner, notwithstanding the fact that such practice may be a means of livelihood. That is the uniqueness of law or legal practice; the idea primarily is of community service and to aid justice as an officer of the court, solicitor and advocate of the Supreme Court of Nigeria, yet in the long run we get tremendous material benefit for our service, but that is not the main object of legal profession. For the law lecturer, legal practice is not considered a business, but an extension of his duties both as a researcher and as a sworn officer of the court. Legal Practice is not buying and selling, it is not running a business or any other profession and 18

stated by both the Code of Conduct for Public Officers and the Rules of Conduct for Legal Practitioners. Legal or law practice is not stated in any legislation as constituting a trade of buying and selling, or business.

It is disappointing that the leadership of the NBA that ought to protect the interest of its members by emphasizing the above positions in defense of the sanctity and integrity of legal education by protecting teachers; now embarks on a mission of destroying the profession by alienating the profession from law teachers and researchers. The same researchers are responsible for most of the books that forms the very foundation of our legal studies and our legal system. Preventing teachers from consultancy will kill the teaching profession and bring an end to quality research.

ON THE CONNECTION BETWEEN DECLINE IN QUALITY OF LEGAL EDUCATION AND LAW PRACTICE AND CONSULTANCY BY LAW TEACHERS.

Without commissioning any form of empirical study to verify the cause, some lawyers blame the decline in standard of legal education on teachers, and the fact that law teachers engage in law practice. Law Practice or legal consultancy includes courtroom advocacy and solicitor ship. If reference is made to active courtroom advocacy as responsible for the decline, there are estimated 70,000 lawyers in Nigeria, about 1000 are law teachers either on contract or on full time. Research among members of the Nigerian Association of Law Teachers (NALT) reveals that almost all law teachers engage in law practice, but less than 100 actually engage in active courtroom advocacy nationwide, some of them are part-time lecturers. In what way 19

would such small number impact on the quality of the product? As far as courtroom advocacy is concerned, less than 10% of full-time law teachers engage in it, while many of the law lecturers engage in solicitorship, arbitration, consultancy, consultative research and publishing at one point or the other for fees, while spending most of their time within the faculties.

The real problem and cause of decline in the quality of legal education lies in the infrastructure, systemic decay and dislocation, socio-economic factors, and failure of the NBA to key into the areas of acute need of reform of the entire legal education. The NBA shows absolute no concern with what happens in the faculties. While most faculties and colleges of law are struggling and battling to meet up with the basic minimum standards in the face of economic challenges; and law students groping for the littlest opportunities to expose themselves, while the teachers are practically baring the cost of their continuing legal education. The NBA has not established a single endowment to assist the faculties, students or even the staff. Other Bar Associations participate fully in the growth, reform and progress of legal education. For instance, the American Bar Association (ABA) sponsors moot court competitions and law clinics, and has started collaborating with law schools to establish a programme known as the Incubators and Residency Programme aimed at creating a cooling moment between law school and the real world for newly qualified lawyers who have nowhere to go, to gain experience and footing within one year and to be sponsored and encouraged to set up their individual practice. The NBA pays absolutely not attention to events occurring in our law faculties. 20

Law is a participant-oriented discipline. Even the staples of black letter²⁵ exegesis, legislation and cases, are products of practical decision making. The first Professor of English Law in London, Andrew Amos, a practicing barrister, tried to bring what was regarded as ‘the fire and thunder of litigation’ into the classroom.²⁶ In the United Kingdom, until the 1970s, almost all full-time law teachers were professionally qualified and some firsthand experience of legal practice. It was when law schools expanded and became more integrated into the university that the proportion of academic lawyers with this kind of background declined. ²⁷ However, the British law professors were able to open up other opportunities for contact with “the real world”.²⁸

²⁵ Black Letter is a legal doctrine which includes the basic principles of law generally accepted by courts and / or embodied in the statutes of a particular jurisdiction or generally accepted whether engrained in a statute or not.

²⁶ Twining W., *General Jurisprudence: Understanding Law From a Global Perspective*. (Cambridge University Press: 2009) Page 241.

²⁷ Academic lawyer is a term used to describe university teachers in active law practice. See *Black’s Law Dictionary 8th Edition*.

²⁸ Twining W., *op. cit.*

²⁹ Ibid.

The numbers of full-time law teachers with experience of private practice has eroded, but today in the United Kingdom most academic lawyers are involved in a wide range of practical activities, usually viewed as 'outside work'. Consultancies both in the UK and abroad, membership of law reform committees, include law commissions, voluntary involvement in law related NGOs, participation in human right activities that count as 'outside work', but which are encouraged by most universities. A survey of Who's Who entries of Law Fellows of the British Academy showed that about 80 per cent of reported involvement of all British full-time law Professors in such activities.^{29 21}

More important, is the finding that academic legal culture in common law countries has been closely tied to legal practice.³⁰ This is notwithstanding the allegation that many law professors spend too much time in practice. What takes precedence in the argument always is the practitioner's or consultant's perspective on 'the law in action' which is regarded as different from that of an empirical researcher who can fulfill his research needs through the many ways to contact 'the real world'. Yet, even the empirical researchers must at some point engage in active practice in order to pry into certain deeper understandings of practical concepts, or blindly rely on postulations of other practitioners.

³⁰ *Ibid*

³¹ See Warren R. Burger, "Some Further Reflections on the Problem of Adequacy of Trial Counsel," *Fordham Law Review* 49 (1980) cited in Karen B. Brown et al, *General Reports of the XVIIIth Congress of the International Academy of Comparative Law*.

³² Named after Robert MacCrate, the chair of an American Bar Association Committee charged with reform. The ABA's Report of the Task Force on Law Schools and Profession: *Narrowing the Gap*, published in 1992.

In the United States, the role of practice in legal education has been an issue for the legal academy since U.S. Supreme Court Chief Justice Warren Berger publically criticized law schools for failing to adequately prepare lawyers for practice.³¹ Several influential reports shifted the terrain of legal education towards a greater role for the teaching of practice, beginning with the “MacCrate Reports”³², The MacCrate Report recommended for a steady march towards the inclusion of requirements in law schools accreditation criteria dealing with the teaching of practice-skills, ethics and values-as recommended in the MacCrate Report, as well as standards dealing with the status of clinical teachers within the law schools hierarchy.³³ More recent reports promise to keep the role of practice central to the mission of 22

legal education in the United States.³⁴It is the same position in most parts of Europe where practice is found to be central to the teaching of law and as much as possible, where law teachers are encouraged to engage in some form of practice.

³⁴ Example of such reports are Carnegie Foundation, *Educating Lawyers*, Published in 2007, Clinical Legal Education Association (CLEA) report on *Best Practices for Legal Education: A Vision and a Road Map*, authored by Prof. Roy Stuckey and others, published in 2007.

³⁵ Karen B. Brown et al. *Op. cit.*

³⁶ Ibid.

In Netherland, law teaching is generally full-time, although private practice is permitted and common for many faculty members/ lecturers.³⁵ The position in Netherlands is the same with Germany, France and most of the other parts of Europe.³⁶

The pedagogy of teaching law globally seem to be arriving at a consensus that practice and practical teaching and learning either by deploying experience of the lecturer in teaching or clinical legal education and the concept of experiential learning is adopted as the best approach. This is so much unlike Nigeria where the Bar Association had launched a rude assault on lecturers instigating other lawyers to harass them whenever they appear in court.

In Nigeria, there has been a decline in the number of academic lawyers in the last fifteen years mainly due to contraction in the availability of viable briefs or fear of harassment by ignorant practitioners who finding that they have no serious response to issues in the matter before them, embark on direct attack on the law lecturer carrying out his legal duty on behalf of his client.

As the number of academic lawyers decline, so also is the decline in the standards of legal education in Nigeria.³⁷ Law lecturers who do nothing else but teach and hang around the 23

³⁷ The results of the Bar examinations in the last 15 years have shown an increase in failure rates except this year (2015 August call) when the proportion changed with slight rise in passes due to reforms undertaken in the law school. There are also complaints that the quality of practitioners is in the decline.

faculties now dominate teaching, and teaching our students mainly dead laws and obsolete principles. Unlike our predecessors, law lecturers do not engage in the development of the law through practice anymore, they just write articles and are promoted; complacent and contented with the meager salaries, or resort to academic extortion of students to meet up with their basic needs.

Nigerian public universities are the cheapest in the world for undergraduate programmes. In Nasarawa State University for instance, students still pay about N30,000.00 (Thirty Thousand Naira only) (150 Dollars) as annual school fees. Yet, the annual recurrent cost of running the Faculty of Law alone is above N100,000,000 (One Hundred Million Naira) if you factor in the capital requirement for the Faculty of Law of the University only, it will amount to above One Hundred and Fifty Million Naira. With about 300 students in the Faculty of Law of Nasarawa State University, Keffi, the faculty generates just about N10,000,000.00 (Ten Million Naira Only). The consequence is that for most teachers in our public universities, they need to fend for themselves when it comes to matters of academic and intellectual exposure, and continuing education.

Very few law teachers engage in law practice today, and are therefore very prominent in their respective jurisdictions. From our observation, some of these academic lawyers aside from active engagement in courtroom advocacy also make excellent professors. There are no cases of outright dereliction of duty by law teachers who completely abandon their responsibility as 24

teachers to permanently be in their chambers and courts because such a law teacher would be thrown out by the disciplinary structure of the University. The Nigerian Law School in response to employers' complaint few years ago, that most new wigs are not employable due to lack of basic skills, decided to overhaul its curriculum by adopting a more practical approach to teaching and also encouraging its staff to engage in law practice in order to acquire the skill necessary for them to teach practical law. This is in line with the position taken all over the world, the difference however, is other countries as mentioned in this paper, it is the Faculties that are adopting the methods and encouraging the lecturers to acquire the skills for onward deployment in tutoring. Students spend five years in the University basically studying theory in the discipline that is whole applied.

CONCLUSION

In as much as the law does not prevent law teachers from law practice. The imperative of encouraging law teachers to engage in practice for the good of research and students is apparent, it is the employers of these teachers that should device a code of ethics to regulate their practice and ration the time they can allocate to consultancy and their primary duties. The constitution never intended to prevent law teachers from legal practice. The global trend in legal education today is a departure from the theoretical methods, to adoption of more practical approach to teaching of law with the inculcation of the concept of clinical legal education. Clinical legal education was born as a result of the realization that most law teachers especially in US and Europe that do not engage in professional practice actually lack 25

the requisite practical skill to truly illustrate and demonstrate to their students the real workings of law. Clinical legal education is a fill gap measure that attempts to meet the desired result especially when compared to the practical skill of a real courtroom and field practitioner with field tested experience who takes own students on aspects of both substantive and procedural laws. The simulated clinical experience is nothing compared to an actual professional practice. For those who feel strongly that law teachers are having the best of two worlds; the conception is actuated by ignorance of the job description of teachers, and lack of understanding of the enormous task and responsibility carried by the teacher of breeding and training of future lawyers, leaders and constant improvement of academic literature needed for the growth of the profession and disciplines.