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TABLE OF CONTENTS

1.	A COMPARATIVE ANALYSIS OF THE OFFENCE OF ROBBERY UNDER THE MALAYSIAN CRIMINAL LAW AND THE ISLAMIC CRIMINAL LAW PERSPECTIVE *YUSUFIBRAHIMAROWOSAIYE	1-23
2.	REFORMING THE PUNITIVE POLICIES OF NIGERIA'S CRIME CONTROL REGIME AS A SOURCE OF NATIONAL GROWTH *MUIITARA. ETUDAIYE	24-47
3.	FAIR HEARING: IS IT A MAGIC WAND TO CURE ALL ILLS IN ALL MILIEUS? *L. A. AYINLA	48-65
4.	CIVIL JURISDICTION IN NIGERIAN COURTS: A JURISPRUDENTIAL SYNTHESIS OF SOME ISSUES. *A. T. SIEHU	66-88
5.	JOHN AUSTIN'S IMPERATIVE THEORY OF LAW AND ITS RELEVANCE TO THE NIGERIAN LEGAL ORDER *MOHAMMED E. ETUDAIYE	89-103
6.	THE CONVERGENCE, DIVERGENCE AND COMPLIMENTARITIES BETWEEN RELIGION, ETHICS AND THE LAW IN CRIME CONTROL. *JONATHAN EHIUSANI	104-116
7.	FEMINIST JURISPRUDENCE: THE ROLE OF WOMEN IN POLITICS IN NIGERIA *HAKEEM IJAIYA	117-126
8.	AL-MUDARABAH AS ONE OF THE ALTERNATIVES TO CONVENTIONAL BANKING SYSTEM *BASIIIRUA. OMIPIDAN	127-134
9.	JURISPRUDENTIAL ANALYSIS OF THE RIGHT OF PROPERTY *O. S. AFOLABI	135-141
10.	THE MORAL BURDEN OF THE NIGERIAN LAWYER IN THE WAR AGAINST CORRUPTION *DR. M. M. AKANBI	142-153
11.	RIGHTS OF WOMEN IN PARTICIPATORY DEMOCRACY: A JURISPRUDENTIAL APPROACH *ABDULRAHEEM NIMAH MODUPE	154-169
12.	DETERMINING THE BASIS OF A LEGAL ORDER: JOHN AUSTIN'S IMPERATIVE THEORY AND HANS KELDEN'S THEORY REVISITED *G. M. OLATOKUN	170-184
13.	CONSTITUTIONAL IMPEDIMENTS TO THE ENTHRONEMENT OF SHARŪ'AH IN NIGERIA *ABDULQADIR IBRAHIM ABIKAN	185-215
14.	JURIPRUDENTIAL VALUE OF INTERPRETATION OF STATUTES *FATIMA FUNSHO ABDULRAZAQ	215-247
15.	THE PRIVY DOCTRINE AND THIRD PARTY RELIANCE ON BILL OF LADING TERMS *ADEWUYI A. T.	248-260
16.	PRACTICE AND PROCEDURE OF THE ECOWAS COURT OF JUSTICE *MOJEED OLUJINMI A. ALABI	261-294

enforced under the present Nigerian constitution. The Sharī'ah itself will not favour any radical approach than has been taken by those states, working within the limit permissible by the constitution as it enforces, strictly, agreement and Oaths.¹¹² A way further in the struggle for a total entronement of Sharī'ah is Constitutional conference/Assembly where all the provisions of the Constitution offensive to Sharī'ah will be abrogated. Professor Ben Nwabueze has suggested that the insistence of the states in the adoption of Sharī'ah should be taken as that they have opted for a confederal arrangement or a complete break-up of the association. This option, it is submitted with respect, is less civilized than the method adopted by the Colonial Government, in amalgamating us in the first place.

¹¹² See Qur'an 4:33, 17:37, 23:9, 9:77, 13:20 and 16:91-92; the Prophet was also reported to have said: "No faith for whoever lacks trust and no religion for whoever keeps no covenant" Al-Bukhari; see also the preamble to the 1999 Constitution and the Oath of allegiance taken by the political office holders the duo of which bound the Nigerian Muslims to the contents of the Constitution, although the issue of the preamble, made by the "Supreme Ruling Council" of the successive military Government, binding the entire populace has been a subject of a heated controversy.

The University of Ilorin Law Journal

JURIPRUDENTIAL VALUE OF INTERPRETATION OF STATUTES

INTRODUCTION

FATIMA FUNSHO ABDULRAZAQ

Statutory interpretation is not an exercise in semantics; it is the ascertainment of the literal meaning of words. It should be guided and informed by the purpose of the provisions being interpreted.

Interpretation of statutes is a concept that has for centuries stirred up great interest in the legal system of nations, Nigeria not being an exception.

The essential rule is that words should generally be given the meaning which the normal speaker of the English language would understand them to bear in their context at the time when they were used. It would be difficult to over estimate the importance of this rule because vast majority of statutes never come before the court for interpretation.

The reference to lawyer and other experts is made advisedly because we would be deceiving ourselves if we were to imagine that some form of expertise is not necessary for comprehension of most statutes, the ordinary meaning rule is so as to allow for the application of a technical meaning when the words in questions are used in a statute dealing with a particular trade or business.

* *Fatimah Funsho Abdulrazaq, Lecturer, Department of Private and Property Law University of Ilorin.*

Based on the principle of separation of powers the primary duty of the courts has always been to interpret the law.

The National Assembly comprises of the senate and the representatives of the federal level and houses of assembly at the state level which enactment are known as laws:

By section 4 of the 1999 Constitution of the Federal Republic of Nigeria, the legislative power is vested in the National Assembly, while is vested in the house of assembly in case of each state of federation.

Legislation is one of the principal forms of law in the modern states. It is the function of the judiciary to interpret the statutes and law with minimum, if any, of direction from the legislature as to how the judges should set about this task.

It has often been stated that the court must limit itself to interpreting the law, for what the law ought to be is outside the function of the courts. Basically, the concern of the courts in their interpretative functions as it relates to the construction of statutes is to ascertain the intention of the legislature or the law maker.

In *FASAKIN V FASAKIN*¹ it was held that where the language used by the legislature or law giver is clear and explicit, the court must give effect to it because in such a situation the words of the statute speak the intention of legislature or law giver.

Interpretation of statutes has therefore become an inevitable subject in the development of law and jurisprudence. In fact, the interpretation of statutes has over the years by integration with other concepts, become an integral part of the concept of justice. This cannot come as a surprise as statutes can be said to be one of the pillars of the government. In the words of Lord Denning.

“In almost every case in which you have to advise, you will have to interpret a statute”^{1a}.

1. (1994) NWLR (p.340) 597

1a. Cross: *Statutory Interpretation*, Butterworth, London p. 12

It would therefore seem that statute law on a particular subject cannot conclusively be described as the law governing that subject until interpreted by the courts, which may come out with an interpretation that is miles away from what the statutes seems to be saying on the face of it.

It is the duty of the courts which have the ultimate responsibility of declaring and interpreting provisions of the Constitution to always bear in mind that the Constitution itself is a mechanism under which laws are to be made by the legislature and not merely an Act which declares what the court is².

Lawyers and the court in particular try to unravel the meaning of statutes, a task made difficult by the subtle relationship between law and language. Language as at date, is the main if not the only method by which communication can be effected and thought expressed, language itself has its problems. Its varied uses make intricate the use of words to achieve desired results in legislation private documents and so on. Words may have different meaning. Many words change their meanings in the course of time.

It has been accepted by all our courts that a broad and liberal spirit should prevail in interpreting the provisions of our Constitution although we have constantly to bear in mind the objects which such provisions were intended to serve. It is legitimate to look back at the history of the process.

It is also important to remember that the provision of the Constitution ought to be interpreted as a whole, that is, related sections ought to be interpreted together.

Statutory interpretation may then be described as the process by which the courts seek to unravel the meaning of a particular piece of legislation as couched in the language of the draftsman. It may immediately appear surprising that enactments ostensibly drafted so carefully and after much deliberations and consideration by supposed experts should need a process of unraveling. It may indeed be thought that whereas a layman in his written contracts, may be expected to express himself in loose or non-legal language

and consequently to expose these instruments to frequent examination by the courts; in the case of experts (i.e. legal draftsmen) whose work generally undergoes minute criticism in the legislature before a Bill becomes law. This would not happen, and a statute ought always to state clearly and beyond possibility of doubt exactly what is meant³.

The draftsman is rarely praised for his ingenuity to put the policy of the legislature, (which most of the time is in a confusing sequence) in clear language. Diplock LJ had this to say in emphasizing with the draftsmen in case of *School M.G Co. V.Clifton Ltd*⁴.

"It must be rare in these courts for attribute to be paid to parliamentary draftsmen particularly in connection with a statute dealing with landlord and tenants; but let honour be given where honour is due and should like to pay a tribute to the draftsman for the way in which he has integrated into the familiar legal concepts about leasehold interest in the Act of 1954 to accord to the tenant of business premises greater security of tenure that the common law provides".

In some other instances however the draftsmen has been rebuked for the way and manner statutory provisions have been couched. An instance is the comment of LORD DENNING M.R, in *daily V. Leeds corporation*⁵.

"I must say that rarely have I come across such a mass of obscurity, even in a statute" I cannot conceive how any ordinary person can be expected to understand it. So deep is the thicket that before the lands Tribunal, both of

2. Niki Tobi, *Sources of Nigeria Law* pg. 70 which brought the Constitution into being. The court is not be oblivious of the history of the law and legislation.
3. George Opeyemio kusanya, *The Interpretation of Statutes under the Nigerian Legal System*, 1974 (O.A.U.)
4. (1966) 3 W.L.RS75 at 550
5. (1964) IWLR 1218 at 122

the very experienced counsel lost their way. Each of them missed the last 20 words of subsection (8) of section 9 of the Act of 1959. So did this expert tribunal itself. I don not blame them for this. It might happen to anyone in this jungle."

HARMAN L. J. had this to say about the difficulty interpretation laid down at the doorstep of the draftsman.

"To reach a conclusion on this matter involved the court in wading through a monstrous legislative morass, staggering from store to store and ignoring the marsh gas exhaling from the forest of schedules lining the way on each side.

I regarded it at one time.. as a slough of despond through which the court would never drag its feet, but I have, by leaping from tussock to tussock as best I might eventually, pale and exhausted, reached the other side.....⁶".

In some instances the courts have almost gone beyond mere blame, to thinking about how the draftsman could be punished or made to pay for his contribution to ambiguity in statutes. In *Connaught Fur V. Cramas Properties Ltd.* SALMMOD L. J. had this to say⁷

"The draftsman has however, adopted a most slovenly mode of expression, he has used a form of words which is highly ambiguous so ambiguous that the minds of all judges who have considered this case, not least any one, have fluctuated again and again during the course of the argument. I can only sympathies with the parties to this litigation and echo the wish once expressed in similar circumstances by Scrutton L. J. merely, that it were possible to order the cost here and below to be paid out

6. *Ibid* p. 1224

7. (1985) 1. WLR 46 at 54

of the pocket of the draftsman who created this mess in which we now find ourselves"

Draftsmen however are not God, they cannot foresee the various aspects of that which they proceed to put into legal language. The law does not penalize draftsman no matter how perfunctory they are in drafting statutes, rather it provides principles to unravel the meaning of statutes⁸.

It is important to appreciate the natural dependence of the draftsmen and the courts when the letters are engaged in statutory interpretations. It is the courts duty to give effect to the intention of the legislature, but the main source of information on this matter is the wording of the statutes. If this is not clear there is obviously a risk that the courts will be unable to do their main work properly. On the other hand the draftsman will find it difficult to convey the intent of the legislature to the court unless he knows they will attach the same meaning to his words as that in which he employs them. Hence there is the need for a common standard of interpretation and there can hardly be a better standard than the ordinary, or, in appropriate cases, the technical meaning of English words.

In actual fact English words are in number of cases capable of diverse meanings and this often causes problem for the courts while interpreting a particular statute. That is why it is necessary to comply with certain rules provided for it in unraveling the meaning of words provided in the statutes.

According to Obilade⁹.

"If every word had only one meaning (the) task would have been very easy; words, however have no particular meaning except in a context".

It follows therefore that the context in which a word is set could change the meaning totally from its usage in another part of the

8. *Interpretation of Statutes*, A.D Badaki J. Kn published "1996"

9. *Obilade: The Nigerian Legal System*, Sweet and Maxwell, London p.56

then the courts and judges. In the words of CARDOZO.

"The point is rather that this power of interpretation must be lodged somewhere, and the custom of the Constitution has lodged it on the judges; it could hardly be lodged elsewhere insignificant is the power of innovation of any judge when compared with the bulk and pressure of the rules that edge him on every side. Innovate however, to some extent, he must for with the new condition there must be new rules! "

There is no doubt that one of the most important of judicial functions is the interpretation of statutes. However, the way and manner the courts are to set a about construing or interpreting statutes is the point where there is divergence of opinion and a lot of contradictions.

In the words of DENNING L.J in *Sca Fords, Ltd-V- Asher* ¹²

"A judge should ask himself how, if the maker of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must then do as they would have done. A judge must not alter the material of which the Act is woven but it can, would, should iron out the creases".

This seems to be a very liberal approach to the whole matter, however in the words of LORD REID in *Luke V. Inland Revenue Commissioners*. ¹³

"It is only where the words are absolutely incapable of construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail".

11 *Cardozo: The Method of Sociology-The Judge as a Legislature.*

12. (1949) 2KB 481, at p. 499

13. (1963) AC 557 at p. 576

The same judge in an earlier case had previously stated thus:

*"It is a cardinal principle applicable to all kinds of statute that may not for any reason attach to a statutory provision a meaning which the words cannot reasonably bear. If they are capable of more than one meaning, then you can choose between those meanings but beyond that you must not go"*¹⁴.

In the later case of *Mausal-V-Olius*¹⁵, LORD REID went further to buttress his point.

"They are not rules in the ordinary sense of having binding force. They are our servants, not our masters. They are aids to construction, presumptions or pointers. Not infrequently are rule points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular rule".

In fact, on one occasion, a judge may apply the literal "rule" and in the next case he may prefer the mischief rule and more of the cases will be assigned any reason for choosing one rather than another. In practice, it is often difficult to predict with any certainty which approach in a particular case. It is more precise to speak of principles of interpretation rather than rules precisely because rules must be applied on all occasions in which they are relevant.

THE RULES OF INTERPRETATION

Historically the courts have evolved some rules of interpretation for their guidance but the "golden rule is that there are no golden rule"¹⁶ notwithstanding the above, the common law judges adequately dealt with the matter. In *Liverpool Borough Bank V. Turner* (1860)

14. *Jones V. Direction of Public Prosecution* (1960) AC 635 at p. 668

15. (1975) AC 373 at p. 382.

16. *G.B Showl Man and superman*

Dr. G. F. & J 502 at 507 Lord Campbell L. C stated as follows:

"No universal rule can be laid down for the construction of statutes as to whether mandatory enactment shall be considered directory only or obligatory with an implied nullification of disobedience it is the duty of courts of justice to try to get the real intention of the legislature by carefully attending to the whole scope of the statute to be construed"

In the same vein in Howard V. Bodington (1987) 2 P. D. 203 at 211, Lord Penzance said:

"I believe, as far as any rule is concerned you cannot safely go further than that in each case you must look to the subject matter, consider the importance of the provision that has been disregarded and the relation of the provision to the general object intended to be secured by the Act and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory"

The rules are as laid down by common law judges are as follows:-

- a. The literal rule.
- b. The golden rule.
- c. The mischief rule.

THE LITERAL RULE

According to the literal rule, statutes are to be interpreted literally and words used in statutes are thus to be constructed in their usual grammatical sense¹⁷. It is immaterial that hardship might result in the interpretation.

The presumption in this rule is that the words in a statute are taken to bear the usual meaning as found in a dictionary and so once the

meaning is clear the judge is bound by it regardless of the absurdity.

TINDAL C. J. said¹⁸

"If the words of a statute in themselves precise and unambiguous, no more can be necessary than to expand those words in their natural and ordinary sense. The words themselves alone do in some cases best declare the intention of the law giver"

The literal rule or "plain meaning" as some refer to it assumes that the legislature means what they say. Since the purpose of interpretation of statutes is to discover the intention of parliament the literal approach argues that what the legislature says is what it means.

In the words of LORD RUSSELL in *Altrincham Electric Supply Ltd V. Salc Urban District Council*¹⁹.

"In the present case, notwithstanding the alleged impossible results which are said to flow from the plain meaning of the words used ..., I find myself without any materials evidential of otherwise, which enable me to assert that the words in S. 58 cannot possibly have been intended by their authors to bear the only meaning which they naturally convey".

DIAS quoting Lord REI in *Inland Revenue Commissioners V Hinchey*²⁰ insisted that the intention of parliaments is to gleaned from the words used. In the words of LORD REI:

"What we must look for is the intention of parliament, and I also find it difficult to believe that parliament ever really intended

18. *Sussex Peerage claim* (1844) 11 CC & 85, 143

19. (1936) 154 L.T 379

20. (1960) AC 748, p. 769

the consequences which flow from the appellants contention. But we can only take the intention of parliament from the words which they have used in the Act.

LORD MERSEY was quite bold in his approach when he said:

*"It is a strong thing to read into an Act of parliament words which are not there and in the absence of clear necessity, it is a wrong thing to do"*²¹

It would seem that the literal rule does not take into consideration any absurdity or manifest injustice that it may cause when it is used. This view was adumbrated in *Abley V Dale*²² where it was stated

"If the precise words used are plain and unambiguous in our judgment we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case of an absurdity or manifest injustice"

One might quickly to state here what is the use of law if it is absurd or lead to injustice and this will surely show the defect. In the rule which is compounded by the fact that the judge is not to make the law but to interpret/declare it. To do otherwise will amount to a naked usurpation of legislative function.

Most critics have said the object of the legislature is frustrated by an undue insistence on the part of the courts in applying the statutory words to the particular case in a strict literal sense.

It is my humble submission that where an interpretation will lead to absurdity or manifest injustice, that cannot be the intention of the legislature and the court should be expected to mitigate the injustice"

21. *Thompson V Fould & Company* (1910) AC 409, 420

22. (1851) 11 C. B 378 at 391

"A judge should ask himself how, if the maker of the Act and themselves come across ruck in the texture of it, they would have straightened it out. He must then do as they would have done."²³

I cannot agree more with this position.

In *I.R.C. V Hinchy*²³ where the interpretation of S. 25 (3) of the English income tax Act 1952 which provides:

"A person who neglects or refuses to deliver or willfully makes delay in delivery a true and correct list, declaration or return which is required under the preceding parts of the chapter to deliver shall:

- a. if proceeded against by action in court be liable to the sum of £20 and triple the tax which he ought to be charged under this Act"

It is interesting to note that three judges arrived at different conclusions after applying the same literal rule.

However, it was decided in case of *Adejumo V The Military Government of Lagos State*,²⁴ the literal construction must be followed unless this would lead to absurdity and inconsistency with the provision of the state as a whole.

This was also adumbrated in the celebrated case of *Awolowo V. Minister of Internal Affairs*²⁵.

The words "counsel of his own choice" as entrenched in the 1960 Constitution constituted by the formidable hear-nut for Odo Udoma j to crack is it counsel of his own choice from among the members of the Nigerian bar as from members of the Bar or any of the common law countries?.

23. *Lord Denning in Seaford Court Estate V Asher* (1949) 2 k.b 481 at 490

24. (1960) A.C 748

25. (1972) 35c 45

"The necessities which gave birth to the Constitution, the controversies which preceded its formation and the conflicts of opinion which were settled by its adoption may properly be taken into view from the purpose of tracing to its source any particular provision of the Constitution in order thereby to be enabled to correctly interpret its meaning"

It is necessary to look at attitude of Supreme Court to the interpretation of constitutional provision in the case *P.D.PV. INEC*⁴⁵. it was held that for the Supreme Court to the interpretation.

In the case of *Awolowo V Usman Sark* what fell to be interpreted was the provision of section 21(5)(c) of the 1960 independence Constitution which entitled every person charged with a criminal offence to defend himself in person or by legal representatives of his own choice⁴⁶.

Section 13 of the immigration ordinance⁴⁷ also provided:

"Notwithstanding anything in this ordinance, contained, the minister of internal affairs may, in his absolute discretion, prohibit the entry into Nigeria of any person not being a native of Nigeria"

The Applicant had been charged with a criminal offence. He sought to be defended by one Mr. E.F.N Gratiaen who was then in England. Mr. Gratianen was a non-Nigerian though he was enrolled to practice in Nigeria and held in Traveling Certificate, the Respondent, in his absolute discretion as internal affairs minister, and acting in pursuant to powers granted him in that respect by section 13 above, refuse to allow Mr. Gratiaen entry, where upon the Appellant went to court challenging the ministers action and

45. (1999) *HNWLR* pg 626

46. (1966) *N.S.C.* 209

47. *Cap. 84 LFN* 1958

challenging his motive (s) UDO UDOMSJ (as he then was) as first instance held not the legal representative contemplated by section 21 (5) (c) must be a practitioner who was not only enrolled to practice in Nigeria, enter the country as of right According to his lordship:

"It is clear that any legal representative chosen must not be under a disability of any kind. He must be someone though outside Nigeria, can enter the country as of right and also someone enrolled to practice in Nigeria".

This lordship went further to hold that:

"The Constitution is a Nigerian Constitution meant for Nigerian as it only runs in Nigeria. The natural consequence of this is that the legal representative contemplated in section 12 (5) (c) ought to be someone in Nigeria not outside"

This holding of UDO UDOMAJ. was upheld by a full panel of the Supreme Court on ONYEMA, COKER, DIGBE JJ. SC in affirming the judgment their lordship added.

"As for question raised by counsel for the plaintiff whether the action of the minister in prohibiting the entry of Mr. Gratiaen was reasonable, we are of the view that this court is clearly not concerned with the resemblance and unreasonableness of the act of minister, and the question does not arise seeing that the minister had an absolute discretion to prohibit his entry. We think it necessary to add that section 21 (5) (c) of the Constitution can not be read in isolation, and this apparently was what counsel for the plaintiff as done. The right parted by this section is qualified by various consideration which we need the

constituted by some physical act involving a gratification actually in existence and going beyond a mere demand for such gratification.

In *Opeola V. Opadiran*⁵³ it was held inter-alia that the purpose for which a statute or provision therefore has been made its nature and the intention of the legislature in making it which is known as social policy or mischief rule can be taken into consideration by the court arriving at a decision whether a particular word or phrase is mandatory or directory.

CONCLUSION

Having considered in this paper all the canons of interpretation of statutes as used by court particularly Nigerian courts, it is obvious that one cannot with all strength at one's disposal say that court preference for a particular canon of interpretation against the other but the usual trend being that statutes are first considered on their literal meaning which is the safer way and when this could result to absurdity other rules might be applied to give it the effect intended by the legislature.

The judges, in exercising their interpretative jurisdiction wears, whichever cloak is convenient and help them to administer justice based on the words used by the legislature. As was said by Lord DUPARECQ.

"It must be remembered that the courts have laid down, indeed not rigid rules, but principles, which have been found afford some guidance when it is sought to ascertain intention of parliament"

The assenting need to seek the purpose of the enactment rather than be dogmatic about rules, in a character is purposioist posture,

PROFESSOR NWABUEZE stated thus:

"the interpretation of statutes should be guided not so much by what law makers may or may not have intended as by the purpose which the provision in question is designed to serve-the words should be interpreted in the light of the underlying purpose and rational of the provision.

*Interpretation of statutes is not an exercise in semantics, the ascertainment of the literal words, nor is it an exercise in mind reading, it would be guided and informed by the purpose of the provision being interpreted"*⁵⁴.

LORD DENNING with attendant opposition reiterated the purposivist position in the *NORTHERN V BRANET COUNCIL*⁵⁵ where he said:

"the literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the purposive approach in all cases now in the interpretation of statutes we adopt such a construction as will "promote the general legislative purpose" underlying the provision. It is no longer necessary for judges to write their hands and say!

"there is nothing we can do about it" whenever the strict interpretation of a statute gives rise to an absurd and an unjust situation, the judges can and should use their good sense to remedy it by reading words in, if necessary so as to do what the parliament

would have done, had they led the situation in mind"

It is humbly submitted that statutes should not be misinterpreted, whatever canon of interpretation one is using in a way that takes leave of common sense, it must be fair and equitable and be seen to meet the ends of justice, since- the proper role of a judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid the rule or even change it so as to do justice in the instant case before him.

There could be very many meanings coming up to Udo Udoma's mind. But he was nevertheless expected to base his decision on one. He said such counsel should be somebody that could enter Nigerian as of right.²⁶

However this rule of interpretation should be plain and unambiguous.

THE GOLDEN RULE

This rule aims at correcting obvious injustices that might be occasioned as a result of the use of literal rule of interpretation. Here the courts construe statute in such a way as to produce a reasonable result even though it involves departing from the meaning of the words used²⁶ to an absurd meaning where both are linguistically possible where a statutory provision in one interpretation brings about inequitable result, this may lead the court to seek another possible interpretation which will do better justice²⁷ and Parke B expanded the rule by saying that:

*"It is a very useful one in the construction of a statute to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that it is at variance with the intention of the legislature, to be collected from the statute itself or lead to any manifest absurdity or repugnance in which case the language may be varied or modified so as to avoid such inconveniences but no further"*²⁸

The imports of the above are that the courts are given a lee way out of the problem of literal rule of interpretation where absurdity might results. It allows the court to prefer sensible meaning to an absurd meaning where both are linguistically possible notwithstanding the fact that such meaning is the more natural and obvious meaning of the word use as long as it will produce an unjust

26. *Glanville Williams op cit.* 106

27. *LORD Reid in Courts and Co V. Iree (1953) AC 281*

28. *Becke V Smith (1836)*

and inconvenient result.

The court may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter, or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute²⁹ this rule, notwithstanding the criticism that it is a "naked usurpation of legislative function", has enjoyed wide acceptance.

In applying it by house of words LORD REID! Said:

*"To apply the words literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words"*³⁰

Also the case of *University of Ibadan V Adamolekun*³¹ where the Supreme Court has to determine whether an edict made by the military governor of western Nigerian could be declared void by court S.3 (4) of the Constitution (suspension and modification) Decree No. 1 of 1966 provides that where an edict is inconsistent with a provision of a decree, the edict is void the extent of its inconsistency.

Buy S.6 of the same decree provides that no question as to the validity of any decree of edict shall be entertained by any court in Nigeria, the court held the edict void by the Golden rule.

THE MISCHIEF RULE

The contents of the mischief is as stated in the Heydon's case and characteristics of this canon of interpretation is not unlike the two

29. *Cross, Statutory Interpretation* p. 84

30. *Luke V I.R.C (1963) AC 557 at 577*

31. *(1967) ALLNLR 213*

previous rules which can be rightly referred to as "referential approach" to interpretation, this represent the "purposive approach". Here the judges go outside the statute to consider extraneous factors as guide for man to reach the "intention of the parliament".

The court should consider the following in the course of applying the rule, namely

- (a) what was the common law position before the making of the Act
- (b) what was the mischief and defeat for which the common law did not provide
- (c) what remedy had parliament resolved and appointed to cure the defect
- (d) the reason of the remedy

The judge is to interpret a statute so as to suppress the mischief and advance the remedy.

"To suppress subtle inventions and deviations for continuance of the mischief and to add force and life to the cure and remedy according to the intent of the maker of the law"³²

In *Akerele V. I.G.P. ADEMOLAJ*³³ ADEMOLAJ while interpreting the word "Accuse" 210 (b) of the criminal code said:

"It appears to me that the short history behind this chapter of code is prohibit indiscriminate accusation of with craft, and to stop the practice if trial by ordeal and the like by making them punishable".

The court then rejected the arguments of the learn counsel for the appellant that he word meant a formal accusation swearing to an information under oath.

³² LORD Denning in *Engineering Industry Training Board V Samuel Talbox* (1969) QB 27

³³ (1952) 2 ANLR 37

This rule is said to be purposive in approach because it contemplates inquiring into the policy and purpose behind the statute and what the statute aims at achieving or accomplishing. We no longer construe acts of parliament according to their literal meaning. We construe them according to their object and intent and this will lead to a greater of judicial legislation than under any other approach.

A judge may not add words that are not in the statute save only by way of necessary implication or may interpret a statute according to his own views as to policy, but if he can discover this from the statute or other materials, which is permissible for a court to consult, he may interpret it accordingly.

OTHER RULES OF INTERPRETATION

1. **EJUS DEM GENERIS RULES:** it prescribes that where a list of specific items is followed by a general clause, the general clause is deemed to be limited to things of the same kind as those specified e.g. remove all chairs, tables, etc. will be limited to furniture and Wallclock will not be included.

In *Tillmanns V. SKNU Tsord*³⁴ the question arose whether a port is accessible in the opinion of master, because "ice" was within the exception.

"Any other case in consequence of war, disturbance or any other case" it was held that it does not cover "ice". It must be construed to mean and apply to cause similar to war and disturbance.

2. **EXPRESSIO UNIUS EXCLUSIO ALTERIUS.**

Exclusion: This is a maxim of statutory interpretation meaning that the expressed mention of one thing is the exclusion of the other.

When certain persons or things are specified in a statute, an intention to exclude all others from its operation may be inferred.

³⁴ (1908) 2 KB 381

However, caution is being advocated on the use of this system. See *Colo Qujum V Brooks*³⁴ where it is stated as follows:

"It is often a valuable, but dangerous master to follow, and the making ought not to be applied, when it is application having regards to the subject matter to which it is to be applied leads to inconsistency or injustice"

e.g "Students of Obafemi Awolowo University, Ile-Ife includes every student of the university. But if we say LAW student" of Obafemi Awolowo University Ile-Ife then we have to go in specific and therefore excluded all other students of the said university.

3. BENEFICIAL CONSTRUCTION:

It stressed that words must not be so strained when construing a statute or deeds as to include cases clearly limited from the material meaning. For example in *Forsdike V. Comqoultom*³⁵ it stressed that a statute which requires a public house to be closed at certain hours on Sunday could not be construed to extend to Christmas day.

4. UT REAMAGIS VALEAT QUAM PAREAT:

This principle prescribed not where there are two possible interpretations to a statute, the one that will enhance the smooth operation of the statute is to be chosen and which accords with the intention of the legislature as discovered by the court. And once this intention is discovered, the statute must be interpreted in such terms to best carry it into effect. According to BOWEN L.J.

"The rules for the construction of statutes are very like those which apply to the construction of other documents, viz that, if possible, the words of an Act of parliament must be construed so as to give a sensible meaning to them. The words ought to be

³⁵ (1888) 21 QB at PG 65

construed".

5. LEX NON COGITAD IMPOSSIBLIA:

It is the general principle of interpretation that statute should be construed in such a manner that will not command the doing of the impossible. Therefore, where an Act is capable of two interpretations in which by one it will be valid by the other, the Act should be interpreted in such a way that it will be valid.

In *Ohuka V. State*³⁶ where section 31 Supreme Court Act, No 12 of 1960 required appellant to give notice of appeal within a prescribed period from the date of judgment of the court. Held that in applying the rule, computation of time cannot start until appellant becomes aware of the judgment.

6. NOSCITUR A SOCIIS:

This is a rule of construction, applied to all written instrument. The obscurity or doubt of any particular word may be removed by reference to associated words. And the meaning of a term may be enlarged or restricted by referring to the subject of the whole clause in which it is used. According to MAXWELL in interpretation of statute

"Where two or more words which are susceptible of analogous meaning are coupled, no Socitur a socils. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general, being restricted to sense analogues to Act of the less general"

The Noscitur a socils rule was applied to the construction of the offences against The Person act, 1837, which made it a felony to shoot or to "stab, cut or wound any person". The word "wound" was held to be restricted by the words which proceeded and consequently to bite off a finger or a nose was not to come within the

36. 112 BD at 71

meaning of the Act.

7. LEX NIL FRUATA FACIT:

The law does nothing in vain. In exercise of their interpretation duties, the courts will generally proceed on the ground that the statute whose provisions fall to be construed was enacted for a purpose or to achieve some objectives and will therefore construe the statute so as to give sure effect to it.

STATUTORY INTERPRETATION IN NIGERIA

In Nigeria, statutory interpretation has been treated the same way as any other common law subject and the rules of interpretation treated in the fore-going pages are mere rules of practice and not principle of law, therefore they are only discernible from various cases.

The courts in Nigeria have had a field day in construing statutes in a manner that will put their conscience at rest in seeing justice is done as each matter before them warrants.

As we have earlier stated, the attitude of the Nigerian courts is to interpret the words of statute according to their plain and ordinary grammatical meaning but this was not always satisfactory because words as mere symbols, are capable of more than one definition, depending in their context and the meaning ascribed to it.

The Nigerian court, in construing a statute, have always bear in mind the ever-occurring shifts in the meaning of words. It should be remembered that it is not within human powers to foresee the manifold set of facts which may arise, and even if it were, it is not possible to provide for them in terms of free from all ambiguity.

The statement of FATAYI-WILLIAM JSC is thus:

"the general rule for construing a statute has been stated by this court in a number of cases. The rule is: where the words of a statute are clear the court shall give effect to their literal

meaning. It is only when the literal meaning may result in ambiguity or injustice that the court may seek internal and within the body of the statute it self or external aid from the statutes in parri materia in order to resolve the ambiguity or avoid doing injustice"³⁷

In Nigeria however, the Interpretation Act 1964 applies to every federal instrument in the absence of a contrary intention, the legislation, similarly the interpretation law of each state applies to every enactment of the state country to any intention provided.

The power of interpretation by the court is incidental to the judicial power of the count as provided for under S.6(6) of the 1999 Constitution and S. 295 (3) of the 1999 Constitution which provides as follows.

"where any question as to the interpretation or application of this Constitution arises in any proceedings in the court of appeal and the count is of opinion that the question involves substantial quest of law, the court may and shall if any party to the proceedings so request, refer the question to the court of appeal as it deems appropriate".

In Nigeria, courts are also bound to follow the external aid in interpretation of statutes such as, dictionary and those contained in the interpretation laws which apply subject to the provision being enacted.

CONSTITUTIONAL PROVISIONS

More technical rules of interpretation of statutes are to some extent inadmissible in the interpretation of the Constitution to defeat the principles of government entrenched therein³⁸ and where the quest is whether the Constitution has used an expression in the wider or

37. *Mobil Oil (Nigeria) Ltd V. Federal Board of Inland Revenue* (1977) 3 SC 53

38. *Niki Tobi: Sources of Nigeria Law* pg. 69

on the narrower sense, the court should, wherever possible, and in response to the demands of justice, lean to the broader interpretation unless there is something in the text or in the rest of the Constitution to indicate the narrower interpretation will best carry out the objects and purposes of the Constitution.

Quoting from *Minister of Home Affairs V. Fisher*³⁹

"A Constitution instrument should not necessarily be construed in a manner and according to rule which apply to Acts of parliament. Although the manner of interpretation of a constitutional instrument should give effect to the character and origins of the instrument, such an instrument should be treated as sui generis calling for principles of interpretation of its own suitable to its character without necessary acceptance of all presumptions that are relevant to the legislation of private law"

With reference to the Constitution of the federal Republic of Nigeria, 1979, BELLO C.J.N in *Onyema & Ors. V. Oputa & Ors.* has this to say:

*"Our Constitution was enacted for the purpose of promoting the good government and welfare of all persons in Nigeria. Accordingly it should be construed to promise the peoples' welfare and, unless it is absolutely essential, it should not be construed to inflict hardship and inconveniences on any community"*⁴⁰

In *Bronik Motors Ltd V. Wema Bank*,³ NNAMANI JSC had in the same vein, stated that a Constitution should not be interpreted as a statute because it has been accepted by our courts that a broad and liberal spirit should prevail in interpreting the provisions of our

39. (1987) 2 N.S.C.900

40. (1983) 1 SCNLR 296, 321A

Constitution, although one has to constantly bear in mind objects which such provision were intended to serve.

The first litmus test of court' attitude to Constitutional interpretation was in *Adegbenro V. Akintola*⁴¹ whether the dispute centered on the correct interpretation to be given to S.33(A) of the 1960 Constitution of western Nigeria. That section empowered the Governor to remove the premier of the Region if "it appears to him" that the premier no longer commanded the support of a majority of the house of assembly.

Apparently applying the literal rule, the judicial committee of privy council in reversing the decision of the Federal Supreme Court declared that the section gave the Governor unlimited power to decide whether a premier commanded the required support or not.

The justification for special rules of interpretation for the Constitution is obvious. According to SIR UDO UDOMA J.S. in *Nafiu Rabi V State*.⁴²

"The function of the Constitution is to establish a frame work and principles of government, broad and general in terms intended to apply to the varying conditions which the development of our several society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of Government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in the narrow sense, in my view, this court should whenever possible, and in response to the demands of Justice, lean to the broader interpretation, unless there is something in the next or in the rest of the Constitution to indicate that the

41. (1962) 1 ALLNLR 465

42. (1980) 8-11SC. 130, 148 149

narrower interpretation will best carry out the object and purposes of the Constitution".

The Supreme Court has also established that where there are doubts as to interpretation or construction to be placed on any provisions of the Constitution recourse may be had to its historical antecedents.

According to NNAMANI SC in *Bronik Motors V. WEMA Bank* (Supra)

"should there still be any lingering doubts as to the proper meaning and I would suggest that it is legitimate to look back at the history of process which brought the 1979 Constitution into being"

In doing this the court adopted the dictum of SIR GEORGE JESSEL M.R. in *Holmes V. Guy*⁴³, where the learned master of rails had said:

"The court is not to be oblivious of the history of law and legislation, although the courts is not a liberty to construe an Act of parliament by the motives which influenced the legislature, yet when the history of law and legislation tells the court and prior judgment tell this court, the object of the legislature was the court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to find what it means and with a view to extending it so something that was not intended"

The court also cited with approval the American case of *Knowlton V Moor*⁴⁴ where JUSTICE WHITE, while delivering the opinion of the Supreme Court of the United States, had held:

⁴³ (1877) S.C.L.D. 901, 905

⁴⁴ 78.U.S. 41, 747 at 786