LAW LECTURERS, PUBLIC SERVICE AND THE 5TH SCHEDULE TO THE 1999 NIGERIAN CONSTITUTION*

Abstract:
The public service of the Federation of Nigeria in relation to code of conduct is well encapsulated in Part II of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999, as amended. The Fifth Schedule to the 1999 Constitution placed a seemingly absolute ban on all public servants from participating in the management and running of any private business or profession save farming. The Fifth Schedule also creates the Code of Conduct Tribunal and ascribes sanctions to be meted out on any public servant who contravenes the Code of Conduct for public service. This creative appreciation focused on the extent of assimilation and impact of Law Lecturers within the constitutional lips and bounds of the Fifth Schedule to the 1999 Constitution. The paper proffer answers to questions such as: Does a community construction of the Fifth Schedule exempt Law Lecturers from its constitutional webs? Can the Code of Conduct Tribunal impose any punishment on a Law Lecturer if found guilty? The responses to the metaphorical posers are in the affirmative and negative respectively. It is therefore, the logical conclusion of this paper that Law Lecturers despite being public servants are not captured within the constitutional contemplation of the Fifth Schedule to the 1999 Constitution and therefore wholesomely exempted thereat.

Keywords: Law Lecturers, Public service, Code of Conduct, 5th Schedule to the 1999 Nigerian Constitution

1. Introduction

The entrenchment of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999, as amended, undoubtedly placed an absolute restriction on all categories of staffers in the public service of Nigeria, either that of the Federal or State government from engaging, and or participating in the management and running of any private business or profession. In delving decisively into the nitty-gritty of this piece of academic appreciation, a community and thematic construction of the Fifth Schedule[1] shall be adopted in an attempt to unveil the semantic values of the wordings and phraseologies used thereat. The chosen indices will accord serious cognizance on the notion that principles in legal science are the most dynamic and reflective of the ever complex and interactive world. They are never static as those of the physical sciences with almost definitive certainty of the expected outcome. The rationale being that the law grows and develops with the dynamics and complexity of human behaviour globally. The dynamism of the law is no doubt effected by the judiciary in the exercise of its interpretative role given thereto by the principal organic law in Nigeria. Judicial pronouncements are highly influenced by the persuasive power of advocacy of the Bar. The trio of legal dynamism, judicial pronouncements and bar advocacy are done nowhere than in the court room. It is therefore the absolute reality that the court room remains the theatre and centre for legal growth and development in any viable society. Flowing from this stream of consciousness, the teachers of the law who by their peculiar calling are incessantly keeping pace with the maintenance, sustenance, continuity and dissemination of acceptable legal principles and standards should not be far-away, and or barricaded from the only factory where legal values and norms of enduring acceptability are being treaded and exchanged for societal utilization and perpetuity of posterity.

The factory of appreciable legal ethical standards, admirable value chain, growth and development of the law is the court room. The diffusional, transferor, inculcator of all the universal admirable and acceptability, and as well ethical standards, capacity utilization for growth and development of the law is the law teacher. Consequently, there should exist un-severable and unbreakable synergy between the manufacturer (court room) and the distributors (law lecturers) for constant exchange of values. This is so prominent against the backdrop that the consumers of the products (students) are not easily accessible to the factory and even if they do, they may not conveniently comprehend the operations of court room practice and how ideas are being transacted, exchanged and pronounced by Judges. The proper channel for dissemination and distribution of

*** By O. I. DERIK-FERDINAND, LLB, LLM, BL, ACArb, PhD Candidate,** Nnamdi Azikiwe University, Awka, Anambara State, Nigeria); Lecturer, Department of Law, Bayelsa State Polytechnic Aleibiri, P.M.B 168, Bayelsa State; Legal Practitioner and Chartered Arbitrator, Egele & Egele Attorneys-at-Law, (Daniel Chambers) 24 INEC Road Kpansia-Epie, Yenagoa, Bayelsa State of Nigeria;

[1] To the Constitution of the Federal Republic of Nigeria 1999, as amended.

the final products for societal continuity are the law teachers who should be constantly interfacing between the court room and the class room. It then means that an obstruction to the inter-change of values between the court room and the class room will be inimical and counter-productive to posterity.

The above as critically analysed should be the most preferable avenue for the grooming and preparation of today's assurance of tomorrow's continuity in the growth and development of legal education in Nigeria. Significantly, for forum convenience of perpetuity of the law, there should not be any clog in the chain and flow of interaction and exchange of information and idea between court room practice and class room activities of law lecturers.

2. The Public Service

The public service as construed generally under section 318 of the Constitution of the Federal Republic of Nigeria 1999, as amended dealing on various definitions and interpretations of terms used thereat may not apply mutatis mutandis to the provisions contained in the Fifth Schedule[2], in that it has a specialized and circumscribed interpretation paragraph. Paragraph (19) of the Fifth Schedule[3] dealing with distinct interpretations may be very similar in nature and character, but are quite different from the general provisions of section 318[4], especially as no reference was made to section 318[5]. It is therefore, the preference of this paper to make use of the interpretation paragraph of the Fifth Schedule,[6] which is paragraph (19) in canvassing discourse in support of this paper. The said paragraph makes copious reference to various fragmentations of public officers for the purpose of the Code of Conduct Bureau entrenched under Part II of the Fifth Schedule[7]. The law lecturers qua public officers being the substratum of this work is graphically captured under item (15), Part II of the Fifth Schedule[8] for the purposes of the Code of Conduct, it stipulates thus: 'public officer' means- All staff of universities, colleges and institutions owned and financed by the Federal or State Government or Local Government Councils.

By the unambiguous provisions of item (15), Part II of the Fifth Schedule,[9] anybody who teaches or works in any higher institution of learning owned and financed by any tiers of government in Nigeria is a public officer for the purposes of the Code of Conduct Bureau. It is therefore the irresistible logical inference that anyone who teaches law in any public higher institution is a public officer under the general webs of the Fifth Schedule[10]. Albeit, the prominent unquestionable puzzle to be posed herein is, do the Constitutional tentacles of the Fifth Schedule[11] entangle the law teacher? Does the mere settling and filing a legal process in a law court amounts to management and running of private business or profession? What is the meaning of management and running of a business? Will the circumstances be the same if the process is signed by a law teacher who runs a registered law firm? Are the provisions of the 1979 Constitution the same as that of the 1999? They are not. What then is the intendment of the drafters in the paradigm shift in the wordings and phraseologies of the 1999 Constitution? These oratorical questions will be visited and answered in anon.

3. The Fifth Schedule to the Constitution of the Federal Republic of Nigeria

Sub-paragraph (b) of paragraph (2) of the Fifth Schedule,[12] enacts as follows: 'Without prejudice to the generality of the foregoing paragraph, a public officer shall not-

> (b) except where he is not employed on full time basis engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.

[2] The Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended.
[3] *Ibidem*.
[4] *Ibidem*.
[5] *Ibidem*.
[6] *Ibidem*.
[7] *Ibidem*.
[8] *Ibidem*.
[9] To the Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended.
[10] *Ibidem*.
[11] The Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended.
[12] *Ibidem*.

There is no doubt that the above constitutional enactment is a general provision[13] attempting to bar all categories of public officers from participating in the management and running of any private business or profession. There is also no qualm that the general provisions of section 172,[14] which enacts as follows: 'A person in the public service of the Federation shall observe and conform to the Code of Conduct.'[15] It is also unquestionable that the law teacher who is either teaching for the Federal or State government's institution of higher learning is inclusive of these general provisions. Item 15 of the Fifth Schedule,[16] establishes the Code of Conduct Tribunal. The Code of Conduct Tribunal has special jurisdiction to the exclusion of all other courts in Nigeria in matters arising from allegation of any breach or contravention of the provisions of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999. This is the position of the law as held by the Supreme Court, in *Ahmed v Ahmed*,[17] where Chukwuma-Eneh, JSC., held as follows:

> Any breach of the provisions of the Fifth Schedule or matters of non-compliance with any provisions of the Code shall (meaning that it is mandatory, that is, and must) be made to the Code of Conduct Bureau that has established its Tribunal with exclusive jurisdiction to deal with any violation of the provisions under the Code. If I may emphasise any violation shall be made to the Code of Conduct Bureau. The provisions have made it mandatory to take any matter so covered by the Fifth Schedule to the Code of Conduct Tribunal and not to any ordinary regular court as has been done in this instance. If I may repeat, the Code of Conduct Tribunal has been established with the exclusive jurisdiction to deal with all violations contravening any of the provisions of the Code as per paragraph 15(1). This provision has expressly ousted the powers of ordinary regular courts in respect of such violations. The Tribunal to the exclusion of all other courts is also empowered to impose any punishment as specified under sub-paragraphs 2 (a), (b) and (c) of paragraph 18.

Specifically, paragraph 18 (1)(2), (a), (b) and (c) of the Fifth Schedule[18], provides thus:

> (1) Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this code it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the National Assembly.
> (2) The punishment which the Code of Conduct Tribunal may impose shall include any of the following-
> (a) vacation of office or seat in any legislative house, as the case may be;
> (b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and
> (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

It is not in dispute that the provisions of section 172[19] of the 1999 Constitution and sub-paragraph (b), of paragraph (2) of the Fifth Schedule,[20] are general provisions whilst those of paragraph 18 of the Fifth Schedule,[21] are specific. The law is trite and elementary so banal that where the Constitution or a Statute has both general and specific provisions that the specific provisions will prevail over and above the general

[13] The Constitution of the Federal Republic of Nigeria, 1999 as amended.
[14] *Ibidem*.
[15]Section 209 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, which provides thus: 'A person in the public service of a State shall observe and conform to the Code of Conduct.'
[16]To the Constitution of the Federal Republic of Nigeria, 1999 as amended provides thus: 'There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons.'
[17] [2013] 15 NWLR (Part 1377) 274 SC; [329, paras. D-F].
[18] Constitution of the Federal Republic of Nigeria, 1999 as amended.
[19] Section 209 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, which provides thus: 'A person in the public service of a State shall observe and conform to the Code of Conduct.'
[20] Constitution of the Federal Republic of Nigeria, 1999 as amended.
[21] *Ibidem*.

provisions. This stand point of the law is espoused in *Inakoju vs Adeleke*,[22] where the Supreme Court per, Tobi, JSC., of blessed memory held as follows:

> The law is elementary that where the Constitution or a statute contains a general provision as well as a specific provision, the specific provision will prevail over the general provision. In this wise, it is my view that the specific provision of section 188(9) will prevail over the general provision of section 102. Accordingly, the removal of the 3rd respondent is governed by section 188(9) and not section 102 of the Constitution.

It is therefore the humble, but firm view of this paper that in order not to make the general provisions of the Fifth Schedule to the 1999 Constitution to have the status of imperfect obligation, paragraph 18 is specifically enacted to empower the Code of Conduct Tribunal to impose penal sanction on any public officer who is found guilty as per the provisions of the Fifth Schedule.[23] It is the further contention of this work that, but for the punishment paragraph of the Fifth Schedule, the provisions thereon would have been red herring and figment in law, a toothless bull dog. Flowing from this stream of consciousness, it is the specific enactment of paragraph 18 that gives teeth to the Fifth Schedule.[24] Impliedly any public officer who cannot be adequately and conveniently punished under paragraph 18 of the aforesaid schedule is invariably not entwined within the whims and caprices of the Fifth Schedule.[25] This implies that the Code of Conduct Tribunal specifically established to exclusively adjudicate on breaches stemming from the Fifth Schedule to the 1999 Constitution,[26] will not have jurisdiction over persons not expressly mentioned under item (18).[27] It is, however, significant to unequivocally note hereto that the provisions of paragraph 18 of the Fifth Schedule[28] do not in all intents and purposes of the drafters of the 1999 Constitution contemplates the inclusion of a law teacher.

4. The Law Lecturer and the Provisions of the Fifth Schedule

Save the general provisions of Part II of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended, particularly item 15 to the effect that a law teacher is a public officer, nothing else in the entire Fifth Schedule significantly affect the law teacher. Could there be a penal code without punishment? Can the law teacher be punished under paragraph (18).[29] The answer is not in the affirmative. For better appreciation of the submission canvass herein, sub-paragraph (2) of paragraph 18 of the Fifth Schedule,[30] will be incisive to reproduced for ease of inspection and reference, it inter-alia provide as follows:

> (2) The punishment which the Code of Conduct Tribunal may impose shall include any of the following-
> (a) vacation of office or seat in any legislative house, as the case may be;
> (b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and
> (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

It is the further constitutional imperative that no Nigerian can be punished save the offence is defined and punishment prescribed in a written law. This is the provision of subsection (12) of section 36,[31] it enacts thus:

> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

[22] [2007] ALL FWLR (Part 353) 3 SC; [177, paras. A-B]; See also *Diapianlong v Dariye* [2007] 8 NWLR (Part 1036) 336 SC.
[23] To the Constitution of the Federal Republic of Nigeria, 1999 as amended.
[24] *Ibidem*.
[25] *Ibidem*.
[26] *Ahmed v Ahmed* [2013] 15 NWLR (Part 1377) 274 SC.
[27] Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended.
[28] To the Constitution of the Federal Republic of Nigeria, 1999 as amended.
[29] Of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended.
[30] Constitution of the Federal Republic of Nigeria, 1999 as amended.
[31] Constitution of the Federal Republic of Nigeria, 1999 as amended.

Consequently, the question begging for an obvious and swift answer is, from the community reading of section 36(12) and sub-paragraph (2) of paragraph (18) of the Fifth Schedule to the 1999 Constitution. Could a law teacher be convicted, let alone punished by the provisions of the Fifth Schedule? The answer is definitely not in the positive. This is predicated on the premise that the punishment paragraph of the Fifth Schedule does not provide punishment for the law teacher. Therefore, it is the deductive logical syllogism that: Law teachers are captured within the Fifth Schedule to the Constitution! The Fifth Schedule does not provide punishment for law teachers! Therefore, law teachers are brazenly exempted from the constitutional webs of the Fifth Schedule.

There is no argument that the provisions of paragraph (18) of the Fifth Schedule to the Constitution[32] provide punishment for only members of legislative houses in Nigeria. Since law teachers are not covered under the aforesaid paragraph, they cannot be read into the provisions of the Fifth. The law is banal and elementary that the court will adjudicate in vein if it lacks the powers to impose punishment by the end criminal or quasi criminal trial. It is the further settled law that provisions of the constitution or any other statute cannot be read into, add to it, or subtract from. This position of the law is found in the annals and chronicles of *Ogba v The State*,[33]the Supreme Court per *Akpata, JSC.*, held thus:

> It is however, erroneous to read into a clear and unambiguous constitutional provision what it does not embrace. The provision has to be interpreted strictly in accordance with the ordinary meaning of the words used without its being adorned, as it were, with ornamental words not therein to make it attractive to wider interpretation.

Furthermore, the zenith of courts in Nigeria, in *Cocacola (Nig) Ltd v Akinsanya*,[34] where it was held:

> A Judge's duty which is even a command on him is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and must not add to or remove any word therefrom, no onerous weight or burden must be foisted on an otherwise clear and unambiguous provisions. … It is not the function of the court, in its interpretative jurisdiction to interpret a particular provision of the statute or constitution by addition or importation thereto words not therein contained.

The highest in hierarchical order of courts in Nigeria further held,[35] per Eko, JSC., as follows:

> The courts are not permitted to interpret the provisions [of the Constitution or a Statute] to mean what actually they do not mean, or not to mean what they clearly mean. In their interpretative jurisdiction, the courts are enjoined to avoid an interpretation that will reduce the legislation to futility. The better approach is to adopt the construction that brings out the purpose of the legislation on the understanding that parliament legislates only for a purpose.

A critical view of the provisions of paragraph (18) from the *ejusdem* generis rule reveals that, sub-paragraphs (a) and (b) specifically mentioned 'members of a legislative house.' Thus, those to forfeit their property under sub-paragraph (c) are also members of a legislative house. The only *ejusdem* to the said paragraph could be councillors of a Local Government Council which are members of the legislative arm of the local government and a law teacher can never be *ejusdem* to members of a legislative house. Therefore, the central theme and common denominator in paragraph (18) of the Fifth Schedule,[36] is only members of a legislative house and does not in strict constitutional interpretation include any other public officer mentioned under Part II of the Fifth Schedule.[37] The *ejusdem* rule is espoused by the apex court in, *Buhari v Yusuf*,[38] where Uwaifo, JSC., held as follows:

> *Ejusdem* generis rule is an interpretative rule which the court would apply in appropriate case to confine the scope of general words which follow special words as

[32] *Ibidem.*
[33] [1992] 2 NWLR (Part 222) 164 SC; [186, paras. B-D].
[34] [2017] 17 NWLR (Part 1593) 74 SC.
[35] *Cocacola Nig. Ltd v Akinsanya* [2017] 17 NWLR (Part 1593) 74 SC; [123, paras. D-F]
[36] Constitution of the Federal Republic of Nigeria 1999, as amended.
[37] *Ibidem.*
[38] [2003]14 NWLR (Part 841) 446 SC; [496-497, paras. H-A].

> used in a statutory provision or document within the genus of those special words. In the construction of statutes, therefore, general terms following particulars ones apply only to such persons or things as are *ejusdem* generis with those understood from the language of the statute to be confined to the particular terms. In other words, the general words or terms are to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended.[39]

It is submitted that if the drafters of the *Grundnorm* or the Organic Law of the land intended to include law teachers within the ambit of the constitutional tentacles of the Fifth Schedule to the Constitution,[40] it would have so expressly provided. The deliberate failure or omission of the drafters of the Constitution[41] to expressly mention law teachers in paragraph (18)(2),[42] is an express and automatic exclusion of law teachers within the constitutional contemplation of the Fifth Schedule[43] and there is no constitutional intendment to co-opt any other name that might be impliedly included. This well settled principle of law is posited by the highest in the echelon of courts in Nigeria, in *Attorney-General, Bendel State v Aideyan,*[44] where it was held as follows:

> It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included, hence the maxim Expressio unius est exclusio alterius. This is that, the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication.

Vividly, the aforesaid principle of law is more encompassing in, *Jev vs Iyortom,*[45] where the Supreme Court held thus:

> It is trite law and an unassailable legal principle that the express and unambiguous mention of one thing in a statutory provision, automatically excludes any other which otherwise would have applied by implication, with regard to the same subject matter. This is usually captured in the Latin maxim which states *expressio unius est exclusio alterius.*

It is the further contention of this paper that going by the combined provisions of paragraphs 15(1) and (18) of the Fifth Schedule,[46] and the constitutional use of the word 'guilty.' It is irresistible conclusion that the proceedings in the Code of Conduct Tribunal are quasi criminal in nature. Being criminal, the average Nigerian citizen has no competence to institute an action in the Code of Conduct Tribunal which has the exclusive jurisdiction[47] to hear and determine complaints arising from the Fifth Schedule.[48] Going by the pronouncement of the Supreme Court in *Ahmed vs Ahmed*,[49] the legal implication is that the usual preliminary objection raised against the competence of court process signed and filed by a law teacher in the conventional regular courts is void *ab-initio*, null and void. It is also the law that failure to institute the alleged violation of the Fifth Schedule,[50] amounts to no violation or infringement at all in the sight of the law. In specific substantiation of the submissions canvassed hereinabove, the Supreme Court in, *Ahmed vs Ahmed,*[51] per Chukwuma-Eneh, JSC., held as follows:

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[39] See also: *Okewu v F.R.N* [2012] 9 NWLR (Part 1305) 327 SC; *Ehuwa v O.S.I.E.C* [2006] 18 NWLR (Part 1012) 544 SC; *Fawehinmi v I.G.P* [2002] 7 NWLR (Part 767) 606 SC.
[40] Constitution of the Federal Republic of Nigeria 1999, as amended.
[41] *Ibidem*.
[42] Part I, Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999, as amended.
[43] Constitution of the Federal Republic of Nigeria 1999, as amended.
[44] [1998] 4 NWLR (Part 118) 646 SC. See also *Ogbuanyinya v Okudo* (1979) 6-9 SC 32, *Military Governor of Ondo State v Adewunmi* [1988] 3 NWLR (Part 82) 280 SC; *Udoh v Orthopedic Hospital Management Board* [1993] 7 NWLR (Part 304) 139 SC; *Buhari v Yusuf* [2003] 14 NWLR (Part 841) 446 SC [499, paras F-G], per Uwaifo, JSC.
[45] [2015] 15 NWLR (Part 1483) SC; [330, paras. A-B].
[46] To the *Constitution of the Federal Republic of Nigeria 1999, as amended.*
[47] *Ahmed* v Ahmed [2013] 15 NWLR (Part 1377) 274 SC.
[48] To the Constitution of the Federal Republic of Nigeria 1999, as amended.
[49] *(Supra)*.
[50] To the Constitution of the Federal Republic of Nigeria 1999, as amended.
[51] [2013] 15 NWLR (Part 1377) 274 SC; [330, paras. A-B & C-E] respectively.

> It is therefore conclusive to hold that no ordinary regular tribunal or court for that matter has been expressly or impliedly conferred with the power to deal with any violations and/or non-compliance with the provisions of the Code. For any other court or tribunal to do so in the face of these express and unambiguous provisions will render such decisions null and void ab-initio and liable to be set aside. In this regard any decision of this court [the Supreme Court] not being a tribunal established under the Code excepting sitting in exercise of its appellate jurisdiction as provided under paragraph 18(4) will be rendered null and void.
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> It is clear therefore, that the alleged incidences of violation of the provisions of the Code with regard to this matter as alleged by the cross-appellants have not been made to the Code of Conduct Bureau and so the cross-appellants must be taken as having failed to do so, thus amounting to not having any violation to take to the said Tribunal and its implication as it affects the propriety of having raised in the instance cross-appeals on the facts of this matter is very fundamental.

The legal connotation of the above submission is that the average Nigerian cannot initiate an action in the Code of Conduct Tribunal except and unless the person is a law officer. Thus, the mere signing and filing of a legal process in a law court is not an offence known in any written law in Nigeria. Consequently, the process of arrest, investigation, preferring of Information and filing same in the Code of Conduct Tribunal by a competent legal officer is near impossible. Even if the law teacher is arraigned in the Code of Conduct Tribunal, the Tribunal is without legal vires to punish the law teacher. Furthermore, the laid dawn practice and procedure in criminal jurisprudence is inept in the provisions of the Fifth Schedule,[52] neither express nor implied reference is made thereto to adopt any known criminal adjectival law in Nigeria. Therefore, the law teacher is as free as the air with regards to the provisions of the Fifth Schedule.[53] The only convenient forum or avenue may be *vide* a law officer, and not every legal practitioner in Nigeria is a law/legal officer. A legal or law officer is a technical term referring to only the few legal practitioners employed in the Ministry of Justice either of the Federal or State government, and any other governmental agency expressly established by law having the implied delegation of the Attorney-General of the Federation or the State. The term is defined as follows; section 496 (1),[54] defined a law officer as follows:

> Means the Attorney-General of the Federation and Solicitor-General of the Federation and includes the Director of Public Prosecutions and such other qualified officers, by whatever names designated, to whom any of the powers of a law officer are delegated to by law and a private legal practitioner authorized by the Attorney-General of the Federation to appear for and on behalf of the Attorney-General of the Federation.

Again, section 436 (1)[55] defined law officer as follows: 'law officer' includes the Director of Public Prosecutions and every State Counsel of any grade in the Attorney-General's Chambers in the Ministry of Justice. By the exclusive jurisdiction of the Code of Conduct Tribunal, even if it has the competence to punish public officers as stipulated by the 1999 Constitution, it would be an up-hill task to institute an action against a law teacher, let alone imposing punishment against the law the teacher. It is the further submission of this paper that the mere settling, signing and filing of a legal process in a court of law does not amount to running and management of a private business or profession. Running and management of a business connote the establishment of an ongoing business venture as prescribed by the Companies and Allied Matters Act. Management and running of a business mean the control of daily activities of an incorporated outfit, with board of directors, management team and well organized and co-ordinated staffers. It also means the preparation and submission of annual returns and payment of all statutory taxes to the Federal Government and Pay-as-you earn to the State Government as prescribed by all enabling laws. Therefore, the law teacher who merely signs and files a legal document in court does not run and manage a business.

[52] To the Constitution of the Federal Republic of Nigeria 1999, as amended.
[53] *Ibidem*
[54] The Administration of Criminal Justice Act, 2015.
[55] Criminal Procedure Law, CAP C15, Vol.1, Laws of Bayelsa State of Nigeria, 2006.

In another dimension, the provisions of the 1979 Constitution and that of the 1999 are not exactly the same. There is a tilt in the two Constitutions, the former enacts, a public officer shall not engage in private business or profession, save farming whilst the latter provides: a public officer shall not engage in the management and running of a private business or profession, save faming. There is a distinction between engaging in business and running and managing a business. The drafters have reasons for altering the wordings and phraseologies of the 1979 Constitution. The 1999 Constitution is not merely doing business, but running and management of business, and the duo are not the same and the nuances in their semantics should be accorded accordingly. It is also the view of this work that the provisions of the Rules of Professional Conduct for Legal Practitioners, 2007 do not affect the law teacher. This is predicated on the premise that the law teacher does not represent his employer as bars by the Rules of Professional Conduct. This view point was also ascertained by the Supreme Court, in *Ahmed vs Ahmed*,[56] where the apex court held the provisions of the Rules of Professional Conduct for Legal Practitioners, 2007 does not in the case. The view was correct in that Mr. M.K Dabo did not represent the Nigerian Law School where he was teaching law as a public officer. For ease of reference, order 8 of the Rules of Professional Conduct for Legal Practitioners, 2007 provides thus:

> (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.

The provisions of rule (2) of order 8 of the Rules of Professional Conduct for Legal Practitioners, 2007 does not the law teacher. This is because the supremacy clause of the Constitution of the Federal Republic of Nigeria 1999 as amended will reign supreme over the adjectival provision of order 8(2) Rules of Professional Conduct for Legal Practitioners, 2007.

5. Conclusion:

From the forgoing exposition expatiated in this paper, it is the finding that the provisions of the Fifth Schedule[57] does not affect the law teacher in any way or manner. Therefore, it is the humble, but firm conclusion of this literary appreciation that law teacher despite being a public servant is not captured within the constitutional contemplation of the Fifth Schedule to the 1999 Constitution and therefore wholesomely exempted from its whims and caprices. Besides, the mere signing and filing of legal document in the court does not necessarily amount to management and running of a private business. Running and management of a business as envisage in the Fifth Schedule,[58] means the ownership and actual physical control of an ongoing concern in consonance with the provisions of the Companies and Allied Matter Act.

[56] [2013] 17 NWLR (Part 1377) 274 SC.
[57] To the Constitution of the Federal Republic of Nigeria 1999, as amended.
[58] To the Constitution of the Federal Republic of Nigeria 1999, as amended.