

**A Critique of the Application of the Principles of Natural
Justice in Disciplinary Action in Nigerian Universities**

BY

**Rotimi Charles, AWOGBEMI
LLM/LAW/45512/2012-2013**

**Being a Dissertation Submitted to the School of Postgraduate
Studies, Ahmadu Bello University, Zaria in Partial
Fulfillment of the Requirements for the Award of the Degree
of Master of Laws (LL.M.)**

AUGUST, 2016

DECLARATION

I hereby declare that this dissertation entitled “A Critique of the Application of the Principles of Natural Justice in Disciplinary Action in Nigerian Universities” has been produced by me under the supervision of Dr.Y. Dankofa and Dr. K.M. Danladi. This dissertation, to the best of my knowledge has never been submitted either in Ahmadu Bello University Zaria, or any other Institution for the award of degree. All quotations are indicated in the footnotes and sources of information are duly acknowledged by means of list of references.

Rotimi Charles Awogbemi

LLM/LAW/45512/2012-2013

Signature

Date

Q

DEDICATION

This work is dedicated to God Almighty, He has been true and faithful and to my beloved departed sister, Mrs Jumoke Joshua, continue to rest in the bosom of our Lord. To her ever sweet and cherished memory, I dedicated this humble work of mine.

ACKNOWLEDGEMENTS

My profound appreciation and gratitude to God Almighty for bestowing on me life and good health and guiding me and charting my part through this crucial and fundamental stage in my life. I say to God be all the glory.

I would like to record my deepest gratitude to my supervisors. Special thanks to the Chairman Supervisory Committee, Dr Y. Dankofa for his untiring guidance, I appreciate your constant encouragement, constructive criticism and support. I also acknowledge the contribution of my supervisor, Dr. K.M. Danladi, your insightful comments, queries and suggestions helped me a great deal, if this Dissertation is worth anything, it's because they painstakingly dedicated time, energy and moral resources to guide me through. I am indebted to you sirs.

Special thanks go to my Internal Examiner, Dr. A. M Madaki, for his untiring guidance. His brilliant grasp of the aim and content of this work led him to insightful comments, queries and suggestions that helped me a great deal. Sir, I am grateful for your invaluable assistance and acts of mentorship. I very much appreciate your infinite patience, time and sustained devotion to shape this work.

My sincere and heartfelt appreciation to all the staff of the Faculty of Law. Special thanks to all my lecturers for their instructions and knowledge impartation, I have learned a great deal from your classes that will benefit me in my future studies. Dr.Akande,Prof.Aboki, Prof. M.T. Ladan, Dr. A. Akume, Dr. D.C John, Barr. Ameh, Dr Madakiand so on, may God reward you abundantly.

My unalloyed appreciation and humble gratitude to my Vice-Chancellor, Prof. O. Geoffrey Okogbaa for granting me the opportunity to undertake this study. I also appreciate Alhaji I.A Jalingo, (former Registrar, Federal University Wukari), Mr MagajiThomas Gangumi, Registrar Federal University Wukari. It is the tremendous motivation and encouragement given by Barr.

Amen J.J. Otabo (Ag. General Counsel, Legal Unit, Federal University Wukari) that helped me to achieve my dream and bring out this study while pursuing and developing my professional career under him. Thank you, sir, you are a source of inspiration. My unalloyed gratitude to my colleagues in the Unit; Barr. Micah, Barr. Christian, Barr. Wisdom, Barr. ThankGod, Mr. Oyegun, ‘our amiable secretary’, Mr Jude, and Mr Francis. May you all continue to soar higher.

To my colleagues in the LL.M Program, particularly Christian Ejike, Saka, Alozie, Idoko, Osei, Donna, accept my profound gratitude for your great, stimulating company and support. I also owe a deep sense of appreciation to all the PG Hostel guys and friends, Bolaji, Daniel, Martins, Kola, Zakari, Bala, thank you for being my committed friends during this programme. I am also honoured to mention the name of my dear friends Johanna Jonathan, FibiAyuba, SilasOkuofu, YaknanGambo “Yak” and my main man, Auta Sabo, thanks for all the help and encouragement. May you all enjoy unparalleled and unmerited favour in your life pursuits.

The ultimate source of every creative inspiration is one’s own family. My deepest gratitude to Elder and Mrs. E.S. Awogbemi, without your support, love and constant “how is the program, are you not yet done” all this would not have been possible. I cannot forget all the encouragement and enthusiasm I received from my siblings- Tunji and Folasade, thank for the unceasing moral push and care- you humble me. I am also indebted to Kemi Otola, thanks for being the love and courage when I need it most.

In everything, I praise the Almighty God.

TABLE OF STATUTES

Page

Ahmadu Bello University (Transitional Provisions) Act, Cap. A14 LFN 2004-----	
-----2, 36, 41, 42, 43, 44, 45, 46, 47, 48, 52, 57, 67, 87, 89, 90, 115, 116	
Ambrose Alli University Law 1999-----	57, 89, 117
Constitution of the Federal Republic of Nigeria,1979-----	
-----33, 38, 39, 49, 50, 51, 66, 67, 64, 67, 68, 81, 112, 114	
Constitution of the Federal Republic of Nigeria, 1999-----	
-----1, 6, 13, 17, 31,32, 33, 39, 60,65, 67, 69, 70, 80, 81, 83, 84, 96, 97, 101, 106, 127, 128, 130	
Constitution of the Federal Republic of Nigeria, 1963-----	65
Estate Agents and Valuers (Registration) ActCap 111 LFN 2014-----	110
Examination Malpractices Act Cap E 15, LFN 2004-----	67, 68, 131, 134
Federal Polytechnics Mubi, Act Cap. F17 LFN 2004-----	117
Fifth and fourteenth Amendment to American Constitution-----	17
Institute of Chartered Accountants ActCap. 185, LFN 2014-----	110
Medical and Dental Practitioners Act. Cap M8, LFN 2004 -----	36,
110	
Obafemi Awolowo University (Transitional Provisions) Act, Cap. 02 L.F.N. 2004-----	
-----2, 36, 41, 42, 43,44, 45, 46, 47, 49, 52, 54, 55, 67,87, 89	
Special Tribunal Miscellaneous Offences Act Cap. 40, LFN 1990-----	3, 69,
134	
Student’s Union Activities (Control and Regulation) Decree No. 47 of 1989-----	
114	
Surveyors Registration Council of Nigeria ActCap 425 LFN 2014-----	110
Test of Magna Carta, issued in 1215-----	
18	

University of Benin (Transitional Provisions) Act, Cap U 4, LFN 2004-----	41, 54, 55,103
University of Calabar Act Cap. U5 LFN 2004-----	42, 46, 49, 51, 65
University of Ibadan Act Cap. U6 LFN 2004-----	36, 116
University of Ilorin Act, Cap U7, LFN, 2004----- -----	36, 41, 42, 44, 46, 47, 49, 52, 54, 55,56, 57, 59, 64, 67, 68, 81,82, 89, 97, 108
University of Jos Act Cap. U8 LFN 2004-----	48, 51,90, 115
University of Lagos Act CAP. U9 LFN 2004-----	47, 48, 51, 56, 94
University of Maiduguri Act Cap. U10 LFN 2004-----	38, 42, 46, 49, 50, 60, 64
University of Nigeria Act, Cap U11, LFN 2004----	36, 41, 44, 47, 52, 54, 55, 59, 64, 67, 68, 81, 89
University of Port Harcourt Act, Cap U13, LFN 2004-----	41, 49, 50, 81,82, 114, 115
University of Queensland Calendar, Vol. 1, 1995-----	45
University of Wollongong, Calendar, Undergraduate 1994-----	45

TABLE OF CASES

Page

<i>Abang vs University of Calabar</i> (2008) All FWLR (Pt. 403) 1367-----	51,
95	
<i>Abia State University vsAnyaiibe</i> (1997)3 NWLR (Pt 439), 646-----	127
<i>Adedeji vs Police Service Commission</i> (1968) N.M.L.R. 102-----	23, 83, 99
<i>Adekunle vs University of Port Harcourt</i> (1991) 2 NWLR (Pt.181) 534-----	50,
114	
<i>Adigun vs A.G. Oyo State & 18 Ors</i> (1987) 3 SCNJ 118 -----	114
<i>Aiyetan vs Nigerian Institute for Oil Palm Research</i> [1987] NWLR (Part 59) -----	16, 32, 33,
83	
<i>Akintemi&Ors vs Prof. Onwumechilli & Ors</i> (1981)11 OY.S.H.C. 457-----	48
<i>Akintemi vsOnwumechili</i> (1985) 1 NWLR (Pt.1) 68-----	37, 48, 54, 57, 75, 81, 93, 111, 121, 124
<i>Akinyanju vs University of Ilorin</i> (2011) All FWLR. (Pt. 569) 1080-----	102, 108, 117
<i>Alakija vs Medical Disciplinary Committee</i> (1959) 4 FSC. -----	
36	
<i>Ariori vsElemo</i> (1985) 2 NWLR (Pt.6) 211-----	88
<i>Baba vs Civil Aviation Training Centre</i> (1989) 1 NWLR (Pt 98) 419-----	
104	
<i>Bamgboye vs University of Ilorin</i> (1999) 6 S.C. 72 at 121-----	72,
127	
<i>Bendel State Civil Service Commission & Anor vsBuzugbe</i> (1984) 7 SC-----	109

<i>Board of Education vs Rice</i> (1911) A.C. 179 -----	
33	
<i>Board of Inland Revenue vs Joseph Rezcallah and Sons Ltd.</i> (1961) W.N.L.R. 32-----	1
<i>Chief Constable of the North Wales Police vs Evans</i> (1982) 1 W.L.R. 1155, H.L.-----	22, 124
<i>Clement AnoghenalFalume vs Ambrose Alli University & 3 Ors.</i> HEK/MISC/11/2010 (unreported) -----	
-----117	
<i>Cooper vs Wandsworth Board of Works</i> (1863) 14 C.B (N.S) 180 at 189-----	17, 20
<i>Council of Federal Polytechnic, Mubi vs Yusuf</i> (1987) 1 SCNJ 11-----	
117	
<i>Dangote vs Civil Service Commission of Plateau State</i> (2001) 4 S.C. (Pt. II) 43-----	
70	
<i>Debbis vs Llyod</i> (1980) 13 M.L. R. 281-----	20
<i>Denloye vs Medical and Dental Practitioners Disciplinary Tribunal</i> (1968) 1 All NLR 306-----	
65	
<i>Dimes vs Grand Junction Canal Proprietors</i> (1852) 3 H.L.C. 759-----	
27	
<i>Dr. Imasuen vs University of Benin.</i> (2011) All FWLR (Pt.572) 1791-----	103
<i>Dr. Raji vs University of Ilorin.</i> (2011) All FWLR (Pt.435) 1832-----	98
<i>Dr. Bonham's Case</i> (1610) 8 Co. Rep. 113b-----	27
<i>Dr. Taiwo Olarunjoba-Oju & Ors vs Professor Shuaib O. Abdul-Raheem and Ors.</i> (2009) 26 WRN 1. -----	96

<i>Egwu vs University of Port Harcourt</i> (1995) 8 NWLR (Part 414) 419-----	93,
	96
<i>Eperokun vs University of Lagos</i> (1986) 4 NWLR 162-----	56, 94, 98,
	114
<i>Esiaga vs University of Calabar</i> (1997) 4 NWLR, (Pt.502) at 724-725-----	38, 56, 71,
	75, 85, 95, 98
<i>Federal Civil Service Commission &Ors vsLaoye</i> (1989) 4 SCNJ 146-----	66, 70
<i>Federal College of Education vsAnyanwu</i> (1997) 4 NWLR (Part 501) 533-----	36
<i>Federal Co-op. College &Ors vs Miss Adeniran.</i> (2012) LPELR-19736 (CA)-----	73, 102
<i>Garba & Ors. vs University of Maiduguri & Ors.</i> (1986) 1 NWLR (Pt 18) 550 -----	1, 3,
	9, 11, 25, 29, 38, 46, 47, 48, 50, 59, 60, 61, 63, 66, 67, 70, 78, 85, 94, 98, 102, 104, 111, 126, 127
<i>Glynn vsKeele University.</i> (1971) 1 W.L.R 487, 495-----	95
<i>Goss vs Lopez.</i> 419 U.S. 565-----	58,
	59
<i>Grand Chamber of the European Court of Human Rights A. vs United Kingdom</i> (2009) E.C.H.R. 301-----	24
<i>Hart vs Military Government of Rivers State & 2 Ors</i> (1976) 11 S.C. 21-----	
	35
<i>Heatley vs Tasmanian Racing and Gaming Commission</i> (1977) 137 CLR 487 at 513-----	120
<i>Ho Paul vs Singapore Medical Council</i> (1995) 2 S.L.R.(R.) 441-----	
	26
<i>Howe Yoon Chong vs Chief Assessor</i> (1977–1978) S.L.R.(R.) 386-----	
	25

<i>Institute of Health ABU Hospital Management Board vs Mrs Jummai R. I. Anyip.</i> (2011) 2 CLRN 127-----	116
<i>James Bagg's Case</i> (1615) 11 Co Rep 95b [77 ER 127] 1275-----	1, 19
<i>Janaki Viyatunga's case.</i> (1988) 1 QB 322-----	46
<i>Karriapper vs Wijesimba.</i> (1976) 2 AER 485-----	127
<i>Kashim Ibrahim Ado & Ors. vs University of Jos.</i> Suit No. PLD/J91/92(unreported)-----	97
<i>Kay Swee Pin vs Singapore Island Country Club</i> (2008) 2 S.L.R. (R.) 802-----	23
<i>Kok Seng Chong vs Bukit Turf Club</i> [1992] 3 S.L.R.(R.) 772. -----	25, 106
<i>Kola Odetola & Ors vs Prof. Wande Abimbola, V-C, University of Ife & Ors.</i> Suit No. HIF/MISC.27/87 (Unreported)-----	51
<i>L.P.D.C vs Fawehinmi</i> (1985) 2 NWLR (Pt. 7) 300-----	15, 33, 39, 35, 107, 109, 111
<i>Lagunju vs Olubadan in Council</i> (1950) 12 W.A.C.A. 406-----	23
<i>Leeson vs General Medical Council</i> (1889) 43 Ch. D. 366-----	20, 28
<i>Lloyd vs McMahon</i> (1987) 1 A.C. 625-----	23
<i>Magit vs University of Agriculture, Makurdi.</i> (2005) 19 NWLR (Pt.959) 211-----	37, 52, 57, 76, 81, 85, 97, 121
<i>Merchant Bank Ltd. vs Federal Minister of Finance</i> (1961) All N.L.R 598-----	34
<i>Metropolitan Properties Co (F.G.C) Ltd. vs Lannon</i> (1968) EWCA Civ 5-----	27
<i>Nakkuda Ali vs Jayaratne</i> (1951) A.C 66-----	34

<i>Narayan Das vs State</i> . A.I.R 1968 Orissa 14-----	
	106
<i>Nnoli vs University of Nigeria Teaching Hospital</i> (1994) 10 SCNJ 71-----	
	77
<i>O'Rourke vs Miller</i> (1985) 156 CLR 342 at 353-----	
	120
<i>Obadara vs President, Ibadan West Dist. Grade "B" Customary Court</i> (1965) NMLR 39-----	
	29
<i>Odukale vs University of Ife</i> . 7 U.I.L.R. 391-----	55,
	106
<i>Ogundoyin vs Adeyemi</i> (2001) 7 NSCQR 378 -----	
	33
<i>Ogunmadeji&Ors vs MoshoodAbiola Polytechnic</i> . (2001) I CHR 372 -----	62, 77
<i>Okakpu vs Resident, Plateau Province</i> (1958) N.N.N.R. 5-----	34
<i>Olaniyan&Ors vs University of Lagos</i> . (1985)2 NWLR (Pt. 9) 599-----	56,9 3, 94, 97, 98, 114
<i>Orioge vs A.G. Ondo</i> (1982) 3 NCLR 349-----	
	33
<i>Orisakwe vs Governor of Imo State</i> (1982) 3 NCLR 743-----	
	33
<i>Osumah vs Edo Broadcasting Services</i> (2005) All FWLR (Pt. 253) 773-----	
	87

<i>Painter vs Liverpool Oil Gas Light Co.</i> (1836) 3 A.& E.433-----	
18	
<i>Psychiatric Hospital Management Board vsAyitacha.</i> (2000) 11 NWLR (Pt. 677) 154-----	
125	
<i>R (Peng Hu Shi) vs King’s College London.</i> (2008) EWHC (Admin) 857 [45]– [46] -----	
123	
<i>R vs Chancellor of the University of Cambridge (Dr Bentley's Case)</i> (1723) 1 Str 557-----1,	
20	
<i>R vsAltrincham JJ., ex.p Pennington</i> (1975) O.B.-----31	
<i>R vs Dyer</i> (1703)1 Salk. 181-----	
19	
<i>R vs Sussex Justices, ex parte McCarthy</i> (1924) 1 K.B 256 at 259 -----	
27	
<i>R. vsBarnsley JJ</i> (1960) 2 Q.B. 167-----28	
<i>R. vs Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte</i> [No. 2] (2000) 1 A.C. 119 at 133, H.L. (UK). -----	
29	
<i>R. vs Gaming Board for Great Britain</i> (1970) 2 O.B. 417-----26,	
101	
<i>R. vs Hammond</i> (1863) 9 L.T. (NS) 423-----	
28	
<i>R. vs Home Secretary, ex. Parte Hosenball</i> (1977) 1 W.L.R 766-----24,	
101	

<i>R. vs Lord President of the Privy Council, ex parte Page</i> (1993) AC 682-----	
46	
<i>R. vs Rand</i> (1866) L.R 1. Q.B. 230-----	
30	
<i>R. vs University of Nottingham ex parte K.</i> (1998) ELR 184-----	46
<i>R. vs Visiting Justice at Her Majestic Prison, Pentridge, ex p. Walker</i> (1975) V.R. 883-----	
25	
<i>R. vs Wells Street Stipendiary Magistrate, ex p. Seillon</i> (1978) 1. W.L.R 1002-----	
25	
<i>Re Godden</i> (1971)2 Q.B 662-----	24,
101	
<i>Re R.N. (An Infant)</i> (1967 (2) B. 617, 530P-----	16
<i>Re-Brook</i> (1864) 16 CB 403-----	20
<i>Ridge vs Baldwin</i> (1963) (1) WB 569, 578 -----	18, 120
<i>Ridge vs Baldwin</i> (1964) A.C. 40-----	35
<i>Secretary of State for the Home Department vs AF</i> (2010) 2 A.C. 269, H.L. 17-----	
23	
<i>Sofekun vsAkinyemi</i> (1980) 5-7 S.C.-----	17, 33,
65	
<i>Sunday Eguamwense vs James Amaghizemwen.</i> (1993) 9 NWLR (PT. 315) 1-----	
81	

<i>Surinder Singh Kaunda vs Government of the Federation of Malaya</i> (1962) A.C. 40-----	22
<i>Tan Boon Chee David vs Medical Council of Singapore</i> (1979–1980) S.L.R.(R.) 523-----	25
<i>Tawakalitu vs Federal Republic of Nigeria</i> (2001) All FWLR, (Pt. 561) -----	79
<i>Thorne vs University of London.</i> (I966) 2 QB 237-----	37,
	46
<i>Udemah vs Nigeria Coal Corporation</i> (1991) 3 NWLR 477-----	99
<i>Ugwumadu vs UNN.</i> (2000) 7 CLRN 130-----	68,
	77
<i>Unical vsUgochukwu</i> (No.2) (2007) 17 NWLR (Pt.)249-----	62
<i>University of Calabar vsEssien</i> (1996) 10 NWLR (Part 477) 225-----	65, 71
<i>University of Ilorin vsAdesina</i> (2010) 9 NWLR (Pt.1199) 331-----	82
<i>University of Ilorin vsAdesina</i> (2014) LPELR-23019(SC)-----	124
<i>University of Ilorin vsOluwadare</i> (2003) FWLR, (Pt 149) 1195-----	8
<i>University of Ilorin vsOluwadare</i> (2006) 14 NWLR (Pt.1000) 751-----	12, 56, 69, 72, 82, 84
<i>University of Uyo & 3 ors vs Linda OnyebuchiEssel.</i> (2006) All FWLR (Pt.315) 81-----	68
<i>West Africa Examination Council vsAkinkunmi.</i> (2008) 35 NSCQR 222-----	95
<i>Wood v. Woad</i> (1874) L.R. 9Ex. 190-----	20

ABBREVIATIONS

ABU	Ahmadu Bello University
AC	Appeal Cases
AER	All England Reports
ALR	Australian Law Reports
Ch. D	Chancery Division
CLRN	Commercial Law Reports of Nigeria
ECHR	European Court of Human Right
ELR	Education Law Reports
EWCA Civ	England Wales Court of Appeal Civil Division
FSC	Federal Supreme Court (Law Reports)
FWLR	Federation Weekly Law Reports
KB	King Bench
NCLR	Nigerian Constitutional Law Reports
NLR	Nigeria Law Reports
NMLR	Nigerian Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NSCQC	Nigeria Supreme Court Quarterly Reports
NWLR	Nigerian Weekly Law Reports
OAU	Obafemi Awolowo University

OND	Ordinary National Diploma Certificate
PLR	Plateau Law Reports
QB	Queen Bench
QBD	Queen Bench Division
SC	Supreme Court Reports
SCNJ	Supreme Court of Nigeria Judgments
SDAC	Staff Disciplinary and Appeal Committee
SDC	Student Disciplinary Committee
SSDC	Senior Staff Disciplinary Committee
UILR	University of Ife Law Reports
UK	United Kingdom
UKHL	United Kingdom House of Lords
UNN	University of Nigeria, Nsukka
USA	United State of America
VC	Vice Chancellor
WACA	West Africa Court of Appeal
WLR	Weekly Law Reports
WRN	Weekly Reports of Nigeria

TABLE OF CONTENTS

Title page	i
Declaration.....	ii
Certification.....	iii
Dedication.....	iv
Acknowledgment.....	v
Table of Statutes.....	vii
Table of Cases	ix
List of Abbreviations.....	xv
Table of Contents.....	xvii
Abstract.....	xx

CHAPTER ONE

GENERAL INTRODUCTION.....	1
1.1 Background to the Study.....	1
1.2 Statement of the Problem.....	3
1.3 Aim and Objectives of the Study.....	4
1.4 Scope and Limitation of the Study.....	5
1.5 Justification and Significance of the Study.....	5
1.6 Research Methodology.....	6
1.7 Literature Review.....	7

1.8 Organizational	
Layout.....	13

CHAPTER TWO

CONCEPTUAL DISCOURSE ON THE PRINCIPLES OF NATURAL JUSTICE

2.1 Introduction.....	15
2.2 Historical Background to the Doctrine of Natural Justice.....	16
2.3 Twin Pillars of Natural Justice.....	18
2.3.1 Principle of <i>Audi Alteram Partem</i> (Fair Hearing Rule / Due Process)	18
2.3.2 Principle of <i>Nemo Judex in Causa Sua</i> (Rules against Bias)	26
2.4 Application of the Principles of Natural Justice in Nigeria.....	31
2.5 Conclusion.....	40

CHAPTER THREE

DISCIPLINARY POWERS OF UNIVERSITIES IN NIGERIA

3.1 Introduction.....	41
3.2 Administrative Structure of the University.....	42
3.3 Exercise of Discipline powers of the University.....	44
3.4 Disciplinary powers under the University's Statute.....	44
3.4.1. The Visitor to the University.	45
3.4.2. The Vice-Chancellor.....	47
3.4.3. The University Senate	52
3.4.4. The University Council.....	54
3.5 Who is a University Student?.....	57
3.5.1 The Relationship between the Student and the University.....	58

3.6 Application of the Doctrine of Natural Justice to the Universities Discipline Action.....	62
3.6.1 University’s Jurisdiction in Disciplinary Matters with Criminal Elements.....	64
3.6.2 University’s Disciplinary Jurisdiction in Examination Malpractice Offences.....	67
3.6.3 University’s Pure Academic Actions.....	74
3.7 The Doctrine of <i>Forum Domesticum</i>	79
3.7.1 Exhausting Internal Remedies within the <i>Forum Domesticum</i>	81
3.7.2 Inapplicability of Exhaustion of Domestic Remedies in Fundamental Rights Issues.....	83
3.8 Conclusion.....	86

CHAPTER FOUR

4 AN ASSESSMENT OF THE APPLICATION OF THE PRINCIPLES OF NATURAL JUSTICE TO THE PRACTICAL EXERCISE OF DISCIPLINARY POWERS BY UNIVERSITY

4.1 Introduction.....	87
4.2 University Disciplinary Methods and Procedures.....	89
4.3 Fair Hearing in the Exercise of the University Disciplinary Powers.....	91
4.3.1 Rule of Fair Hearing (<i>Audi Alteram Partem</i>)	92
4.3.2 Rules against Bias and Interest. (<i>Nemo Judex in Causa Sua</i>)	107
4.4 Breach of University Statute.....	114
4.5 Critique of the Application of the Principles of Natural Justice in University Disciplinary Action.....	118
4.6 Conclusion.....	128

CHAPTER FIVE:

SUMMARY AND CONCLUSION

5.1 Summary.....130

5.2 Findings
.....131

5.3 Recommendations.....132

Bibliography.....136

ABSTRACT

The requirement of the principles of natural justice in the Universities disciplinary action has received much attention from the Courts in the recent time. The Court intervention in the administrative determination of the Universities has created a lot of uncertainties and confusion. In fact, the extent, scope and limit of the Universities' power to punish student for misconduct is mostly unclear. This problem is so far-reaching that the University decision-makers are often confused as to practical steps to follow or what standard of natural justice they should observe in their disciplinary process. Objectives of the work include the appraisal of the University disciplinary jurisdiction vis-à-vis court of competent jurisdiction in trying University students for misconduct. This work is motivated by the unusual raise in the student-university litigations in Nigeria. The study focused on the importance of University disciplinary system and remedies as a much better way of resolving University disciplinary matters. It employed the doctrinal method of research to critically examine the application of the principles of natural justice in disciplinary action in Nigerian Universities and its effect on the institutional administrative expediency and efficiency. This research produced a number of findings: the application of the principles of natural justice to the University disciplinary actions are too demanding for the University Disciplinary Authorities; students and staff, despite the internal redress mechanism in the University forum, still resort to the court of law for redress. Based on the findings, it is recommended that the observation of the basic principles of natural justice should be *sine qua non* to discipline of student in Nigerian Universities. It is no longer sufficient for a University to discipline a student where it appears to the Vice-chancellor that such a student has been guilty of misconduct. Any student facing a disciplinary penalty, must know the case against him/her, the student must be given an opportunity to correct or contradict the evidence that have been made in support of the case, the University authority must make its decision without a reasonable apprehension of bias. In order to avoid the cost and minimize the number of lawsuits mushrooming in our Universities, it is crucial that University administrators understand the law, disciplinary due process and follow it.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Disciplinary action of whatever nature must be carried out according to the dictate of law. This is one of the pillars of the rule of law. Statutes always provide procedures to be followed before a person is disciplined. These procedural requirements are provided in the statutes to enable the authority exercising the power under such statute reach a conclusion that is fair, just and reasonable. Where these procedures are ignored, irrespective of the fairness of the power exercised, the court will hold that the law has not been obeyed and the power exercised, is a nullity.¹

One of the legal requirements for a valid exercise of disciplinary action is the observation of natural justice principles. The doctrine of Natural justice has, over the years, crystalized into two maxims: *Audi alteram partem* meaning that nobody should be condemned unheard. *Nemo iudex in causa sua* which means that a man should not be a judge in his own cause. The most frequent cause of judicial interference with the exercise of administrative powers is a disregard of these principles of natural justice. Many of the cases of disciplinary actions in Nigerian Universities were often reviewed against the Universities by the courts, consequently nullified as a result of their failure to recognise and observe the principles of natural justice.

Natural justice, apart from being the “law of GOD”², has also found expression in the Constitution of the Federal Republic of Nigeria (1999 Constitution). **Section 36 (1)** provides:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled

¹*Board of Inland Revenue vs Joseph Rezcallah and Sons Ltd.* (1961) W.N.L.R. 32, see also the dictum of Oputa JSC at page 618 in the case of *Garba & Ors. vs University of Maiduguri & Ors.* (1986) 1 NWLR (Pt.18) 550

²*R vs Cambridge University (Dr Bentley's Case)*(1723) 1 Stra. 557 where Fortescue, J said: “The laws of God and man both give the party an opportunity to make his defence. If he has any. I remember to have heard it observed by a very learned man upon such occasion, that even God himself did not pass sentence upon Adam, (say God) where art thou? Hast thou eaten of the tree, whereof I commanded thee that thou should not eat? And the same question was put to Eve too.”

to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

The effect of this provision is that, even where there is no statutory provision allowing a person, who is under 'trial' to be heard in an institution's law, such person must nonetheless, be given the opportunity to present his case and be heard in accordance with the provision of the Constitution. It has long been established that administrative authorities/tribunals are bound to observe the principle of natural justice and right to fair hearing in the discharge of their judicial and quasi-judicial functions.³ The guiding principle is that as long as an individual's right and obligation stand to be affected by decision, action or inaction of any authority or tribunal, the action of such authority or tribunal is amenable to judicial scrutiny to see that the authority or tribunal observe the principles of natural justice.

Universities world over are vested with the power to instil, inculcate discipline and good moral in their students. This power usually stems from statutory provisions, which are normally contained in the enabling laws of the institutions. Nigerian Universities (particularly the Federal Universities) have theirs contained in the Acts establishing them. The various Acts, which are similar in content, give the Universities the authority to set up disciplinary panels and to determine their procedures with a view to ensuring that such conform to the dictate of fair hearing and right reasoning.⁴

The University is a meeting point for various academic competitions and pursuits, a very large body of students from different backgrounds and cultures converge there to pursue their individual intellectual interests. Essentially, the University's students must be subject to its disciplinary powers so as to ensure an orderly academic community where the University's objectives could be achieved. Preservation of law and order is, therefore, crucial for peace and stability in the University without which serious academics pursuit can hardly take place. In other words, the students,

³*James Bagg's case* (1615) 11 Co.Rep.93b,99a.

⁴See for instance Statute 9 (6) (2) & (3) of Ahmadu Bello University (Transitional Provisions) Act Cap. A14 LFN 2004 & section 33(2) of Obafemi Awolowo University (Transitional Provisions) 1990 Act Cap. O2 LFN 2004

lecturers and other supporting staff in the University community must be disciplined and subject themselves to the laws establishing the University, its rules and regulations.

If a University is to run successfully, the University authority must be able to exercise its disciplinary powers to punish students for the breach of its rules. The emphasis here is that the University disciplinary process is used to maintain law and order in the university community. This is because, if any reasonable degree of academic progress is to be attained, a peaceful environment must be secured. The University has the inherent power to formulate and enforce rules of student conduct that are 'appropriate and necessary' to the maintenance of order reasonably necessary to further the institution's educational goals. The power to discipline erring members of staff and students is extant, the fundamental requirement is that such an institution must act in accordance with the principles of natural justice.

1.2 Statement of the Problem

Maintaining peace and order in any of our University has now become a herculean task. The University on one hand, is often saddled on how to use the big stick on students adjudged to have fouled the institution rules and regulations without drawing the ire of the law, while on the other hand, the student is often embroiled with the quandary of determine where to seek relief from the often perceived high-handed and oppressive decisions of the University in meting out discipline for the breach of its rules and regulations. The unnatural consequences of the above is the spate of law-suits instituted against the Universities by their staff and students' alike when disciplinary actions were taken against them. Unfortunately, most of these suits ended against the University concerned, most often, on the ground of non-observance of the cardinal principles of natural justice.

The problem is more complex in the face of issues like the place of natural justice in the administrative law sphere, the extent, scope and desirability of the application of the principles of

natural justice in administrative / disciplinary action of the University; the effect of the Supreme Court's decision of *Garba vs University of Maiduguri* which prohibit the University from entertaining students' misconduct tainted with crime; the provisions of the Examination Malpractice Offences Act which regulate, define and prescribe penalty for examination malpractice misconducts in public Universities, and in addition vest jurisdiction in examination malpractice cases on the Federal High Court; the question of exclusiveness or otherwise of academic decisions as distinct from University administrative / disciplinary action; the adequacy and relevance of forum domesticum for settlement of issue or dispute in the University community. These issues are extant and called for a serious attention and thinking.

This research work shall attempt to find answers to the following questions-

1. In exercising disciplinary powers, must the University decision-makers take into consideration the principles of natural justice or just discretion before meting out punishment to student adjudged misconducted?
2. What amount to misconduct which a University can legitimately assume jurisdiction and punish its student for and which degree of misconduct that the University is prohibited from entertaining?
3. Is examination malpractice a minor misconduct amenable to the University disciplinary jurisdiction or a serious misconduct triable only by a court of competent jurisdiction?
4. Is the University jurisdiction in all academic decisions exclusive and not subject to judicial review as declared often by the courts or is it a theory?
5. Must a student exhaust the internal remedies in the *forum domesticum* of the University before approaching the Court of law for redress?

1.3 Aim and Objectives of the Research

The main aim of this research is to critically assess the application of the principles of natural justice in disciplinary action in Nigerian Universities. The specific objectives of the research are:

1. To find out whether the University decision-makers exercising their disciplinary powers under the University Act must observe the principles of natural justice when discipline student for misconduct.
2. To appraise the University disciplinary jurisdiction vis-à-vis that of Court of competent jurisdiction or Tribunal established by law in trying University student for misconduct tainted with crime.
3. To examine whether examination malpractice is a minor misconduct subject to the University disciplinary jurisdiction or a serious misconduct within the competent of the High Court only.
4. To find out whether University academic decisions are subject to supervisory and reviewing power of the court.
5. To appraise the doctrine of *forum domesticum* in the University context, especially as it relates to disciplinary actions and internal settlements.

1. 5 Scope of the Research

The territorial scope of the research essentially covers Tertiary Institutions in Nigeria. There are more than 100 Universities⁵ in Nigeria today established by statutes whose provisions are strikingly similar (particularly the Federal Universities). The provisions of these statutes will be examined in the light of the prevailing circumstances in our campuses to demonstrate their adequacy or otherwise.

The substantive scope is administrative law.

1. 5Significance of the Research

This research work is significant as it would study the reason(s) for the high rise in the number of suits instituted against the various Public Universities in Nigeria by their staff and students

⁵National Universities Commission, Monday Bulletin, Vol. 9, N0. 55, December 29, 2014 p. 9-10 contained the list of approved Universities in Nigeria; 40 Federal Universities, 39 State Universities and 50 Private Universities.

whenever disciplinary actions are taken against them. This research work would explore the causes and offer panacea to this unending suspicious and mistrust (in disciplinary actions which ought to have been settled internally) that exist between the Universities and their students who are ordinarily fated by stature to co-exist.

The research also seeks the effect of the application of natural justice to the Universities disciplinary action, has it achieved the desired result in terms of justice vis-a-vis administrative expediency?

The research is justified as it will enlighten the University decision makers/authorities in understanding student's right to fair hearing and due process; both substantial and procedural, thus, providing practical information that University authorities, government agencies, administrators generally may use to make fair decisions while conforming to the law.

The research will also be invaluable to students as it will seek to suggest a much friendlier, cheaper, time-conscious means of appealing against disciplinary actions taken against them by the University administrators, compare to time-consuming, much expensive and uncertainty of the outcome of judicial proceedings often instituted against their respective Universities.

Ultimately, the research will also improve the existing literature on the importance of natural justice in disciplinary actions in the University and the public generally and may equally stimulate further studies in this area thereby becoming a veritable research material for further studies.

1. 6 Research Methodology

This research work employs the doctrinal method. Primary and secondary sources are utilised.

The Primary sources include the Constitution of the Federal Republic of Nigeria (CFRN) 1999, Establishment Acts of some Federal Universities, Legislations pertaining to Education and case laws. Secondary sources include relevant text-books both foreign and local, Research Articles,

Journals, Seminars and Conference materials, Newspapers as well as Magazines, information and materials from the internet.

1.7 Literature Review

There are not too many textbooks on the subject matter of this study, however there are numbers of Magazines, Newspapers, Judicial Decisions, Websites materials and Articles both in local and foreign journals which have one way or the other touched the subject matter. Some of these works are reviewed below;

Edako⁶ examines students' misconducts vis-a-vis the University powers to instil discipline within its community and among its students' populace and the need of the University to observe the requirement of the natural justice in its decisions making and administrative actions in this regards.

The learned writer did not to tell us the procedures the University authority should employ when discipline its student for misconduct so as to meet the requirement of the principle of natural justice or the fair hearing rule. This study shall also focus on this aspect.

Akhabue⁷ in his article examines the legal status of a student in Nigerian University and principles of fair hearing. He argued the Universities need to conform to the tenets of natural justice with regard to student admission and disciplinary procedures. Short cut procedure should not be adopted by the Universities when disciplining student, rather student, even where appeared guilty of an offence, the student must still be seen to be treated fairly and in accordance with the law. The author did not tell us the standard procedure to be adopted by the Universities to accord the erring student fair hearing in accordance to the law. This work intends to cover this gap.

⁶Edako, S. E. (2011) "Application of Natural Justice to issues in University Governance" *African Journals of Education and Technology*, Vol. 1, No. 2. pp 93-111

⁷Akhabue, D. A. (2014) "The Legal Status of a Student in Nigeria University and the Law". *SCSR Journal of Social Sciences and Humanities (SCSR-JSSH)* Vol. 1, Issue 1, pp 01 – 08

Oretuyi⁸ emphasizes the importance of the observance of the natural justice principle by the University Dons while exercising their powers of discipline under the Enabling Act. Failure to adhere to this principle will vitiate the decision of the authority no matter how well considered, the writer concluded. The learner writer however, did not tell us the standard of the principles required in University disciplinary determination. Also the writer did not clarify whether the requirement of the hallowed natural justice principle is equally paramount and crucial to the exercise of academics' decisions by the University authority. This will be discussed in this research work.

Nwokeochain his article "Legal control of Disciplinary Action in Nigerian Universities"⁹ examines the hierarchy and the scope of the disciplinary powers of the University organs. He further highlights instances where the University disciplinary actions have been judicially reviewed against the University on a various ground such as breach of natural justice rules, fair hearing, and the University Statute. The work did not discuss the procedures the University authority should follow in proceeding against student so as to meet the requirement of the law. However, this study shall endeavour to cover this crucial area within its ambit.

Obanya¹⁰, in his article "Locating the Proper Forum for the Remedies of Aggrieved Students in Tertiary Institution in Nigeria" was of the view that the Court will not ordinarily interfere in the internal affairs of the University and that the court will always insist that student should exhaust remedies provided in the forum domesticum. He concludes that in fundamental right issues, the student needs not exhaust the internal remedies, such student may approach the court to seek redress. To him, only the court has jurisdiction in fundamental rights issues. The author omits to tell us the instances that will justify a student to resort to litigation in order to enforce his right in his University.

⁸Oretuyi S.A. (1984) "Discipline of Students: A Vice-Chancellor must observe the Rules of Natural Justice" *Nigerian Law Journal* (FDP) Vol. 12, No. 1. Pp. 83-88.

⁹(2005) *Journal of Public and International Law*, Vol. 1. No. 1. Pp. 114-130.

¹⁰<http://www.legalline.blogspot.com> (accessed on 20th February, 2013)

Nwazi¹¹critically examines the jurisdiction of the courts vis-à-vis the investigative and disciplinary roles of the Nigerian Universities over their students as it relate to examination malpractices. The writer concludes that the court decision in *University of Ilorin v Oluwadare*¹² clearly divested the Universities their powers to punish any examination malpractice, which the court adjudged to be a serious criminal charge triable only in a competent criminal court or tribunal set up under the Constitution to try such offences.

He solicits for more powers to the Universities, especially to handle examination malpractice offences as matter within the domestic domain of the universities. He proposes that a permanent, well constituted Disciplinary Board for examination and other academics misconducts may be set up in the Universities to handle such offences. The author, however omits to enlighten us what will be the legal status of such Disciplinary Board will it be elevated to the rank of a competent criminal court or tribunal set up by the Constitution to try such offences?

Fabunmi¹³ discussed the causes of instability in the Nigerian Universities, the author examines the provisions of the law establishing the Universities and how far these provisions have sustained law and order in the Universities.

He also examines the disciplinary powers of the Vice - Chancellors in maintaining peace and order in their campuses in line with the decision of the Supreme Court in *Garba v University of Maiduguri*¹⁴. He was of the view that the decision should not be interpreted too broadly as it will have the effect of eroding completely the Universities powers of discipline. He thereby suggests that serious criminal offence committed by the student should be reported to the police for prosecution in a regular court, minor offences, even with criminal element should be allowed to be

¹¹Nwazi J. N. (2005)“Scope of Disciplinary Power of Nigerian Universities on Examination Malpractice Offences: *University of Ilorin vs Oluwadare* Revisited” *Ife Law Juris Review*, Vol. 2, Part 2. Pp. 292-305

¹² (2003) FWLR, (Pt 149) 1195

¹³Fabunmi, J. O. (1991)“University Law: Maintenance of Law and Order in Nigerian Universities” *Obafemi Awolowo University Law Journal*, 7 & 8, Pp. 1- 21

¹⁴ (1986) 1 NWLR, (Pt. 18) 550

handled by the Universities. Although the learner author suggestion looks attractive, he however failed to demarcate or discern serious offence from minor offence.

Ibidapo-obewrote “The Declining Disciplinary Power of the Universities” (A Case Comment on the Decision of the Supreme Court in *Garba v University of Maiduguri*.¹⁵The author chronicles the celebrated Garba’s case and asserts that some of the judicial pronouncements made in it would only curtail and hamper universities’ statutory powers of discipline. However, he did not mention that the gauge for reviewability of the University actions is its disregard for due process: procedural and substantive and the principles of natural justice. This omission shall be considered in this dissertation.

Idowu¹⁶ dwells on examination misconduct using Obafemi Awolowo University as a case study. The writer discusses the University examination regulations as well as its ambit and the various methods/devices employed by the students to commit examination malpractice.

He expatiates on the disciplinary methods and procedures put in place by the University authority to address the cases of examination malpractice offence committed during the time under consideration. He did not however, consider other student acts that activate misconducts and how to deal with those misconducts.

Popoola¹⁷ in his paper presentation titled “Law and University Administration in Nigeria: Issues, Challenges and Perspectives” was of the view that Universities and their members should respect the law of the land. Universities are not an island unto themselves, they operate within the confines of the sovereign authority of the nation and are bound by its laws. He concludes that the University Management in their discipline action should follow the law and not discretion. The paper though

¹⁵ (1987) *Obafemi Awolowo University Law Journal*, 211

¹⁶Idowu, A. A, (1991)“Due Process and Student Academic Misconduct: A case study of Obafemi Awolowo University, Nigeria, from 1982-1988”*Obafemi Awolowo University LawJournal*, 7 & 8 pp. 59-77

¹⁷Popoola, A. O. (2014). Law and University Administration in Nigeria: Issues, Challenges and Perspectives. Paper Commissioned for Presentation at the Executive Education Programme organized for Vice-Chancellors of Nigerian Universities by the Association of Vice-Chancellors of Nigerian Universities: Le Meridien Hotel Uyo, Akwalbom State.

discusses the powers and limitation of the visitor in Nigerian Public Universities and essence of discipline in the Universities, he however omits to tell us the means of achieving the discipline in our citadels of learning.

Akume in the article “Universities Authorities and its Students under the Rule of Law: A case Study of Ahmadu Bello University,Zaria”¹⁸ highlights the relationship between the University Authorities and its students. He further examines the civil rights of the students and the University Authorities’ control and exercise of discipline power over the students.

The author cautions the University Authorities to always adhere to the rule of law when taking action that may result into students’ expulsion. He maintains that the University Authorities cannot take final disciplinary measure when the allegations against a student has criminal elements, but the University Authorities can take final disciplinary measures if the students action has no criminal elements e.g. failure to register for two consecutive academic sessions, failure to write examinations, etc. The author however, did not tell us whether the University Authorities need to adhere to or observe the fair hearing rule in taking final disciplinary measures where the student’s action contains no criminal ingredients.

Aduba authored the “Constitution Guarantees in Disciplinary Proceedings in Tertiary Institution”¹⁹, in his contribution, Aduba bemoans the alarming rate at which students resort to litigation these days, blaming this trend on the carelessness of the Universities authorities in handling simple disciplinary cases by not observing the elementary principle of fair hearing. He also takes a critical look at the *Garba’s case(supra)* and came to the conclusion that the case is enough parameter for the managements of higher institutions of learning in the country. The writer though enumerates a host of discipline activating conducts, he did not to cover the area of academic disciplines that are not misconducts in nature. This important aspect shall be covered by this dissertation.

¹⁸ (2007) *Journal of Private & Comparative Law*, A.B.U., Zaria. Vol. 1, No. 1. pp 19-36

¹⁹ [www.researchgate.net/publication/40439853/Constitutional Guarantees in Disciplinary Proceedings in Tertiary Institution](http://www.researchgate.net/publication/40439853/Constitutional_Guarantees_in_Disciplinary_Proceedings_in_Tertiary_Institution) (last accessed 2nd July, 2012)

Smith's "The Exclusive Jurisdiction of the University Visitor"²⁰, an article on the exclusive jurisprudence of the University Visitor. His effort in the work was basically rested on the categories of powers available to the Visitor and how such should not be extended beyond limit. However, unlike the common law definition and wide jurisdictional scope of the visitor, the visitatorial power is statutory defined in Nigeria

Nwauche in his article "Rethink the Exclusive Jurisdiction of Nigerian Universities in Academic Matters"²¹ writes extensively on the exclusively jurisdiction of the Nigerian Universities on issues bothering academic actions. The writer seems to suggest the exclusiveness of University autonomy in academic matters if there are procedural compliance with internal rules and fundamental human rights.

Eka, B. U. in his book titled "Judicial Control of Administrative Process in Nigeria"²² dwells extensively on the principles of natural justice, its historical background, transplanting and application to the Nigerian jurisprudence. The work covered generally the Courts' jurisdiction to control and review administrative actions and inactions. The distinctive aspect of the extant work is that it raised new posers in fair hearing, especially as such related to discipline in the higher institutions. The work however, concentrates only on the general administrative process in Nigerian.

Ndifon & Ndifon²³ in their journal article discuss the question of examination malpractice and the violation of the right to fair hearing. They examine the provisions of the Examination Malpractice Offences Act²⁴ and its application to the Public Universities in Nigeria. According to them, examination offence is regulated by the Act and the jurisdiction to punish for examination offence

²⁰www.researchgate.net/publication/238340658/The_Exclusive_Jurisdiction_of_the_University_Visitor (accessed on 25th February, 2014)

²¹www.ajol.info/article/viewfile. (accessed on 23th February, 2014)

²²Eka, B.U. (2011) *Judicial Control of Administrative Process in Nigeria*. Obafemi Awolowo University Press Ltd, Ile Ife, Nigeria.

²³Ndifon C.O & Ndifon R.A. (2012) "Public Examination in Nigeria and Punishing Malpractice: Human Right Perspective." *British Journal of Arts and Social Sciences*, Vol. 5, No. 2

²⁴Cap E 15, Laws of the Federation Republic of Nigeria, 2004

is vested in the Federal High Court. Their work is relevant to this research but the position of the learner authors is no longer tenable in the face of the Supreme Court decision in *Unilorin vs Oluwadare*.²⁵

Aduba, Kpareuzue & Agwe²⁶ in their work “Discipline of Students under Nigeria University Laws and its implication on Litigation Management in the University of Jos” discuss the powers of the Vice-Chancellor and the Senate in regards to regulation of students conduct and discipline. The article emphasizes the reasons why students resort to litigation to overturn the decision of the University Senate in instances of discipline actions. The authors posit that the University of Jos should have save itself from a lot of trouble and cost if it has adhered to the principles of natural justice which are Constitutional guaranteed. The authors, however omit to show us how the University authority can dissuade student from recourse to litigation even when comply with natural justice.

1.8 Organizational Layout

This research is divided into five chapters. The first chapter gives a brief introduction of the study consisting of the background, statement of problems, scope, aim and objectives, and methodology. It also reviews some of the existing literatures on the subject and spells out the organizational layout.

Chapter two discusses the historical background of the doctrine of natural justice, its two pillars- *audi alteram partem* and *nemo judex in causa sua*-, and the fair hearing rule under the Constitution of the Federal Republic of Nigeria, 1999. The chapter also examine the basis of the application of the principles to University administrative actions.

²⁵ (2006) 14 NWLR (Pt.1000) 751

²⁶ Aduba J. N., Kpareuzue A. and Angwe B [http://www.researchgate.net/publication/40439885_ Discipline_of_Students_under_Nigeria_University_Laws_and_its_implication_on_Litigation_Management_in_the_University_of_Jos](http://www.researchgate.net/publication/40439885_Discipline_of_Students_under_Nigeria_University_Laws_and_its_implication_on_Litigation_Management_in_the_University_of_Jos). (accessed 2nd July, 2012)

Chapter three deals with the Universities and discipline powers stretching to the administrative structure of the University, the exercise of the disciplinary power of the university, power under the statute: The Visitor, the Vice-Chancellor, the Senate, the Council. The chapter explores the status of a University's student, the unique features and the relationship between the University and the student. The chapter also dwell on the application of the principles to the university discipline decisions, distinguishing pure academics discipline actions from other administrative discipline actions, it touches also the University jurisdiction in student misconduct tainted with crime including examination malpractice offences and the doctrine of forum domesticum and inapplicability of forum domesticum in Fundamental Right issues.

Chapter four is on the assessment of the disciplinary powers and procedures of the University, dealing with the university disciplinary methods and procedures, thereby highlighting the University disciplinary hearing procedures. The chapter presents a case review of the effect of non-observance of the elements of the hearing rule and the rule against bias in the University adjudicating processes. The chapter also assessing the effect of the breach of the University statute in the course exercising University's disciplinary powers. We close this chapter by highlighting some negative effects of the application of the principles of natural justice to the Universities disciplinary action.

The final chapter closes with summary, findings, recommendations and conclusion.

CHAPTER TWO

CONCEPTUAL DISCOURSE ON THE PRINCIPLES OF NATURAL JUSTICE

2.1 Introduction

The principles of natural justice perform a very important function in the field of administrative law in that they help to maintain certain standards of fairness in administrative justice. Natural justice represents higher procedural rules, which every administrative authority must follow in taking any decision adversely affecting the rights of a private individual.¹ Certain fundamental rules are so necessary to the proper exercise of power that they are projected from the judicial to the administrative sphere.² Natural justice embodies two main principles which have been described as “the twin pillar supporting it.”³ Since their application varies according to the circumstances therefore these are principles rather than rules and are traditionally expressed in the form of two Latin maxims. *Audi alteram partem* translates as “hear the other side.” It essentially requires that a person affected by a decision must have a proper opportunity to put his case. *Nemo iudex in sua causa*, means literally, “no man shall be judge in his own cause”, it acts as a requirement that not only must there be an absence of actual bias in decision making, but there must be an absence of an appearance of bias.⁴

The concept has meant different things to different people at different times. In fact, the expression “natural justice” has been described as one “sadly lacking in precision” because of the various meaning that may be attached to the word “justice”. This is because it is a loose and abstract phrase. Thus in *Abbott vs Sullivan*,⁵ the English Court stated that “the principles of natural justice are easy to proclaim, but their precise extent is far less easy to define”. Obviously, there is no

¹Massey, I. P. (1985) *Administrative Law* (2nd Ed.) Lucknow: Eastern Book Company, p. 22

²Wade, H.W.R. (1971) *Administrative Law* (3rd Ed.) Oxford, England: Clarendon Press, p.154

³*L.P.D.C vs Fawehinmi* (1985) 2 NWLR (Pt. 2)

⁴Herling, D. and Ann L. P. (2004) *Briefcase on Constitutional & Administrative Law* (4th Ed.) London: Cavendish Publishing Limited. p.149,

⁵(1952) 1 K.B.189 at 195

single universal definition of Natural Justice and it is only possible to enumerate with some certainty the main principles.

It has been explained however, that “it is the universality of this ideal of justice which leads to its being called ‘natural.’”⁶ Whatever may have been its origin, the truth is that natural justice has acquired a limited and technical meaning: it is no more a sentimental rather than a rational approach to a legal issues, but a yardstick for the application of the legal ideals of justice and fair play in the sphere of administration. The fact of its looseness has not dissuaded jurists from attempting a working definition of the concept of natural justice however inadequate.

According to the learned authors, Iluyomade and Eka:⁷

It is difficult to define in precise language what natural justice means or what is its actual content. There is no doubt that its origin lies in natural law theory. We may therefore attempt to say that natural justice connotes an inherent right in man to have a fair hearing and just treatment at the hands of the rulers or their agents.

In the famous case of *Ridge vs Baldwin*⁸Harman L.J, in the Court of Appeal countered natural justice with ‘fair play in action’

In *Re R.N. (An Infant)*⁹ Lord Parker, C.J., preferred to describe natural justice as ‘a duty to act fairly’.

The Supreme Court *per* Obaseki JSC¹⁰ maintained that the rules of natural justice are common law rules “which are of universal application in the civilized world” and have “provided refuge from oppressive laws and actions over the ages”.

2.2 Historical Background of the Principles of Natural Justice

Historically, natural justice developed in English Law as a concept founded upon the moral and ethical notions of justice¹¹“the justice of the common law” which it is said will supply the

⁶Wade, H.W.R.*op. cit.* p.172

⁷Iluyomade, B. O. and Eka, B.U. (1980) “*Cases and Materials on Administrative Law in Nigeria*”,Ile-Ife, Nigeria:University of Ife Press, p. 131

⁸(1963) (1) WB 569, 578,

⁹(1967) (2) B. 617, 530P,

¹⁰*Aiyetanvs Nigerian Institute of Oil Palm Research.op.cit. p 1.*

omission of the legislature.”¹²The term expresses the close relationship between the common law and moral principles and it has an impressive ancestry. That no man is to be judged unheard was a precept known to the Greeks inscribed in the ancient times upon images in places where justice was administered, proclaimed in Seneca’s *Medea*, enshrined in the scriptures, mentioned by St. Augustine, embodied in Germanic as well as African proverbs, ascribed in the Year Books to be the law of nature asserted by Coke, C.J. to be a principle of divine justice and traced by an eighteenth-century judge to the events in the Garden of Eden.¹³

In its early period of development, natural justice was confined in its application by ordinary courts. But, as government activities expanded in response to the demands of the welfare state thus necessitating adjudicatory functions to be undertaken within a limited sphere, the courts, in the exercise of their supervisory jurisdiction, gradually extended the principle of natural justice to decision by administrative or statutory authorities and vocational bodies.

In modern time, the Common Law principles of natural justice have been incorporated, in one form or another, in the Constitutional Documents of some countries, particularly those of the newer commonwealth nations that adopt the common law system. The concept natural justice, performs a function somewhat similar to, though not necessary identical with, that performed by the “due process” clause of the United States Constitution (US Constitution).¹⁴ It has been held that this “due process of law” provision has its foundation in natural justice.¹⁵ In Nigeria, the Constitution of the Federal Republic contains some provisions somewhat similar to the American due process clause. In particular, there are provisions regarding fair hearing and impartial adjudication.¹⁶

¹¹Goodhart, A.L. (1953) “*English Law and Moral Law*” London: Stevenson & Sons Ltd. p.65

¹²*Cooper vs Wandsworth Board of Works* (1963) 14 C.B. (NS) 180 at 194 per Byles, J... See also, *Sofekun vs Akinyemi* (1985) 7 S.C. at 189,(Obaseki, JSC)

¹³De Smith, S.A. (1980) “*Judicial Review of Administrative Action*”(5th edn.) London: Stevens & Sons. p.157

¹⁴Fifth and fourteenth Amendment to United States of America Constitution. See also, DeSmith, S.A. at.176. *Op. cit.* p.4

¹⁵*Stuart vs Palmer*, 74 N.Y 183 at 190 per Justice Earl

¹⁶S. 36 of the Constitution of the Federal Republic of Nigeria,1999.

2.3 Twin Pillars of Natural Justice

There are two widely acclaimed principles of natural justice which have been hailed as “the twin pillars of the rules of natural justice and indeed the bastion of the rule of law in a civilized and organized society.”

- i. The *audi alteram partem* rule
- ii. The *nemo iudex in causa sua*.

2.3.1 Principle of *Audi Alteram Partem* (Fair Hearing Rule / Due Process)

No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he had a fair opportunity of answering the case against him.¹⁷ The rule, *audi alteram partem*, requires that a decision-maker must hear both sides, meaning that he must not take a decision that will affect a person without first given him an opportunity to be heard, is a principle applicable to every democratic country that adhere to the rule of law.

The principle is one of great antiquity probably dating back to the Magna Carta,¹⁸ where John, King of England promised:

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.¹⁹

i. Scope of the *Audi Alteram Partem* Rule

The principle of hearing has been applied to diverse situations in cases dating back to the seventeenth century, if not earlier. Most of the earliest reported decisions in which the principle was applied concerned summary proceedings, before justices. Service of a summons upon the

¹⁷*Painter vs Liverpool Oil Gas Light Co.* (1836) 3 A.& E.433, 448-449:

¹⁸Test of Magna Carta, issued in 1215.

¹⁹Clause 39, Magna Carta 1215

party affected was regarded as a condition of the validity of such proceedings.²⁰ The rule was not limited to criminal matters alone, but also in application for the issue of distress warrants and orders for the levying of taxes and other charges imposed by public authorities upon the subject.²¹

At the same time, the rule was also extended to cases relates to deprivation of offices and other dignities. It was a foray by Chief Justice Coke into a review of local government decision-making in 1615, which forcefully asserted the rule and at the same time dramatically extended the power of the Court of King's Bench in enforcing it by mandamus. The case concerned municipal misbehaviour. When James Bagg, a chief burgess of Plymouth, who had been disfranchised for singularly unbecoming conduct, was reinstated by mandamus because he had been removed without notice or hearing.²²

Coke CJ in the case said:

... although they have lawful authority either by charter or prescription to remove any one from the fiefdom, and that they have just cause to remove him; yet it appears by the return, that they have proceeded against him without ... hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party²³

The significant proposition embedded in those lines, was that even though a decision be right, it is not just if made without the decision-maker first hearing from the person to be affected by it.

In another frequently quoted decision to like effect in 1723, the Court of King's Bench issued mandamus to the University of Cambridge requiring the restoration to one Dr. Bentley of the degrees of Bachelor of Arts and Bachelor and Doctor of Divinity of which he had been deprived by the University without a hearing. The judgment of Fortescue J in the case is often cited as an example of the way in which the idea of natural law informed the concept of natural justice.

Fortescue J. said:

²⁰*R vs Dyer* (1703)1 Salk. 181

²¹*Harper vs Carr* (1797) 7 T.R. 270; *Gibbs vs Stead* (1823) 8 B.& C. 528

²²*Bagg's Case* (1615) 11 Co Rep 95b; (77 ER 127) 1275

²³*Ibid.* pp. 1279-1280.

The laws of God and man both give the party an opportunity to make his defense, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence.²⁴

The scope of the application of *audi alterem partem* became broadened in the nineteenth century to embrace such areas as the conduct of arbitrators. In the case of *Re-Brook*²⁵ to include professional bodies and voluntary association in the exercise of their disciplinary functions, and in the case of *Debbis vsLlyod*²⁶ to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals. In *Wood vsWoad*²⁷ the court set aside the decision dismissing a member of a mutual insurance association by the association's committee on the ground that the member concerned was not given a hearing.

Similarly, in *Leeson vs General Medical Council*,²⁸ which involved the statutory requirement of "due enquiry" before a doctor's name was removed from the medical register for professional misconduct, it was held that though the statute said nothing more, yet, "in saying so much it certainly imports that the substantial elements of natural justice, he must have notice of what he is accused of. He must have opportunity of being heard."

The principle of hearing was also applied to the area of exercise of statutory powers despite the fact that some statutes were silent as to the applicability of the rule. It was held in *Cooper vsWandsworth Board of Works*²⁹ that the powers conferred on the local authority to pull a man house down without notice or hearing was subject to a qualification which has been repeatedly recognized, that no man is to be deprived of his property without having an opportunity of being heard.

The Courts, while recognizing that it would be hopeless to require Government Departments, making institutional decisions, to follow the procedure of courts of justice, nevertheless super-

²⁴ *R v Chancellor of the University of Cambridge (Dr Bentley's Case)* (1723) 1 Str 557 at 567 [93 ER 698 at 704].

²⁵ (1864) 16 CB 403.

²⁶ (1980) 13 M.L.R. 281.

²⁷ (1874) L.R. 9Ex. 190

²⁸ (1889) 43 Ch. D 366 at 383

²⁹ (1863) 14 C.B (N.S) 180 at 189

imposed upon their statutory responsibilities the duty to act judicially, in certain situations, in the manner prescribed by the principles of natural justice. The best-known statement of the *audi alteram partem* rule in English administrative law was formulated by the House of Lords in relation to the appellate functions of a government department thus:

Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of state the duty of deciding or determining question of various kinds..... In such cases.... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a questions as though it were a trial ... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view³⁰

This perceptive statement which has been cited in English and Commonwealth decisions - indeed throughout the common law world -, is regarded as laying down the proper standards for the application of natural justice to administrative tribunals as distinct from the ordinary courts.³¹

ii. Scope of the *Audi Alteram Partem* Rule

The rule sets minimum standards of fairness in “adjudication” by bodies which in many instances bear no resemblance to courts of law. Clearly these rules cannot be as high as those rules prescribed by the courts for themselves. There are some principles, fundamental to the conduct of proceedings in courts, which are not firmly embedded in the fluid of *audi alteram partem* rule. However, the following basic rules are essential for the operation of the principle of natural justice.

a. Prior Notice of Hearing

Natural justice allows a person to claim the right to adequate notification of the date, time and place of the hearing as well as detailed notification of the case to be met. This information allows the person adequate time to effectively prepare his own case and to answer the case against him. As Lord Mustill famously held in *R. vs Secretary of State for the Home Department, ex parte Doody*: “Since the person affected usually cannot make worthwhile representations without

³⁰*Board of Education vs. Rice* (1911) A.C. 179, 182 *per* Lord Loreburn L.C.

³¹Wade, H.W.R. *Op cit.* p. 194.

knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”³²

It has been suggested that the requirement of prior notice serves three important purposes:³³

1. The interest in good outcomes – giving prior notice increases the value of the proceedings as it is only when the interested person knows the issues and the relevant information that he or she can make a useful contribution.
2. The duty of respect – the affected person has the right to know what is at stake, and it is not enough to simply inform him or her that there will be a hearing.
3. The rule of law – notice of issues and disclosure of information opens up the operations of the public authority to public scrutiny.

b. Opportunity to be heard

Every person has the right to have a hearing and be allowed to present his own case. Should a person not attend the hearing, even with adequate notice given, the adjudicator has the discretion to decide if the hearing should proceed. In *Ridge vs Baldwin*,³⁴ a chief constable succeeded in having his dismissal from service declared void as he had not been given the opportunity to make a defence. In another case, *Chief Constable of the North Wales Police vs Evans*,³⁵ a chief constable required a police probationer to resign on account of allegations about his private life which he was given no fair opportunity to rebut. The House of Lords found the dismissal to be unlawful. Likewise in *Surinder Singh Kaunda vs Government of the Federation of Malaya*,³⁶ a public servant facing disciplinary proceedings was not supplied with a copy of a prejudicial report by a board of inquiry which the adjudicating officer had access to before the hearing. The Privy Council held that the proceedings had failed to provide him a reasonable opportunity of being heard. According to the court, the minimum requirement of a fair hearing is as follows:

³²(1994) 1 A.C. 531 at 560

³³De Smith S.A. *Op cit.* p. 196.

³⁴(1963) 1 W.B, 569

³⁵(1982) 1 W.L.R. 1155, H.L.

³⁶(1962) A.C. 40

If the right to be heard is to be a real right which is worth anything, it must carry with it the right of accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them.

In *LagunjuvsOlubadan in Council*³⁷ the expression “due enquiry” in a statute was construed presumably to include oral hearing. The Privy Council held that the Governor, in exercising his statutory power to approve the appointment of chiefs, was under a duty to inform the rival candidates of the date on which the enquiry was to take and to invite them to attend and state their case.

However, this requirement does not necessarily mean the decision-maker has to meet the complainant face to face – “Natural justice does not generally demand orality.”³⁸ It has been suggested that an oral hearing will almost be as good as useless if the affected person has no prior knowledge of the case. In *Lloyd vs McMahon*, an oral hearing did not make a difference to the facts on which the case was based. Giving judgment in the Court of Appeal, Lord Justice Harry Woolf held that an oral hearing may not always be the “very pith of the administration of natural justice.”³⁹ Oral hearing is however required if issues concerning deprivations of legal rights or legally protected interests arise.⁴⁰

c. Conduct of the Hearing

A party must have an adequate opportunity of knowing the case he has to meet, of answering it and of putting his own case. If prejudicial allegations are to be made against him, he must be given particulars of them before the hearing so that he can prepare his answers, he must have a proper

³⁷(1950) 12 W.A.C.A. 406

³⁸*R. (Morgan Grenfell & Co. Ltd.) vs Special Commissioner of Income Tax* (2001) EWCA Civ 329; see also *Adedajivvs Police Service Commission* (1968) N.M.L.R. 102 at 105 where the court held “.....It is of the utmost importance however that the enquiry must be in accordance with the principle of natural justice. We do not think that this required oral hearing.

³⁹*Lloyd vs McMahon* [1987] 1 A.C. 625,

⁴⁰De Smith S.A *Op. cit.* p.201

opportunity to consider, challenge or contradict any evidence against him.⁴¹ In *Secretary of State for the Home Department vs AF*⁴², Lord Phillips of Worth Matravers said:

The best way of producing a fair trial is to ensure that a party to it has the fullest information of both the allegations that are made against him and the evidence relied upon in support of those allegations. Where the evidence is documentary, he should have access to the documents. Where the evidence consists of oral testimony, then he should be entitled to cross-examine the witnesses who give that testimony, whose identities should be disclosed.⁴³

Non-disclosure of relevant evidential material to a party who potentially prejudiced by it, is a prima facie breach of natural justice, notwithstanding whether the material in question arose before, during or after the hearing.⁴⁴ There are exceptions to this rule of non-disclosure. Thus, where disclosure of evidential material might inflict serious harm on the person directly concerned⁴⁵ or where disclosure would be a breach of confidence or might be injurious to the public interest⁴⁶. In such situations the affected person should nevertheless be adequately be apprised of the case he has to answer, subject to the need for withholding details in order to protect other overriding interests.⁴⁷

Thus, when a hearing requires the balancing of multiple polycentric issues such as natural justice and the protection of confidential information for national security reasons, both the concerns of public security and the right to a fair trial must be adequately met. It was held by the House of Lords *Grand Chamber of the European Court of Human Rights A. vs United Kingdom*⁴⁸ that a person accused of terrorism against whom a control order has been issued must be given sufficient information about the allegations against him to enable him to give effective instructions to his

⁴¹*Kay Swee Pin vs Singapore Island Country Club* (2008) 2 S.L.R. (R.) 802 at 806, para. 7.

⁴² [2010] 2 A.C. 269, H.L.

⁴³*Ibid.* at p. 355, para. 63.

⁴⁴See, *Kaunda vs Government of Malaya*, supra; *Re Godden* (1971)2 Q.B 662; *Low vs Earthquake Commission* (1959) N.Z.L.R. 1198.

⁴⁵*Re Godden* (1971)2 Q.B. 662. [undisclosed official psychiatric report on police officer; the court ordered disclosure to the officer's own medical adviser but not to the officer himself]

⁴⁶*R. vs Home Secretary, ex. ParteHosenball* (1977) 1 W.L.R 766 (name of informants, details of information, supplied to the police in respect of applicant for gaming club consents was not disclosure on the ground public interest] *Collymorevs A.G.* (1970) A.C. 538 [confidential information about industrial disputes and relations]

⁴⁷*R. vs Home Secretary.* supra.

⁴⁸[2009] E.C.H.R. 301

special advocate. If this requirement is satisfied, a fair hearing can be conducted without detailed disclosure of confidential information that might compromise national security.

The right to be heard in answer to charges before an unbiased tribunal is illustrated in the Singapore case of *Tan Boon Chee David vs Medical Council of Singapore*.⁴⁹ During a disciplinary hearing, Council members were either not conscientious about their attendance or did not attend the whole course of proceedings. This meant they did not hear all the oral evidence and submissions. The High Court held that this had substantially prejudiced the appellant and constituted a fundamental breach of natural justice.

On the basis of reciprocity, if one side is allowed to cross-examine his legal opponent at a hearing, the other party must also be given the same opportunity.⁵⁰ Refusal to cross-examination of witness at an administrative hearing will usually be a denial of natural justice.⁵¹ The point was underscored in *Garba vs The University of Maiduguri*⁵² where the Nigerian Supreme Court *per* Oputa JSC, stated:

To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry the person accused should know what is alleged against him; He should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?⁵³

d. Right to legal representation

There is no inherent common law right to legal representation before a domestic tribunal. The proposition is that one who is entitled to appear in person before a statutory tribunal is also entitled, in the absence of express or implied provision to the contrary,⁵⁴ to be represented by a lawyer or by any other appropriate spokesman of his choice.⁵⁵ A tribunal has the discretion to admit either a legally qualified or unqualified counsel to assist the person appearing before it,

⁴⁹ [1979–1980] S.L.R.(R.) 523,

⁵⁰ *Howe Yoon Chong vs Chief Assessor* [1977–1978] S.L.R.(R.) 386

⁵¹ *R. vs Wells Street Stipendiary Magistrate, ex p. Seillon* (1978) 1. W.L.R 1002

⁵² (1985) 1 NWLR 550

⁵³ *Ibid.* at p. 618

⁵⁴ *Maynard vs Osmond* (1977) O.B.240

⁵⁵ *R. vs Visiting Justice at Her Majesty's Prison, Pentridge, ex p. Walker* (1975) VSR. 883.

based on the facts of the case.⁵⁶ When assessing whether a party should be offered legal assistance, the adjudicator should first ask whether the right to be heard applies, and, secondly, whether counsel's assistance is needed for an effective hearing given the subject matter, bearing in mind the consequences of such a denial.

When one refuses legal representation, one cannot expect to receive a higher “standard” of natural justice. This was enunciated in the case *Ho Paul vs Singapore Medical Council*⁵⁷, Dr. Ho, who had been charged with professional misconduct, chose to appear before the Council in person and declined to cross-examine the Council's key witness. Subsequently, he argued that he should have been warned of the legal implications of not being legally represented. The High Court rejected this argument and held he had suffered no prejudice. Dr. Ho had been given a fair opportunity of presenting his own case and, most importantly, had not been deprived of his right to cross-examine the witnesses.

e. The decision and reasons for it

Currently, the principles of natural justice in the United Kingdom and certain other jurisdictions do not include a general rule that reasons should be given for decisions.⁵⁸ However, where a tribunal gives reason or reasons, for rejecting the representations made to it, it opens itself wide and objectors have a right to attack any of the reasons so given.⁵⁹

2.3.2 Principle of *Nemo Judex in Causa Sua* (Rules Against Bias and Interest)

The second pillar of natural justice is the rule that a man cannot be a judge in his own cause- *nemo judex in causa sua*. This principle embodies the basic concept of impartiality. Thus the rule against interest and bias operates as a disqualification against persons acting in that capacity. The basis on which impartiality operates is the need to maintain public confidence in the adjudicatory process. In order that public confidence in the administration of justice may be fully maintained, no man

⁵⁶*Kok Seng Chong vs Bukit Turf Club* [1992] 3 S.L.R.(R.) 772,

⁵⁷ [1995] 2 S.L.R.(R.) 441,

⁵⁸*R. vs Gaming Board for Great Britain*(1970) 2 Q.B. 417; *McDonald vs R.* (1977) 2. S.C.R 665

⁵⁹*R. vs Northumberland Compensation Appeal Tribunal, ex parte Shaw* (1971)1 All E.R. 1148

who is himself a party to proceedings or who has any direct pecuniary interest in the result is qualified at common law to adjudicate in the proceedings. This was aptly observed by Lord Denning, the Master of the Rolls, in *Metropolitan Properties Co (F.G.C) Ltd. vs Lannon*⁶⁰ “justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: ‘the judge was biased.’ ” Thus, justice, according to Lord Hewart, “should not only be done but manifestly and undoubtedly be seen to be done.”⁶¹

The rule against bias, surfaced in 1610 in *Dr. Bonham's Case*.⁶² The Royal College of Physicians had fined Dr. Bonham and secured his imprisonment when he had continued to practice in London after being refused permission to do so by the College. Lord Coke C.J. held that the College were adjudicating in their own cause since part of the fines was to go to them. Similarly, in *Dimes vs Grand Junction Canal Proprietors*⁶³ which involved an action between Dimes, a local landowner, and the proprietors of the Grand Junction Canal, in which the Lord Chancellor, Lord Cottenham, had affirmed decrees made to the proprietors. However, it was discovered by Dimes that Lord Cottenham in fact owned several pounds’ worth of shares in the Grand Junction Canal. This eventually led to the judge being disqualified from deciding the case. According to Lord Campbell “the maxim that no man is to be a judge in his own cause, should be held sacred.”⁶⁴

i. Scope of *Nemo Judex in causa Sua* Rule (Rule against Bias)

The rule was originally applied to purely judicial tribunals, it evolved with regard to the conduct of judges and magistrates, has been extended to administrative tribunals, arbitrators and other bodies exercising judicial functions, though with some modifications. A public authority has a duty to act

⁶⁰(1968) EWCA Civ 5

⁶¹*R vs Sussex Justices, ex parte McCarthy* (1924) 1 K.B 256 at 259

⁶² (1610) 8 Co. Rep. 113b

⁶³ (1852) 3 H.L.C. 759

⁶⁴*Ibid* at 793

judicially whenever it makes decisions that affect people's rights or interests, and not only when it applies some judicial-type of procedure in arriving at decisions.

ii. Forms of Bias

Bias has been compartmentalized into two forms: pecuniary and/or proprietary bias on the one hand and non-pecuniary bias on the other.

a. Direct Pecuniary / proprietary Interest

The rule against bias operates to disqualify any person who has any pecuniary or proprietary interest in the outcome of the case. The rule applies no matter how exalted the tribunal or how trivial the interest.⁶⁵ For the test is not whether an unjust result has been reached, but whether there was an opportunity for injustice to be done. Thus, in *R. vs Hammond*⁶⁶ Blackburn J observed that: "the interest to each shareholder may be less than quarter of a pound. but it is still an interest." The justices who were shareholders in a railway company in the above case were therefore disqualified from hearing charges against person accused of travelling on the railway without proper ticket.

While as a general rule pecuniary or proprietary interest absolutely disqualify a 'judge', the trend is now towards a restrictive interpretation and application of the rule. Hence, it has been held that the mere fact that some justices belong to a Co-operative Society from which they derived small dividends, was not sufficient to quash their grant of a liquor licence to the society on the ground of pecuniary interest.⁶⁷

b. Personal Bias

Bias due to interest other than pecuniary may take different forms. It may arise, for instance, from varying degrees of personal friendship, family relationship, professional and vocational relationship, employer and employee relationship. Bias may be inferred from an attitude of

⁶⁵*Re- Hopkins* (1858) E.B & E. 100

⁶⁶(1863) 9 L.T. (NS) 423

⁶⁷*R. vsBarnsley JJ* (1960) 2 Q.B. 167

hostility or favouritism exhibited by the judge / administrator/tribunal for or against a party. The disqualification applies regardless of whether or not the decision has in fact been influenced by bias.⁶⁸

In certain limited situations, bias can also be imputed when the decision-maker's interest in the decision is not pecuniary but personal. This was established in the unprecedented case of *R. vs Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte [No. 2]*⁶⁹ in an appeal to the House of Lords, the Crown Prosecution Service sought to overturn a quashing order made by the Divisional Court regarding extradition warrants made against the ex-Chilean dictator, Senator Augusto Pinochet. Amnesty International (AI) was given leave to intervene in the proceedings. However, one of the judges of the case, Lord Hoffmann, was a director and chairperson of Amnesty International Charity Ltd. (AICL), a company under the control of AI. He was eventually disqualified from the case and the outcome of the proceedings set aside. The House of Lords held that the close connection between AICL and AI presented Lord Hoffmann with an interest in the outcome of the litigation. Even though it was non-pecuniary, the Law Lords took the view that the interest was sufficient to warrant Lord Hoffmann's automatic disqualification from hearing the case.

Similarly, the principle of bias applies in Nigerian law and this is illustrated by the following statement by the Supreme Court:

The principle that a judge must not be impartial is accepted in the jurisprudence of any civilized country and there are no grounds for holding that in this respect the law of Nigeria differs from the law of England or for hesitating to follow English decisions.⁷⁰

Thus a person acting in a judicial or quasi-judiciary will be disqualified if he has financial or personal interest in the subject-matter of determination.

⁶⁸*Leeson vs General Medical Council* (1889)43 Ch.D. 366; *Chief Pepple vs Chief Green* (1990) 4. NWLR (Part 420) 108

⁶⁹[2000] 1 A.C. 119 at 133, H.L. (UK).

⁷⁰*Obadaravs President, Ibadan West District Grade "B" Customary Court* (1965) NMLR 39 at 44

In *Garba vs University of Maiduguri*⁷¹ the Supreme Court held *inter alia* that since the Chairman of the Investigating Panel which tried the appellants was the Deputy Vice Chancellor of the University and was a victim of the rampage, the necessary inference to be drawn was that there was a real likelihood of bias since the Deputy Vice Chancellor was thus a witness and a judge at the same time:

There is another pillar of natural justice which was also rudely shaken in this case. The Chairman and Vice-Chairman of the Disciplinary Investigation Panel were themselves victims of the arson and malicious damage which followed in the wake of the rampage. They have to be super human to be able to obliterate from their minds their personal plights and to be able to approach their assignment with the impartiality, objectivity and fairness required of those acting in a judicial or quasi-judicial capacity. Even if they achieved this extra-ordinary feat, the appearance of justice having been done by their Panel will be seriously compromised. It will ever remain a matter of grave concern in the minds of the appellants and ordinary citizens whether they, the Chairman and Vice-Chairman of the Disciplinary Investigation Panel, were not biased, for as Lord Hewart, C.J. emphasized “justice must not only be done but manifestly and undoubtedly be seen to be done.”⁷²

iii. “Real Likelihood of Bias” or “Reasonable Suspicion of Bias”

An issue that has arisen is the degree of suspicion which would provide the grounds on which a decision should be set aside for apparent bias. Currently, cases from various jurisdictions apply two different tests: "real likelihood of bias" and "reasonable suspicion of bias". A “real likelihood” of bias means at least a substantial possibility of bias. The test of real likelihood of bias, which has been applied in many leading cases⁷³ is based on the reasonable apprehensions of a reasonable man fully apprised of the facts.⁷⁴ But the courts have often quashed decisions on the strength of the reasonable suspicion of the party aggrieved, without having made any finding that a real likelihood of bias in fact existed.⁷⁵

⁷¹Supra at p.4

⁷²At p. 619

⁷³See especially *R. vs Rand* (1866) L.R 1. Q.B. 230; *R. vs Meyer* (1876) Q.B.D. 173; *R. vs Barnsley JJ.* (1960)2 Q.B. 167.

⁷⁴*R. vs Rand* (1866) L.R 1. Q.B. 230.

⁷⁵*R vs Higgins* (1895) 1.Q.B.563; *Cottlevs Cottle* (1939) 2 All E.R, 535

On the other hand, the “reasonable suspicion” test asks whether a reasonable and fair-minded person sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the litigant is not possible. In substance, this test does not appear to be different from that of real likelihood since it implies some objective evaluation of the facts suspected or found to exist.⁷⁶ “Reasonable suspicion” tests look mainly to outward appearances while “real likelihood” tests focus on the court’s evaluation of the probabilities; but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result.⁷⁷ It has been suggested that the courts should retain both tests as alternative methods of approach as it may not lead to uncertainty but rather has the advantages of preserving a measure of flexibility.⁷⁸

2.4 Application of the Principles of Natural Justice in Nigeria

Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 provides that the judicial powers of the Country shall be vested in the Courts established by the Constitution and under the Laws of the National and State Assemblies.

Section 36 of the same Constitution provides that:

36(1). In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

It appears, therefore, that the adjudicatory powers in the Country are primarily vested in the regular Courts. However, in view of the complexity of modern administration, it has become inevitable that a great deal of adjudicatory powers is exercised by various administrative bodies or tribunals which perform judicial and quasi-judicial functions. There is no doubt, that the concept of natural justice is implied in the provision of S.36 of the Constitution which provide for fair hearing. For instance;

⁷⁶Eka, B. U. *Op. cit.* p.330

⁷⁷*R vs Altrincham JJ., ex.p Pennington* (1975) O.B. 549 per Lord Widgery C.J.

⁷⁸De Smith, S.A. *Op. cit.* p. 264

Section 36 of the 1999 Constitution, having provided in its subsection (1) that every person shall be entitled to fair hearing within a reasonable time by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality, continues in its subsection (2) as follows:

Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law –

- (a) Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
- (b) Contains no provision making the determination of the administering authority final and conclusive.
- (c) Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing within a reasonable time by a court or tribunal.

It is apparent from the above provision that the 1999 Constitution recognizes and allows the administrative determination of questions that may touch on the civil rights and obligations of individuals provided that the party affected is “given the right to make representations to the administrative tribunal and provided that there is freedom of recourse to the regular courts after the administrative determination.

In elucidating the above provision, Hon. Justice Dr. B.U. Eka⁷⁹ stressed that the operative expressions in the section are “determination”, “fair hearing”, “civil rights and obligations”, “reasonable time”, and “court or tribunal”. In cases to which the section applies the requirement of fair hearing probably depends upon whether there is a “determination” within a reasonable time affecting the civil rights and/or obligations of the person by a court or tribunal. The word “determination” in its broadest sense, includes any decision having the necessary effect, that is, it covers all judicial determinations of rights and obligations. Also, a court or tribunal, need not be a regular court or tribunal.

⁷⁹Eka, B.U. *Op. Cit.*p. 285

i. Relationship between Fair Hearing and Natural Justice

Fair hearing is synonymous but not coterminous with natural justice. There is no doubt, that the concept of natural justice is implied in the provision of Section 36 of the Constitution which provide for fair hearing. In *Aiyetanvs NIFOR*⁸⁰ the Supreme Court declared that the principles of natural justice and fair hearing which are encapsulated in the latin maxims “*audi alteram partem*” and “*nemo judex in causa sua*” are further given constitutional flavour under the provision of section 36 of the 1999 Constitution.

Though the Supreme Court⁸¹ has in a number of cases equated fair hearing with the rule of natural justice, the Court⁸² once said that the word “fair hearing” in section 33 of the 1979 Constitution (now Section 36 of the 1999 Constitution) has been employed to express all the requirements at common law for the observation of the twin arms of natural justice. The Supreme Court also in *Oyewolevs Akande*⁸³ defined fair hearing to mean, hearing which is all about fairness, which is the determining factor for the application of natural justice. The fair hearing provision of the Constitution seems to go beyond the narrow Common Law’s principle of natural justice, firstly, it is incorporated and entrenched in the Constitution. Secondly, being an entrenched provision, it is not vulnerable in the face of any statute. It enjoys rather the privilege of nullifying any other provisions in the constitution or in any statute which are inconsistent with it.⁸⁴

In *Oriogevs A.G. Ondo State*⁸⁵, the Supreme Court stated that the two principles of natural justice are inherent in the constitutional provisions for fair hearing but that the provision goes beyond the principles of natural justice. Fair hearing in Nigeria is not only a common law requirement, but

⁸⁰(2010) 9 NWLR.

⁸¹*Ogundoyinvs Adeyemi* (2001) 7 NSCQR 378 at p. 391 Onu, JSC declared that fair hearing is also a rule of natural justice: see also *Aiyetanvs NIFOR* (1987) 3 NWLR (PT59) 48.

⁸²*LPDC vs Fawehinmi, op. cit.*

⁸³ (2009) 15 NWLR (Pt.1163) 119

⁸⁴*Sofekunvs Akinyemi* (1980) 5-7 S.C.; *Wilson vs A.G Benue State* (1985) 2 S.C.191

⁸⁵(1982) 3 NCLR 349

also a statutory and constitutional requirement.⁸⁶ According to Karibi-Whyte JSC, the constitutional fair hearing has the distinction of being subject to amendment only after compliance with the provisions for doing so in the Constitution. It therefore stands solidly behind the citizen who is legitimately apprehensive that his right to natural justice might be denied him.⁸⁷

Whatever may be the distinction between these concepts, both natural justice and fair hearing require some basic standards in any judicial or quasi-judicial determination. For instance, in *Orisakwevs Governor of Imo State*⁸⁸, it was held that if the right to fair hearing under the Constitution and under the rules of natural justice is to be any real right, it must carry with it a corresponding and equal right in the person accused of any misconduct to know the case which is made against him. He must know the evidence in support, not merely bare and unsupported allegations, and then, he must be given the opportunity to contradict such evidence or incriminating evidence.

ii. **Application of Principles of Natural Justice to Administrative Bodies in Nigeria**

There is no doubt that the principles of natural justice are binding on all the courts, judicial bodies and quasi-judicial authorities. But the important questions are: Whether these principles are applicable to administrative authorities? Whether these bodies are also bound to observe them? Whether an administrative action in violation of these principles is void on that ground? The Nigerian Courts were once inhibited by the distinction between “judicial” or “quasi-judicial” and “administrative” acts. It has been repeatedly said⁸⁹ that in order that natural justice may apply, the tribunal must be shown to be acting judicially or under a duty to do so. In *Okakpuvs Resident, Plateau Province*⁹⁰ the court held per Hurly C.J. of Northern Nigeria:

⁸⁶ *Garba vs University of Maiduguri, op. cit.*

⁸⁷ *LPDC vs Fawehinmi, op. cit.* at pp.341-342

⁸⁸ (1982) 3 NCLR 743. See also *Soleye vs. Sonibare* (2002) FWLR (pt. 95) 221

⁸⁹ *Amaka vs Lieutenant General, Western Region* (1956) 1 F.S.C. 57; *Oyewumi vs Lieutenat General, Western Region* (1954) W.A.C.A 625; *Arzika vs Governor, Norther Region* (1961) All N.L.R 379

⁹⁰ (1958) N.N.N.R. 5.; see also *Nakkuda Ali vs Jayaratne* (1951) A.C 66

From the foregoing (fact), it does not in our judgment appear that the appellant was given an opportunity of being heard on the question whether his licence should be revoked. But we are of opinion that the Resident's power to revoke a licence, like his power to withhold or grant one, is an administrative power in the exercise of which he is not required to act judicially.

Similarly, the Supreme Court in *Merchant Bank Ltd. vs Federal Minister of Finance*⁹¹ held that a statutory licence to engage in the business of banking was not a "civil right" within the Section. 22 of the Constitution of 1960 and so the Minister's order revoking it was not judicial but administrative.

Happily, a new lease of life was given to the principles of natural justice when the House of Lords in the celebrated case of *Ridge vs Baldwin*⁹² restored the law to the path from which it had deviated, that is "the judicial element must be inferred from the nature of the power exercised and the effect upon the individual – the exercise of power which affects the rights and property of a person is necessary judicial, not administrative or ministerial." This has also reflected in the Nigeria legal jurisprudence.

In the landmark case of *L.P.D.C vs Fawehinmi*⁹³ the Supreme Court remarked, "It is well settled that the principles of natural justice apply to both judicial and administrative determinations, they are not limited to judicial decisions." According to the Court:

It is not easy to place a tribunal in the compartment of purely administrative, predominantly administrative or one with judicial or quasi-judicial function. In my view, a purely administrative tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period of in-course into judicial or quasi-judicial, an administrative body must be bound in process thereof to observe the principles that govern the exercise of judicial function. Merely to describe a statutory function as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirements of natural justice. This certainly leaves it open for the court to go into substance of the very act of the tribunal rather than the form of description.⁹⁴

⁹¹(1961) All N.L.R 598

⁹²(1964) A.C. 40

⁹³(1985) 2 NWLR (Pt. 2)300 at 305

⁹⁴*Ibid.* at 347

This above assertion was evident in the earlier decision of the Supreme Court in *Hart vs Military Government of Rivers State & 2 Ors.*⁹⁵ where the court stated that, “is that the duty placed on such a body is to act fairly in all such cases. No labels such as “judicial” or “quasi-judicial” are necessary as they tend to confuse.”

The Courts now maintained that irrespective of whether a body was performing quasi-judicial functions or administrative functions it ought to act with fairness. The old distinction between an ‘administrative act’ and ‘judicial act’ does not survive any longer. Every administrative action which involves civil consequences must follow the rules of natural justice.

iii. Natural Justice in University Administrative Action.

The principles of natural justice play important role in the administrative realm and have been held to be applicable to the administrative determination of a domestic disciplinary tribunal.⁹⁶ In this case however, the Medical and Dental Practitioners Act⁹⁷ provided directly for the setting up of the Disciplinary Committee. But in the case of Universities the enabling laws⁹⁸ establishing them do not set up these committees directly. They rather vest disciplinary powers on the Vice-Chancellor for discipline of students and on the Council for the discipline of staff, the Vice-Chancellor or the Council may in turn constitute a Disciplinary Committee or Board as the case may be.

These Disciplinary Committees are merely advisory. They find facts and make recommendations to the Vice-Chancellor. The Vice-Chancellor, after the approval of the Senate, takes the final and binding decisions based on the recommendations. Appeal lies to the University Council from the

⁹⁵ (1976) 11 S.C. 211

⁹⁶ *Alakija v Medical Disciplinary Committee* (1959) 4 FSC. 38 (The Committee's decision was quashed on the grounds that the rule that no one should be a judge in his own cause had been violated because the Registrar who acted as the prosecutor also took part in the Committee's deliberations)

⁹⁷ Cap M. 8, Laws of the Federation of Nigeria, 2004.

⁹⁸ See Statute 6 (6)(8) & (9), also Sections 32, 33 & 34; of Obafemi Awolowo University Act, Cap 333, LFN, 2004. see also Statute 9 (6) (1)(2)(3) of the Ahmadu Bello University Act, Cap A14, LFN, 2004; Section 18 of both University of Nigeria Act, Cap 455, LFN, 2004 & University of Ilorin Act, Cap 459, LFN, 2004; Section 11 (1) University of Ibadan Act, Cap. U6 L.F.N. 2004.

Vice-Chancellor decision. It is submitted that these disciplinary Committees, though, advisory or recommendatory are subject to the principles of natural justice since their decisions require a mere formal approval of the Vice-Chancellor.⁹⁹ It is clear that disciplinary proceedings in higher educational institutions have to be conducted in conformity with natural justice, provided at least the penalty imposed or liable to be imposed is severe, and, probably, that not only academic performance is being taken into account.¹⁰⁰

Nigerian Universities are creature of law; they are corporate bodies with defined powers and duties. Such powers include disciplinary and academic matters. The Courts attitudes and approaches to University's administrative actions varies. In matter of non-disciplinary decision involving academic judgement, for instance, the grade to be given to a student's work, there has been reluctance on the part of the Courts to intervene. This position is that the 'court will not involve itself with issues that involve making academic judgments. This was the expressed view of the Nigerian Supreme Court in *Magit vs University of Agriculture, Makurdi*.¹⁰¹ According to the court:

A University is a degree awarding institution and can...neither delegate its degree awarding powers nor be stamped to make award where it does not see it fit to do so. For a court to use its awesome magisterial powers to compel a university to award a degree would in effect mean that the court has invested itself with necessary powers to fully appreciate the nuances taken into consideration to award university degrees... It is my view that it is the indisputable right of a university to award or withhold the award of a degree and it is no business of the court to question its motives let alone compelling it to award a degree which it has stated a claimant is not qualified for...It alone possess the power to state whether a particular work is below standard or not...Is the court going to substitute its standard with that of the university? I think not.¹⁰²

But in *Akintemiv Onwumechilli*¹⁰³ where the three students suspended for examination malpractice alleged that they are denied of natural justice, the University argued that the conduct of

⁹⁹Dalhatu M. B., *Natural Justice and the Exercise of Administrative Powers*. retrieved from www.Nadr.co.uk>articles>published. 2th July, 2013 at 10:08 pm.

¹⁰⁰*Federal College of Education vs Anyanwu* (1997) 4 NWLR (Pt. 501) 533; De Smith, S.A. Op. Cit. p.226

¹⁰¹ (2005) 19 NWLR (Pt.959) 211; see also the case of; *Thorne vs University of London* (1966) 2 Q.B. 237

¹⁰² Ibid at pp. 257-259

¹⁰³*Akintemiv Onwumechilli* (1985) 1 NWLR (Pt.1) 68

examinations is a matter within the domestic competence of the University, and it is best left to it to take care of, and that the court should not interfere until the domestic process is completed. The court, rejecting this argument, held that where it is reasonably observed by the court that natural justice is being trampled upon by the University authority in the completion of any domestic process, the court will interfere.

On the other hand, where the decisions are purely disciplinary, for example, in relation to student's behaviours towards others or towards University's property, the Nigerian Courts have made it clear that the University cannot exercise its disciplinary jurisdiction in this respect. The Supreme Court in *Garba vs University of Maiduguri*¹⁰⁴ laid down the law when it held that:

As I indicated earlier the offences for which the appellants were undoubtedly held liable by the Board and the Panel included looting, arson, destruction of property and indecent assault. These are offences under the Penal Code and therefore triable only by the regular courts of law. Neither the Investigating Panel which investigated these serious charges nor the Disciplinary Board of the Senate which considered its findings is a court of law. Neither of them was competent to adjudicate on matters connected with the rights of the appellants once the allegations included crimes.¹⁰⁵

The above was the position until the Supreme Court decision in *Esiagavs University of Calabar*¹⁰⁶ where the court reconsidered its earlier decision in *Garba's case* and acknowledged that the University has power to discipline a student within its internal rules even where the conduct involves some elements of crime.

The University has authority within its premises to discipline any erring or misbehaviour student. The principle of fair hearing as envisaged in the constitution must, however, be the guiding principle in applying any sanction against a misbehaving student. If the act of the student amounts to a crime, the normal report should be lodged with the police but this will not preclude the University exercising its powers under its statute to punish misconduct by any student. The case of *Garba vs University of Maiduguri* has not precluded the University taking action against misconducting student within its campus.¹⁰⁷

¹⁰⁴ (1986) 1 NWLR (Pt. 18)

¹⁰⁵ Ibid at p. 608 *per Nnamani JSC*

¹⁰⁶ (2004) 7 NWLR (Pt. 872) 366

¹⁰⁷ Ibid at pp. 389-390

iv. Basis of the application of Natural justice in the Universities

In Nigeria, the powers and duties of the Universities are statutory and where they fail to exercise them they can be compelled to do so by the courts. The Supreme Court in *Garba vs University of Maiduguri* in clarifying this position, rejected the contractual relationship contention by the University's Counsel and held that by virtue of section 2(1) (i) of the University of Maiduguri Act No. 83, of 1979 which made the appellants members of the University, the relationship between of the appellants(students) to the respondent (University) is principally statutory not contractual.¹⁰⁸

The exercise of administrative functions vis-à-vis judicial and quasi-judicial powers by domestic tribunal such as that of a University is recognised and preserved by the Constitution. The relevant Section¹⁰⁹ allows the administrative determination of questions that may touch on the civil rights and obligations of individuals provided that the party affected is "given the right to make representations to the administrative tribunal and provided that there is freedom of recourse to the regular courts after the administrative determination."¹¹⁰ Indeed, the court in *Obi vsMbakwe*¹¹¹ held that S.33(2) of the 1979 Constitution (which is identical to S.36(2) 1999 Constitution), was conceived to facilitate a smooth running of the administrative machinery by allowing agents of the executive to determine the rights of people in accordance with certain laws that might be made from time to time

Commenting on this provision, Professor AdemolaYakubu¹¹² observed that "Section 36(2) of the 1999 Constitution clothes the proceedings before administrative bodies or tribunals with legality once the requirement of hearing is observed. Thus, it could be said that trial of issues or determination of contentious issues is not the prerogative of the Courts alone. Where a tribunal or

¹⁰⁸*Garba v University of Maiduguri* (1986)1 NWLR (Pt. 18) at p.604

¹⁰⁹ Section 36(2) of the Constitution of the Federal Republic of Nigeria, 1999.

¹¹⁰Ogbu, O. M. (2003) Fair hearing, Domestic Tribunals and Allegations involving a Crime, *Nigerian Bar Journal*.Vol 1 No2, p.236

¹¹¹ (1985) 6 NCLR 783 at 793

¹¹²Yakubu, J. A. (2003) *Constitutional Law in Nigeria*. Ibadan: Demyax Law Books. p. 377

administrative body has been lawfully constituted, it may hear and determine cases or grievances especially with respect to those who are subject to the jurisdiction of such a tribunal or trial body”

2.5. Conclusion

The words “fair hearing” in Section 36 of the 1999 Constitution has been employed to express all the requirements of natural justice in the determination of the civil rights and obligations of the citizens.¹¹³ This principle of natural justice has developed into a universal jurisprudence for a number of good reasons.

Firstly, the principle has been applied to administrative and adjudication process to ensure procedural fairness and to free them from arbitrariness. Secondly, application of this principle helps bolster public confidence in the judiciary as well as in administrative hearing by ensuring that no one having any interest or bias in respect or any matter takes part in the decision-making relating to that matter. Thirdly, it is often said that it 'is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly seen to be done'. By ensuring that the judge or decision maker is not interested in the outcome of any adjudication, the parties can 'see' that justice is being done to their cause. In this regard, it should be noted that whether a judge gave an actually biased judgment by judging his own cause is not material; the judgment is vitiated if there is a real likelihood of the judge being biased, which can be easily presumed if the judge himself is the aggrieved party. The development of this principle helps control arbitrary exercise of discretionary power of adjudicating authorities almost all over the world.

¹¹³ *L.P.D.C. v Fawehinmi* Op. Cit.

CHAPTER THREE

DISCIPLINARY POWERS OF UNIVERSITY IN NIGERIA

3.1 Introduction

The Laws establishing Nigerian Universities usually set out the objects of the Universities. For example, University of Maiduguri Act¹ sets out the objects of the University as follows:

- (a) to encourage the advancement of learning and to hold out to all persons without distinction of race, creed, sex or political conviction the opportunity of acquiring a higher and liberal education;
- (b) to provide courses of instruction and other facilities for the pursuit of learning in all its branches, and to make those facilities available on proper terms to such persons as are equipped to benefit from them;
- (c) to encourage and promote scholarship and conduct research in all fields of learning and human endeavour;
- (d) to relate its activities to the social, cultural and economic needs of the people of Nigeria; and
- (e) to undertake any other activities, appropriate for a university of the highest standard.

Objects similar to the foregoing are discernible in all the laws of Nigerian University². Universities are established to transmit accumulated body of knowledge and, through continuing inquiry, refine and extend it. There are many activities associated with the mission of the University which include teaching, research and service. The consequences of these activities are the production of graduates who are engaged in the various sectors of the economy, solution to societal problems resulting from research findings and high quality service to the public rendered by the University staff. Societal development depends largely on the constant and vigorous pursuit of this goal. But these various activities of the University can meaningfully take place in an atmosphere of

¹ Section 1(3), Maiduguri University Act, Cap U10, LFN, 2004;

² See Part 11, Section 4 of Ahmadu Bello University (Transitional Provisions) Act, Cap A 14, LFN 2004; Section 4, Obafemi Awolowo University (Transitional Provisions) Act, Cap 02, LFN, 2004; Section 4 of University of Benin (Transitional Provisions) Act, Cap U 4, LFN 2004; Section 3 of University of Nigeria, Cap U 11, LFN 2004; Section 3 of University of Ilorin, Cap U 7, LFN 2004; Section 3 of University of Port Harcourt, Cap U 13, LFN 2004.

orderliness, peace and calm. To what extent then, do the laws establishing our Universities ensure all these in our campuses?

3.2 Administrative Structure of the University

The Nigerian Universities are creation of statutes. They are body corporates, with perpetual succession, common seal and power to sue and be sued in their corporate names.³ The law that establishes each University makes provision for their objectives, constitutions, and functions of the constituents and the manner of relationship between the various organs of the institution. The law also stipulates the objects of the university which essentially is the promotion of learning and research activities and to relate its activities to the social, cultural and economic needs of the people of Nigeria.⁴ Also, the statutes spell out the terms of employment, discipline and termination of appointment of the respective Institution members of staff, in addition, the statutes also regulate the methods to be adopted in enforcing disciplinary actions on the students of the institution concerned.

Nigerian Universities are fashioned closely to the model of the English Universities providing for Governing Council, Senate or Academic Board and various officers, of which the Vice-Chancellor is the Chief Academic and Executive Officer, and other principal organs of the University. Functions are assigned to these officers and organs by the University laws for the attainment of the University's goals.

The principal machinery for accomplishing the afore-mentioned goals are:

A. The Visitor

³ Section 2, OAU Act, Cap 02, LFN 2004: Section 3, ABU Act, Cap A14, LFN, 2004; see also Section 1 & 2 of University of Ilorin Act, Cap U7, LFN, 2004.

⁴ Sections 4 of both OAU Act & ABU Act.

At the apex of the authority for the administration of a University is the visitor.⁵ The President of the Federal Republic of Nigeria is the Visitor to all Federal Universities while the Governor of a State is the Visitor to that State University. The Visitor is not an organ of governance of the University, his functions are mainly to conduct visitation, interpret statutes and appoint certain functionaries of the University. Of course, appeal lies to him from disputes in the University, including the disciplinary decision of the University.

B. The Chancellor

The Chancellor is appointed by the Visitor; he is the ceremonial head of the University. He takes precedence over all the other members of the University community and when present, presides over all meetings of the Convocation held for conferring degrees and other academic titles and distinctions to the recipients.⁶

C. The Pro-Chancellor and a Council

The Pro-Chancellor is the next in the pecking order and he presides over the meetings of the Council of the University. Council is the governing authority of the University and has the custody, control and disposition of all the property and finances of the University, manages and superintends generally the affairs of the University.⁷ Council, *inter alia*, participates in the making, amendment or revocation of statutes and ordinances; exercises power of removal from office and other disciplinary control over academic, administrative staff and all staff in the University; it supervises and controls the residence and discipline of students of the University.

D. The Vice-Chancellor and a Senate

The Vice-Chancellor is the Chief Academic and Executive Officer of the University, and an ex-officio Chairman of the Senate⁸. He is saddled with the responsibility of directing the activities of the University. The Senate is the supreme academic authority of the University and responsible for

⁵Section 6 (1) & (2) OAU Act; Section 7 (1) & (2) ABU Act.; Section 14 University of Maiduguri Act; Section 13 &14 University of Ilorin Act; Section 13 &14 University of Calabar Act.

⁶ Section 9 OAU Act; Section 9 & 10 ABU Act: See also Statute 4 of the second schedule to the OAU. Act

⁷Sections 10 & 15 OAU. Act; Sections 11 & 13 (1) (3) ABU. Act.

⁸Section 11 OAU Act; Section 3 of Statute 3 of the First Schedule to the ABU Act.

all academic matters.⁹ In this regard, senate, *inter alia*, formulates and establishes academic policy of the University and advises Council on the provision of facilities to carry out the policy; directs and regulates instructions, teaching and courses of study within the University; regulates all University examinations, admission of persons to the University; awards degrees (other than Honorary Degrees) Diplomas, Certificates and other academics titles and distinctions to persons who qualify to obtain same under the University Law and makes, awards or revokes regulations, participates in the making, amendment or revocation of Statutes and Ordinances.

3.3 Exercise of Discipline powers of the University

Universities are vested with the power to instil and inculcate discipline in the University community. This power stems from statutory provisions, which are normally contained in the enabling laws of the institutions. Nigerian Universities (particularly the Federal Universities) have theirs contained in the Acts establishing them¹⁰. The various Acts, which are similar in content, give the Universities the authority to set up disciplinary panels and to determine their procedures with a view to ensuring that such conform to the dictate of fair hearing, right reasoning and due process of law.

No doubt, University disciplinary process is used to maintain law and order in the University community. Preservation of law and order is essential for peace and stability in our Universities without which serious academic pursuit can hardly take place. In accomplishing their missions and objects, the Universities are not only vested with the power to secure and maintain peace and order within their community and to discipline any member who is in breach of such, but also to adopt procedures in the discharge of this function.

3.4 Disciplinary Powers under the University's Statute

⁹ Section 17 (3) OAU Act; Sections 16 & 17 ABU. Act.

¹⁰ See Sections 32, 33 & 34 OAU Act. see also Statute 9 (6) (1)(2)(3) of ABU Act; Section 18 of both University of Nigeria Act, Cap U 11, LFN, 2004 & University of Ilorin Act, Cap U 7, LFN, 2004.

Authority to discipline both staff and students of the University is vested in four different organs of the University. These are; the Visitor of the University, the Vice-Chancellor, the University Senate and the University Council.

3.4.1 The Visitor to the University

Historically, the office and functions of the Visitor, who rates the top position in descriptions of a University's hierarchy,¹¹ stem from the English common law. The Visitor represented the founder of the eleemosynary institution following the death of the founder. The Visitor had the power to inquire generally into the college's¹² activities and, more familiarly, to resolve complaints. The Visitor functioned to promote order by enforcing the institution's rules. In so doing, the Visitor applied a law separate from the law of the land; accordingly, the founder's intentions, and not the common law, drove the Visitor's decisions. Members of the community- students, lecturers or /and the University- were bound by the decisions of the Visitor. Indeed, only a member of the institution could invoke the jurisdiction of the Visitor.¹³

As the British Empire developed, and British influence and traditions spread to many parts of the world, the concept of the Visitor became an integral and largely unquestioned characteristic of Universities in many parts of the former British Empire. In Nigeria, the founding statutes of the Federal Universities still preserve the traditional concept of the University Visitor and appoint the President of the Federal Republic of Nigeria as their Visitor¹⁴. Whatever their traditional power, the status and scope of power of Visitors in modern-day University are statutorily defined, especially in Nigerian context.

¹¹ See e.g., University of Queensland Calendar, Vol. 1, 1995, at 227; University of Wollongong, Calendar, Undergraduate 1994, at 7. Such a listing comports with ancient practice in England: At the apex of the totally intramural government of the university sat the Visitor. Sadler, R.J.(1981)“The University Visitor: Visitorial Precedent and Procedure in Australia” 7 *University of Tasmania. Law Review.* p.2, 3

¹² Ancient English colleges, attached to universities but exercising teaching functions, were subject to visitation by the founder or an heir or appointee of the founder. As ecclesiastical entities, universities found themselves subject to episcopal visitation. See Sadler, R.J.(1981).“The University Visitor: Visitorial Precedent and Procedure in Australia”, 7 *University of Tasmania. Law Review.* 2, 3 p. 3-4.

¹³ Robinson, S.(1994). “The Office of Visitor of an Eleemosynary Corporation: Some Ancient and Modern Principles”, 18 *University. Queensland Law Review* 106, 108

¹⁴ Section 6 (1) & (2) OAU Act; Section 7 (1) & (2) ABU Act.

Where the traditional jurisdiction of the visitor applies, academic and social behaviour or misconduct issues are considered to be internal matters to be decided by reference to the rules of the institution with appeal only to the Visitor. Thus, in *R. vs University of Nottingham ex parte K.*¹⁵ the Court stressed that “the exclusive visitatorial jurisdiction, certainly over academic decisions and the proper application of university procedures in reaching them, is alive and well ... there is no arguable basis ... for the assumption of the courts of an overlapping review before the Visitor has exercised his jurisdiction”. In *Janaki Viyatunga’s case*¹⁶ the Visitor declined to intervene in the appointment of the examiners of a Ph.D. thesis, and the student sought to impugn that decision in the courts. The court upheld the exclusive jurisdiction of the Visitor. Also in *Thorne vs University of London*¹⁷ a claim in negligence for misjudging a student's papers was smartly dismissed on the sole ground that these matters fell within the exclusive jurisdiction of the Visitor and outside the jurisdiction of the court.

The Supreme Court in *Garba vs University of Maiduguri*¹⁸ dealt extensively on the Visitor and visitatorial jurisdiction of the Nigerian Universities. The court emphasized that the office of the Visitor in Nigeria is a creation of statute¹⁹ and as such a Visitor cannot have more power than those expressly set out in the statute creating the University. The historical origin and powers of the Visitor in a University in England and elsewhere can only be of assistance in Nigeria if the historical powers have been incorporated in the statute setting up a University in Nigeria

In relation to the finality of the Visitor’s decision, it has been established that judicial review is available from the decision of the visitor in certain cases. Thus in *R. vs Lord President of the Privy*

¹⁵[1998] ELR 184

¹⁶*R. vs Committee of the Lords of the Judicial Committee of the Privy Council acting for the Visitor of the University of London, ex parte Viyatunga* [1988] 1 QB 322.

¹⁷ (1966) 2 QB 237

¹⁸ (1986)1 NWLR (Pt.18) 550; see also *University of Lagos vs Dada*

¹⁹ Section 6 (1) & (2) OAU Act; Section 7 (1) & (2) ABU Act.; Section 14 University of Maiduguri Act; Section 13 &14 University of Ilorin Act; Section 13 &14 University of Calabar Act.

*Council, ex parte Page*²⁰ the House of Lords held that the principle that the visitor's decision was not open to judicial review on the basis of errors in either fact or law is qualified. The decision of the visitor could be challenged if made outside of the visitatorial jurisdiction. The Supreme Court in *Garba vs University of Maiduguri*²¹ held that the Visitor, like any other inferior judge is subject to the control of the common law courts, it is the duty of the common law courts to ensure that the Visitor is acting within his jurisdiction. The Court concluded adopting the statement of Dr Peter Smith²², that "the Visitor is..... a private judge involved with purely domestic matters concerning the internal government and management of the foundation, being such a private judge, he would be limited to the provisions setting the University. Whenever the general laws of the land are involved like criminal law, he has no jurisdiction whatsoever.

3.4.2 The Vice-Chancellor

The power to discipline the University's students is vested in the Vice-Chancellor.²³ For instance, Section 33 of the Obafemi Awolowo University Act provides:

- (1) Subject to the provisions of this section, where it appears to the Vice-Chancellor that any student of the University has been guilty of misbehaviour, the Vice-Chancellor may, without prejudice to the exercise of any other disciplinary powers conferred on him by this Law, the Statutes, Ordinances or Regulations, direct-
 - (a) that the student shall not, during such period as may be specified in the direction, participate in such activities of the University, or make use of such facilities of the University, as may be so specified; or
 - (b) that the activities of the student shall, during such period as may be specified in the direction, be restricted in such manner as may be specified; or
 - (c) that the student be rusticated for such period as may be specified in the direction; or
 - (d) that the student be expelled from the University

Section 33(2) of the Act empowers the Vice-Chancellor to delegate any of his powers to discipline students to a Disciplinary Board consisting of such members of the University as he may

²⁰ [1993] AC 682.

²¹ Supra at p. 4

²² Smith, P.M. (1981). The Exclusive Jurisdiction of the University Visitor. *Law Quarterly Review*. Vol.97. p. 610

²³ See Sections 32, 33 & 34 OAU Act, Cap 02, LFN, 2004. see also Statute 9 (6) (1)(2)(3) of ABU Act, Cap A14, LFN, 2004; Section 18 of both University of Nigeria Act, Cap U 11, LFN, 2004 & University of Ilorin Act, Cap U 7, LFN, 2004; section 20 University of Lagos Act, Cap U9 LFN, 2004; Section 18(4) Usman Dan Fodio University Sokoto Act, Cap U14, LFN, 2004

nominate.²⁴The Vice-Chancellor is also empowered to suspend a member of staff for misconduct which in the opinion of the Vice-Chancellor is prejudicial to the interest of the University, however such suspension shall be reported to the Council²⁵.

Statute 9 (4) ABU Act provides: “Students and all other persons whatsoever attending the University for the purpose of instruction shall be subject to the disciplinary control of the University”. Statute 9 (6) (1) of the ABU Act provides for a Student Disciplinary Committee headed by a Deputy Vice-Chancellor as chairman with such members as the Senate may appoint. The Committee shall be responsible for recommending disciplinary measures to the Vice-Chancellor to be meted out to erring students. In the exercise of the responsibility for discipline of students, the Vice-Chancellor shall have regard to the advice of the Committee on Students Discipline as constituted above.²⁶

The exercise of the Vice-Chancellor’s disciplinary powers has provoked a spate of unprecedented litigations in our Universities in recent time. In *Akintemi&Ors vs Prof. Onwumechilli & Ors*²⁷ following an allegation of leakage of examination questions in the Faculty of Law, University of Ife, the Vice-Chancellor set up an investigation panel to investigate the allegations and make recommendations. The Panel invited students and lecturers including the applicants to give evidence. The Panel submitted its findings and recommendations to the Vice-Chancellor who on the basis of the recommendation, suspended the applicants for the rest of the session on the ground that they had fore-knowledge of the examination questions. The applicants challenged their suspension in the High Court claiming that there were no complaint or charge against them and that no hearing was afforded them on the report of the investigation panel. The court held that the applicants should be reinstated as panel had not complied with the principle of natural justice.

²⁴ See Section 18(4) University of Nigeria Act, Cap U 11, LFN, 2004; Section 18(4) University of Ilorin Act, Cap U 7, LFN, 2004; Section 20 (4) University of Lagos Act, Cap U9 LFN, 2004; Section 18(4) Usman Dan Fodio University Sokoto Act, Cap U14, LFN, 2004

²⁵ See for example; Section 16(2) University Ilorin Act; Section 16(2) University of Jos Act; Section 16(2) University of Lagos Act

²⁶ Ibid. Section 6 (1)

²⁷ (1981)11 OY.S.H.C. 457

Also in *Garba & Ors vs University of Maiduguri*²⁸ there had been a violent demonstration by students resulting in wanton destruction of properties, arson, looting and assault on persons. The Vice-Chancellor set up an Investigation Panels whose report was the basis of the dismissal of the appellants from the University. The appellants then brought an action under the Fundamental Human Rights Provision of the Constitution of the Federal Republic of Nigeria 1979, stating that they have been denied the right of fair hearing in that they were neither allowed to call witnesses nor allowed to cross-examined those who testified against them and alleging bias on the part of the Investigating Panel, as the Chairman of the Panel was the Deputy Vice-Chancellor, who was also a victim of the students' rampage.

The Supreme Court held that since the Chairman of the Investigating Panel which tried the appellants was the Deputy Vice -Chancellor of the respondent who was a victim of the rampage, the necessary inference to be drawn was that there was a real likelihood of bias since the Deputy Vice – Chancellor was a witness and Judge all at the same time. The court also held that by virtue of Section 33(1), (4) and (13) of the 1979 Constitution only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against students of a University. Neither the Vice-Chancellor nor any investigating panel set up by him has any competence in law to do so.

“Where it appears to the Vice-Chancellor”

One other very crucial point needs to be considered in relation to the Vice-Chancellor's disciplinary power under Section 33 (1)²⁹ of the OAU Act where the Vice-Chancellor is empowered to exercise his disciplinary power “where it appears to the Vice-Chancellor that any student of the University has been guilty of misconduct.” The Vice-Chancellor has liberty to form an opinion that a student is guilty of misconduct under the Act and there is no limitation as to the material upon which he bases such judgment. If the Vice-Chancellor, in the exercise of his

²⁸Op. cit.

²⁹Which is the same with Sections 17 of University Benin Act, University of Ilorin Act, University of Calabar Act, University of Port Harcourt Act, and University of Maiduguri Act.

discretion makes a blunt, but authoritative statement that he is satisfied that a student is guilty of misconduct, is he bound in such a situation to comply with the rule of natural justice?

This was succinctly answered in the case of *Garba vs University of Maiduguri*³⁰ where the court emphasized that the Vice-Chancellor when assumed the disciplinary powers under section 17 of the Act,³¹ he become not a court but a tribunal established by law acting in a quasi-judicial capacity, and must comply with the constitutional requirements of fair hearing and pass the qualification test to assume judicial functions. The Court further that there is no limitation on how the Vice-Chancellor can become satisfied under section 17 of the University of Maiduguri Act, 1979 that a student is guilty of misconduct. Once the manner by which the Vice-Chancellor became satisfied is known, then, it becomes a case wherein the data upon which he has come to his conclusion would have to be examined objectively according to the rules of natural justice and no longer left to subjectivity.

The Supreme Court in *Adekunle vs University of Port Harcourt*³² stressed that the words “where it appears to the Vice-Chancellor” contained in section 17(1)(d) of Decree No.84 of 1979 (University of Port Harcourt Decree) import an element of discretion and mean that the Vice-Chancellor has to be satisfied before he can order expulsion of a student. The satisfaction has to be derived from some data. Once the data forming the basis of the satisfaction of the vice-Chancellor are known, he should under the ordinary rules of natural justice, even common law, obey the elementary rules of fairness and fair play before he finds against any student or before he takes a drastic action to expel the student.³³

On ways the Vice-Chancellor can become satisfied that a student is guilty of misconduct, the Supreme Court held that there is no limitation on how the Vice-Chancellor can become satisfied that a student is guilty of misconduct. Such ways may include:

³⁰Supra at p. 4

³¹University of Maiduguri Act 1979 Act (now Section 18 University of Maiduguri Act, Cap U 10, LFN,2004)

³²(1991) 2 NWLR (Pt.181) 534 at p.547

³³*Garba vs University of Maiduguriop. cit.* at pp. 590-591

- a.) It can appear to the Vice-Chancellor from his own personal knowledge; or
- b.) It might appear to the Vice-Chancellor from the report of an investigation panel or Board set up to probe the alleged misconduct; or
- c.) It can appear to the Vice-Chancellor from the record of a court of competent jurisdiction convicting the student of a criminal offence.³⁴

Thus in *Kola Odetola & Ors vs Prof. Wande Abimbola, V-C, University of Ife & Ors*³⁵ there was a violent demonstration by some students during the 1987 Annual Convocation of the University of Ife, which had many dignitaries in attendance. The Vice-Chancellor assessing the situation which also got out of hand, suspended eleven students including the applicants. On action for infringement of their fundamental rights under the 1979 Constitution, the trial judge granted their application and ordered the students be reinstated. The court in delivering the judgment said:

It seems that the discretion of the Vice-Chancellor as the Chief Executive of his institution will not sit or stand akimbo and watch his institution engulfed in serious violence which may lead to anarchy, commotion, destruction of life and property and probably the extinction of the institution. This power, however, must be exercised judiciously and in accordance with the laid down rules³⁶

The court on a final note concluded; “I think with due respect, the only limitation is that the student culprit must be identified with certainty.”

But the applicants could not be identified with certainty and so the Vice-Chancellor in exercising his discretionary powers acted unfairly. However, if the Vice-Chancellor had caught the applicants himself and so acted from personal knowledge, his action would have been in order.

The power of the Vice-Chancellor to suspend a member staff for misconduct³⁷ was upheld in the case of *Abang vs University of Calabar*³⁸ where the Court of Appeal in dismissing the appeal held *inter alia*:

³⁴ Ibid. at p.613 per Oputa, JSC

³⁵ Cited in Fabunmi J.O. “University Law: Maintenance of Law and Order in Nigerian Universities” *Obafemi Awolowo University Law Journal*, 7&8 pp.1-21

³⁶ Ibid. p.5

³⁷ See Section 16(2) University Ilorin Act; Section 16(2) University of Jos Act; Section 16(2) University of Lagos Act

³⁸ (2008) All FWLR 1367

1. The suspension of the appellant pending investigation was in accordance with the statutory power of the Vice-Chancellor under section 15 (2) of the University of Calabar Act, Cap. 453 LFN 1990. Thus section 15(2) says:

2. The Vice-Chancellor may, in a case of misconduct by a member of the staff which in the opinion of the Vice-Chancellor is prejudicial to the interests of the University, may suspend such member and any such suspension shall forthwith be reported to the Council

Subsection (2) of section 15 confirms that the exercise of the powers of suspension by the Vice-Chancellor is purely statutory and administrative action and has nothing to do with the exercise of judicial or quasi-judicial powers which would have by implication carried along with it, the principle of *nemo judex in causa sua*. Meaning “no person shall be a judge in his own cause.”³⁹

The subsection brings it out clearly that the exercise of the power of suspension by the Vice-Chancellor does not represent a final decision by the Governing Council of the University in a case of alleged misconduct as such suspension of a staff member shall forthwith be reported to the Council.

3.4.3 The University Senate

The University Senate, apart from being the supreme academic authority of the University, also exercises discipline functions over the University students. The Senate is empowered to deprive any person of any degree or award conferred upon him by the University, if after due enquiry, the Senate is satisfied that he has been guilty of scandalous or other dishonourable conduct in obtaining the same.⁴⁰

In *Magitvs University of Agriculture, Makurdi*⁴¹ the appellant was admitted by the University of Agriculture Makurdi to do a M.Sc. degree in Agricultural Economics. He was required as part of the programme to submit an acceptable thesis. His topic for the thesis was approved. The appellant wrote and submitted his thesis to the Board of Examiners, he also defended the thesis orally. The result of the defence was to accept the thesis and the degree awarded subject to corrections to be certified as may be determined by the panel. Ultimately the appellant was adjudged to have made corrections to the thesis that were below standard. The Senate rejected the thesis and advised the

³⁹Ibid. at p.1375 *per*Owoade, JCA

⁴⁰ Section 18 (1) (2) OAU Act; Section 17 (2) ABU Act; section 7 (1) (6) University of Ilorin Act & University of Nigeria Act.

⁴¹(2005) 19 NWLR (Pt.959) 211

student to withdraw from the University on the grounds that he had employed dishonest and unacademic methods of arriving at the result in the thesis. Aggrieved by the respondent's decision, appellant sought to enforce his fundamental human rights under the Fundamental Human Rights (Enforcement Procedure) Rules 1979, seeking leave to apply for orders of certiorari, mandamus and prohibition. The trial court dismissed the appellant's application. His appeal to the Court of Appeal was also dismissed and he further appealed to the Supreme Court.

In dismissing the appeal, the Supreme Court held, *inter alia*:

The Senate of a University has the duty and responsibility to award or refuse to award a degree or degrees, certificate and such other qualifications, as it considers fit, to any student or students of the University. Section 7 of the University of Agriculture, Makurdi Act, 1992 vests in the Senate, to the exclusion of any other body or organ of the University, the responsibility for the award of degrees and such other qualifications as may be prescribed in connection with examination held. The Senate, as the supreme and ultimate academic authority in the University, has the duty to ascertain the quality of a thesis placed before it. The Senate of a University is the custodian of the integrity of its degree and once it is satisfied for some valid reasons that the award of a degree to a candidate is not justified, it will not award it. The Senate is competent to ask a dishonourable student, such as the appellant to withdraw from the University and to refuse awarding him the M.Sc. degree for academic dishonesty....⁴²

In *Eziagavs University of Calabar*⁴³ the appellant was a final year student in the University of Calabar and Speaker of the Student Union Parliament of the University of Calabar. He instituted an action in Calabar High Court where he sought an order for the enforcement of his fundamental human rights. He contended that the University had illegally suspended him indefinitely when certain materials linking him to a banned secret cult were found in his room. The appellant sought for order nullifying the suspension and 'for the respondents to release his result along with others when examination is taken'. The trial court granted the appellant's prayer which was overturned at the Court of Appeal. Dissatisfied the appellant appealed to the Supreme Court which upheld the decision of the Court of Appeal on a number of issues. The request for an order that his result should be released was denied. The Court said:

⁴²Ibid. at p. 260-261 *per* Mohammed, JSC

⁴³(2004) 7 NWLR (Pt. 872) 366

Where no examination has taken place it is idle to ask a court to grant a relief of the release of the result. It is my view that should any court worth its salt lend itself to such persuasion, then it would have succeeded in no small measure in destroying the institution of higher learning.⁴⁴

The Supreme Court was in essence emphasizing that the conduct of examinations in the University is exclusively within the jurisdiction, competence or portfolio of the University Senate. It does not share the function with any other body or bodies of the University in terms of finality of the decision taken exercise.

In *Akintemivvs Onwumechilli*,⁴⁵ the Supreme Court unanimously dismissing the students' appellants appeal, held that the appellants' application of mandamus was both premature and inappropriate.

The Court said:

Until Senate takes decision on the recommendation in respect of the results of the appellants it cannot be said that the Senate has acted to the detriment of the appellants. Where Senate in exercise of its powers under section 16 and 17 of the University of Ife Act (as the supreme academic authority of the University) takes steps to protect the value standard and credibility of the degrees it awards, no genuine complaint can be made.

3.4.4 The University Council

The University Council is the governing authority of the University and is charged with "the general control and superintendence of the policy, finance and property of the University." The power to discipline the members of staff is vested in the Council of the University.⁴⁶ The Council is given power of removal of and of discipline of any academic, administrative or technical staff on the ground of misconduct or inability to perform the functions of his office or employment.⁴⁷

In exercising its power, Council must give reasons to the affected person and allow him to make representation in person to the Council. The person affected or any three members of the Council may request a joint committee of the Council and the Senate to investigate the matter and to report

⁴⁴Ibid at p. 388 *per* Pats-Acholonu, JSC.

⁴⁵(1985) 1 NWLR (Pt.1) 68

⁴⁶ Section 15 (3) (P), Sections 30, 31 & Section 7 of Statute 23 of the OAU Act: See also Section 16 of the University of Ilorin Act; Section 17 of both University of Benin Act and University of Nigeria Act. Similar powers are contained in the Laws of other Nigerian Universities.

⁴⁷See for example, Section 16 (1) University of Ilorin Act. Section 17 (1) University of Benin Act. Section 16 (1) University of Nigeria Act

on it to the Council.⁴⁸ The Vice-Chancellor has power under the section to suspend a member for misconduct which in his opinion is prejudicial to the interest of the University and thereafter report to the Council. Council may suspend or terminate the appointment of member of staff for good cause and what constitute “good cause” is defined in the subsection thus;⁴⁹

- (a) conviction for any offence which the Council considers to be such as to render the person concerned unfit for the discharge of the functions of his office; or
- (b) any physical or mental incapacity which the Council, after obtaining medical advice, considers to be such as to render the person concerned unfit to continue to hold his office; or
- (c) conduct of a scandalous or other disgraceful nature which the Council considers to be such as to render the person concerned unfit to continue to hold his office; or
- (d) conduct which the Council considers to be such as to constitute failure or in-ability of the person concerned to discharge the functions of his office or to comply with the terms and conditions of his service.

In the exercise of its power of discipline and removal of the Universities staff, the Universities have run into problems either for disregard to the principles of natural justice or for a flagrant breach of procedures laid down in the Universities enabling Laws.

In *Odukalevs University of Ife*⁵⁰ the plaintiff was a Senior Assistant Registrar in the employment of the defendant. As a result of Akanbi Tribunal’s Report, the plaintiff was issued a query and ordered to appear before the Council to defend himself. When the plaintiff appeared before the Council he requested for representation by counsel which request the Council rejected. The Council, after deliberations reduced his rank and then retired him. The plaintiff challenged the decision of the Council contending that he was denied a fair hearing by not allowing him legal

⁴⁸Section 16 (1) (a)(b)(c)(i)(ii) University of Ilorin Act; Section 17 (1) (a)(b)(c)(i)(ii) University of Benin Act. Section 16 (1) (a)(b)(c)(i)(ii)(iii) University of Nigeria Act.

⁴⁹Statute 23, section 7 of OAU Act.

⁵⁰7 U.I.L.R. 391

representation at the council meeting. The trial court set aside the Council decision and ordered reinstatement of the plaintiff on the ground that he had not been given a fair hearing.

Similarly, in *Olaniyan & Ors vs University of Lagos*⁵¹ the appellants' professors had their appointment terminated by the Council of the University following a Visitation Panel Report that they are not fit to hold leadership positions in the University. The three professors challenged the termination of their appointment contending that the purported termination was ultra vires the University and its Council and not in accordance with section 17 of the University of Lagos Act 1967. The Supreme Court ordered the Professors to be reinstated. The Court observed that since there was an allegation of misconduct, the professors should have been given an opportunity to defend themselves.

The Council as the governing authority of the University exercises enormous power in the general administration of the University and superintends all affairs of the University as well. In addition to the general power of the Council, the Council also exercises discipline power over students of the University as appeals from the Vice-chancellor and Senate on students' disciplinary decisions lie to the Council. Accordingly, the Supreme Court in *Esiagwu vs University of Calabar*⁵² stressed that "by the virtue of section 17 (2) of the University of Calabar Act, a student suspended by the University can appeal to the University Council against such suspension"

In *University of Ilorin vs Oluwadare*⁵³ the respondent student was expelled for examination misconduct on the recommendation of the Student Disciplinary Committee (SDC). Under the law establishing the appellant University (University of Ilorin Act) the respondent was to appeal to the University Governing Council against the decision of the SDC recommending expulsion to the University. However, the respondent did not await the outcome of his appeal to the Governing Council before rushing to the Court to institute an action. In allowing the appeal, the Supreme

⁵¹(1985)2 NWLR (Pt. 9) 599; See also *Eperokun vs University of Lagos* (1986) 4 NWLR 162

⁵²Supra at p. 38

⁵³ (2006) 14 NWLR (Pt.1000) 751

Court held that “in the context of section 17(2) of the University of Ilorin Act, if a student appeals to the Council, then he must explore the possibility of having the matter settled at the domestic level.” The dictum of Tabai, JSC was apposite:

...but where the matters involve the award of degrees, diplomas and certificates and matters incidental thereto, like examination malpractices, an aggrieved party, be he a student or a lecturer, should first exhaust all the internal machineries for redress before recourse to court. Where he rushes to court without first exhausting all the remedies for redress available to him within the domestic forum, he would be held to have jumped the gun and the matter would be declared bad for incompetence. In the instant case, the respondent appealed to the Governing Council of the University of Ilorin and ought to have waited for its decision before rushing to court.⁵⁴

The Supreme Court in *Magitvs University of Agriculture, Makurdi*⁵⁵ also held that an application to court to quash the University Senate’s decision about the award of a degree without first appealing to the University’s Governing Council was premature and affirmed the decision of the two lower courts dismissing the application.

3.5 Who is a University Student?

Who is a student for the purpose of disciplinary proceedings in the University or any similar institution? Statute 9 (1) of ABU Act defined students as those persons receiving regular instruction in the University whether or not studying for a degree or other award. Section 2 of the Ambrose Alli University Law 1999, is more helpful. Under that section, a student is defined to include “an undergraduate or any person of such description as may be prescribed for the purposes of this law”. The section further provides that an “undergraduate” means a person in *statu pupillari* at the university other than a graduate; and a person of such description as may be prescribed for the purposes of this law. A “graduate” is defined by the same Section as a person on whom a degree (other than an honorary degree) has been conferred by the university. Consequently, a student who has written all his examinations is still a student subject to the University disciplinary proceedings until a degree is conferred on him.⁵⁶

⁵⁴Ibid. at pp.781-782; See also *Akintemivis Onwumechilli* (1985) 1 NWLR (Pt.1) 68

⁵⁵Supra at p. 4

⁵⁶*Akintemivis Onwumechilli supra* at p 38.

The meaning of the term “student” embraces not only those in full attendance in degree programmes, but includes, also diploma students, certificate students, pre-degree students and student pursuing higher degrees such as Master of Laws, Master of Arts, Doctor of Philosophy, Postgraduate diploma.

3.5.1 The Relationship between the Student and the University

Fundamental to any discussion of students' discipline and right is a determination, as far as is possible, the legal nature of the student-university relationship. This issue has received much attention from academic commentators and, to a lesser extent, from the courts. Different views have been expressed.

(a.) The *in loco Parentis* Rule

The earlier view on the Student-University relationship is the doctrine of *in loco parentis*, that the relationship was quasi-parental. The Latin term *in loco parentis* literally means “in the place of a parent.”⁵⁷ The duty of a reasonably prudent parent was replaced by a duty to exercise reasonable care to protect students from reasonably foreseeable harm. This doctrine viewed the institution as standing in “place of the parent,” the school had the right to control and discipline the child.⁵⁸

Historically, under the *in loco parentis doctrine*, colleges and Universities were perceived to play a role similar to that of parents while the students played the role of children.⁵⁹ A parent would certainly not be expected to give her child notice and a hearing before administering punishment in an ordinary parent-child relationship, and *in loco parentis* operated in roughly the same fashion when applied to post-secondary disciplinary settings.⁶⁰

When *in loco parentis* clearly applied to Universities, the University, like the parent, was fully responsible for “the physical and moral welfare and mental training of the pupils” and, as such,

⁵⁷Gardner B. A. (2004) BLACK'S LAW DICTIONARY (9th Ed.) Thomas West Publishing Co. at p. 858

⁵⁸ Comment, Colleges and Universities: The Demise of *In Loco Parentis*.(1971)6 *Land & Water Law. Review.* 715

⁵⁹Perkins C.J., (1998) *Sylvester vs Texas Southern University: An Exception to the Rule of Judicial Deference to Academic Decisions*, 25 J.C. & U.L. 399, 406-07

⁶⁰*Goss vs Lopez*, 419 U.S. 565, 590-94

was not required to provide notice of hearing nor to employ “fair” procedures during the course of discipline the student, the courts were highly reluctant to interfere with the disciplinary procedures and decisions Universities made with respect to their students. In *Goss vs Lopez*⁶¹ the U.S Supreme Court declared: “[s]chool discipline, like parental discipline, is an integral and important part of training our children,” and that this heavy parent-like responsibility should not be hampered by procedural formalities in disciplinary matters that will ultimately diminish the authority of the school”

Counteracting the above view is the position that for the modern matured college student and the modern impersonal University, the grounds for similarity to the family context seems few and that the student hardly needs the guidance given to a child. Using *in loco parentis* as a guide to the evaluation of teacher-student relationships, will obfuscate the problem rather than enlighten the court.⁶²

(b.) Corporate or Statutory Relationship

Another view, based on a corporate model, emphasises that the student, as a member of the University, is part of the University Corporation rather than a mere recipient of its services. Most modern Universities are corporations established by statutes which generally provide that students are members of the University who, on enrolment, become subject to University statutes and are bound by bye-laws and rules lawfully made in accordance with those statutes.⁶³

This was the view of the Supreme Court in the landmark case of *Garba vs University of Maiduguri* when the court decided that the relationship between the Student and the University is principally statutory and not contractual. In the case the appellants’ counsel argued that the student is bound to the University on matriculation by contract and acquired a status as a member of the University Community. He contended that the relationship between the University and every student is based

⁶¹ 419 U.S. 565, 590-94 (1975) (quoting *Tinker vs Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 524 (1969))

⁶² Abbott, C.M. (1970) “Demonstrations, Dismissals, Due Process and the High School: An Overview”, *Student Dissent in the Schools* (eds.) Irving G. H. et al, Houghton Mifflin Company, p.154

⁶³ See for instance; section 2 (1) (i) University of Nigeria Act, section 2 (1)(i) University of Ilorin Act.

on contract though no doubt it is also regulated by the University of Maiduguri Act 1979 (No. 8). He submitted that it is part of the contract (as regulated by statute) that dispute of a domestic nature shall be referred to and determined by the Visitor appointed for the University.⁶⁴

The court rejected the contractual relationship canvassed by the appellant's counsel and held that by virtue of section 2(1)(i) of the University of Maiduguri Act No. 83, of 1979 which made the appellants members of the University, relationship between of the appellants(students) to the respondent (University) is principally statutory not contractual.⁶⁵

(c.) Contractual Relationship

It is becoming more common to represent the relationship between the University and the student as a contractual one. The contractual analysis could be simply described as follows: a student receives an offer from a University for a place, and upon acceptance of that offer an agreement ensues. This agreement is supported by some form of consideration from each party - a price paid for the promise of the other party.

Accordingly, by providing a postsecondary education to students, a University is effectively increasing the students' capital in exchange for monetary capital, which is also known as tuition. Conversely, the student's participation with and contribution to the academic community of the University is exchanged for the education and accreditation provided by the institution. A contractual framework aptly recognizes this capital exchange between a University and a student. Basically, the parties obligate themselves to each other "so that the obligation of one party is correlative to the obligation of the other."⁶⁶

The student, when enrolling at a University, obligates himself to pay the tuition fee and abide by applicable regulations and codes as stipulated by the University. In return, the University obligates

⁶⁴The Learner counsel cited in support of his argument Notes by Prof. Wade, H.W.R. "Judicial Control of Universities" in *LQR* 85 157-158 quoting Lord Devlin's Report on the sit-in strike of students at Cambridge University which inter alia reads "contract is the foundation of most domestic or internal systems of discipline. The power to discipline should be inferred from the acceptance of it in the contract of matriculation"

⁶⁵*Garba vs University of Maiduguri*. p.604

⁶⁶Yang,S. Y.(2009)"University vs Student: Challenging the Contractual Understanding of Higher Education in Canada", *Lex Electronica*, vol. 14, p. 5

itself to provide an education and grant a degree to the student on the condition that he remains in good standing with the University and fulfil necessary academic requirements to merit the accreditation.⁶⁷

There are difficulties, however, in the adoption of the contractual analysis as the preferable characterisation of the relationship between a University and its students. The reluctance to adopt this view stems from the feeling that the relationship between student and University does not look like a contract - the presumptions of freedom of bargaining power, however fictional they are in the realities of the commercial world, are completely inappropriate here. According to Goldman:⁶⁸

The law of contracts is not, however, an appropriate basis for deciding student-university disputes. Contract rules were developed to deal with the hard bargains made by self-interested persons operating in a commercial setting. The environment in which a student deals with a university is far removed from the market place and it is unwise, therefore, to judge student-university conflicts by the law of the market.⁶⁹

It has also been suggested that adoption of a contractual analysis will result in a material alteration and unwelcome cooling of the relationship.⁷⁰

(d.) The Hybrid Relationship

More recently, the High Court of New Zealand found that the Student-University relationship was only partly based on statute. Elie J. In dismissing the University's argument that contract law did not apply as the relationship was exclusively governed by statute, said:

I think it is beyond argument that the relationship between a student ... and the University is partly based on contract and partly based on the Act itself ... The Courts will not adjudicate upon matters which impinge on academic freedom and independence, but they will entertain an action brought by a student based on tort or his or her contract with the university which does not so impinge.

This was also the line of argument posited in the *Garba's case* where the learner counsel for the appellants argued that the relationship between the appellants' student and the respondent

⁶⁷ Ibid.

⁶⁸ Goldman, A.L. (1966) "The University and the Liberty of Its Students - A Fiduciary Theory". *Kentucky Law Journal*, 54: 643.

⁶⁹ Ibid. p.653.

⁷⁰ Bridge, J.W. (1970) "Keeping peace in the Universities: The Role of the Visitor." *Law Quarterly Review*. 86: 531.

University was regulated by contract as well as the founding statute of the University. In *UnicalvsUgochukwu*⁷¹ the respondents were given provisional admission as students of the appellant's University on terms specified in their letters of admission, which were accepted by the respondents. Subsequently, the respondents were screened and found not to possess the required qualifications. Consequently, the appellant expelled the respondents. The respondents applied for leave to enforce their fundamental rights which was granted by the trial court. The court held that the expulsion of the respondent by the appellant was wrongful. On appeal, the Court of Appeal in setting aside the judgment of the trial court held *inter alia*:

The acceptance of admission offered by an institution on specific terms creates a binding contract between the institution and the Candidates. In the instant case, the offer of admission to the appellant on specified terms and acceptance of the said offer by the respondents on the said terms created a binding contract between the appellant and the respondents. In the circumstances, the trial court erred when it held that the expulsion of the respondents, which was based on their failure to abide by the terms specified in their letter of admission was wrong⁷²

Similarly, in *Ogunmadeji & Ors vs Moshood Abiola Polytechnic*⁷³ the plaintiffs gained admission to study Mass Communication in the respondent institution, having satisfied the advertised entry requirements. The entry requirements were later reviewed upwards before the students could register and the institution refused to register the students who did not possess the new entry requirements. The court held that the institution was bound by the advertised entry requirements and had to register the student based on the original representation.

From the foregoing, it seems that the relationship between the student and the University in Nigeria⁷⁴ is principally statutory but with contractual undertone.

3.6 Application of the Principles of Natural Justice to the University Discipline Actions.

Until the mid-seventies, punishment resulting from any act of indiscipline, including examination malpractice, whether within or outside the school environment; was largely an internal matter of

⁷¹(2007) (No.2)17 NWLR (Pt.)249

⁷²Ibid. at p. 267 *per* Ngwuta, JCA

⁷³ (2001) I CHR 372 at p.372

⁷⁴Appropriately Federal and State owned Universities.

the respective institution and bodies. Students could be restricted, expelled or otherwise punished, without external interference for various kinds of conduct, including examination malpractice. Occasionally, staff got punished for misconduct, but in the latter case, it was under a more careful procedure. By this arrangement, the autonomy of the University in matter of discipline was practically unchallenged. Indeed, the University administration was the alpha and omega in matters of discipline of whatever kind.⁷⁵

Towards the end of the seventies, however, there was a change and a radical departure from the above state of affairs. The authorities began to evoke stern disciplinary measures in order to match the nature of the misconduct which, had now grown astronomically and become more sophisticated. Another dimension which got introduced was that, those affected by the decisions of the school authorities began to challenge the outcome in court, mostly on ground of breach of the rules of natural justice or non-compliance with laid down rules. This therefore marked the beginning of judicial intervention in matters of discipline which hitherto was thought to be the exclusive preserve of the Universities.⁷⁶

In Nigeria, the judicial incursion into University discipline matters came to head in the notorious case of *Garba vs University of Maiduguri*. The Supreme Court ruled that disciplinary proceedings in higher institutions have to be conducted in conformity with the rules of natural justice.⁷⁷ The students had not been given the opportunity of knowing what the allegations against them were nor were they allowed to give evidence in contradiction thereof. The Supreme Court held further that the disciplinary issues within the domain of the University which in themselves were criminal or had criminal elements had to be dealt with in a court of law.⁷⁸ Finally, the powers of Vice-

⁷⁵Ndifon, C. O. and Ndifon, R.A. (2012) "Public Examination in Nigeria and Punishing Malpractice: Human Rights Perspective". *British Journal of Acts and Social Sciences*. Vol. 5, No. 2. p. 340

⁷⁶Ibid. at p.340

⁷⁷The Supreme Court unanimously allowing the appeal reasoned that the breach of the principles of fair hearing related to the fact that the Disciplinary Panel which investigated the matter had as its chairman the Deputy Vice-Chancellor who had himself been a victim of the students' rampage. The court held further that neither the Vice-Chancellor nor any internal investigating panel set up by him had any competence in law to do so.

⁷⁸According to the Supreme Court by virtue of section 33(1),(4) and (13) of the Constitution of the Federal Republic of Nigeria, 1979, only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against students of a university.

Chancellor on disciplinary matters which seem to have been preserved and which cuts across most of the Act of Universities in Nigeria can only be exercised in a very subjective manner⁷⁹, was condemned by the learned Justices of the Supreme Court. A cursory look at the section sadly shows that there is no provision for fair hearing. Reacting to the subjective nature of the section in question, Kayode Eso JSC condemned the decision of the Vice-Chancellor in very strong terms. He stated thus:

It is no longer a case of a person upon whom the discretion is conferred making a blunt, but authoritative statement, that he is satisfied. It seems to me to be a case wherein the data upon which that person has come to his conclusion would have to be examined objectively, according to the rules of natural justice and no longer left to his subjectively... it follows therefore that when section 17 of the University of Maiduguri Act, 1979, No. 83 gives a discretion to the Vice-Chancellor” where it appears to him that any student of the University has been guilty of misconduct” and the data of his satisfaction are known, the Vice-Chancellor should under the ordinary rules of natural justice even under the common law obey the elementary rules of fairness and fair-play before he finds against any such student or as this case, before he takes such a drastic action under section 17(i)(d) of the Act to expel the student.

It should be noted that the above decision has not totally derogate the University powers to discipline its students, but the emphasis is that where the alleged act of misconduct is within the disciplinary powers of the University, its jurisdiction is exclusive. However, in exercising its exclusive disciplinary powers, the University Authority must comply with the principle of natural justice. Another dimension to this is that where the alleged act of misconduct is a crime against the law of the land, the University disciplinary jurisdiction will give way to the ordinary court of the land to try the offender.

The decision in *Garba's case* has not been free from criticisms, especially as it redefined the scope of the university's discipline powers by ousting its jurisdiction from dealing with acts amounting to crime. Some of these criticisms will be considered in the next chapter.

3.6.1 University's Jurisdiction in Disciplinary matters with Criminal Elements

⁷⁹ See section 17 (1) of the University of Maiduguri Act: see also Section 18 (1) of both University of Nigeria Act. & University of Ilorin Act.

It is the law in this country that where an offence is couched in such a way that it is criminal in nature, only the law courts or tribunal set up by law may try it.⁸⁰ This is attuned with the Constitution of the Federation which clearly vests judicial power in the law courts.⁸¹ It follows that, any attempt to usurp this function by any other organ or body will be resisted by the courts. In *Denloyevs Medical and Dental Practitioners Disciplinary Tribunal*,⁸² the Supreme Court held that where the professional misconduct of a practitioner amounts to crime, it is a matter for the courts to deal with and that it is only after the court has found him guilty that the domestic tribunal may proceed to deal with him in professional respect.

It is trite that only the courts of law in Nigeria have the exclusive province to try criminal cases except jurisdiction is conferred by another statute. It will therefore tantamount to usurpation of this power for any order organ or body to indulge in trying any case which involves criminal allegations.

Thus in *SofekunvsAkinyemi*⁸³ where the appellant was found guilty of criminal misconduct by the Public Service Commission of old Oyo State. Fatayi Williams C.J.N. with whom six other Justices of the Supreme Court concurred, held that once a person is accused of a criminal offence, he must be tried in a court of law in accordance with the fair hearing provisions contained in S. 22(10) of the 1963 Constitution. It was further held that the Regulation which permitted the Commission to try criminal conduct is a usurpation of judicial power by the Commission, being an agent of the executive. The words of Fatayi Williams, CJN was very illustrative:

One of the powers which has always been recognized as inherent in courts and which are protected in their existence, their powers and jurisdiction by constitutional provisions has been the right to control their order of business...the principles of separation of powers prohibits the legislature not only from exercising judicial functions but also from unduly burdening or interfering with the judicial department in its exercise thereof.⁸⁴

⁸⁰Section 36(4) CFRN 1999; See also the of *University of Calabarvs Dr. Okon J. Essien* (1998) 12 SCNJ at 304

⁸¹Section 6 of the Constitution of the Federal Republic of Nigeria, 1999.

⁸²(1968) 1 All NLR 306

⁸³(1980) 5-7 SC at 1

⁸⁴*Ibid.* at p. 1

This principle was extended to the University disciplinary tribunal in the notorious case of *Garba vs University of Maiduguri*. In that case, some students of the University of Maiduguri were expelled sequel to a riot accompanied by destruction of property, looting and assault on persons. Their expulsion followed the senate consideration of the reports of the Disciplinary Board and an Investigation Panel set up by the Vice Chancellor. In a unanimous decision of the Supreme Court, it was held that the combined effect of subsection (1) and (4) of Section 33 of the 1979 Constitution (identical with S.36 1999 Constitution) is that, only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against students of a University. The court held further that neither the Vice-Chancellor nor any internal investigating panel set up by him had any competence in law to so do.

It is crystal clear from the foregoing analysis that once an allegation bothers on criminality, only the law courts can be seized of the matter. The rationale for this was clearly stated by Kayode Eso JSC in the case of *Federal Civil Service Commission vs Laoye*.⁸⁵ According to his Lordship:

...when anyone is accused of a criminal offence, he should in his own interest and in the interest of truth and justice be tried by the ordinary court of the land. No hush hush inquiry will take the place of open trial. The right to fair hearing comprehends and includes the right to be heard in open court in defence of one's character and good name, when accused of misconduct amounting to a criminal offence.

The position is clear that a University disciplinary tribunal cannot adorn itself with paraphernalia of court of law to assume jurisdiction when any of its student is alleged of criminal offence.

Obaseki, JSC in caution the University Authority in *Garba's case* said:

It should be observed and noted that students in all our Universities and institutions of higher learning are not above the law of the land and where obvious case of breaches of our criminal and penal laws have taken place, the authorities of the University are not empowered to treat the matter as an internal affair. Both the students and the authorities of the Universities owe the nation a duty to observe the laws of the land and avoid injustice to anyone. Without subjecting any criminal allegation against any student to the machinery provided by the State for ascertaining the truth of the allegation, a very painful denial of fundamental right is inflicted on the students howbeit laudable or sympathetic the intention of the authorities might be.⁸⁶

⁸⁵ (1989) 2 NWLR (Pt. 707) 652 at p. 729

⁸⁶ Op. cit. at p. 576

It is conclusive that in an effort to enforce discipline in their domain, Universities cannot on that basis infringe the doctrine of separation of power. Such enforcement of discipline can hardly justify the usurpation of judicial function of the Courts or the erosion of their independence by the University authorities. Whenever this happens such act will invariably ultra vires the University authority and will be set aside by the courts.

3.6.2. University's Disciplinary Jurisdiction in Examination Malpractices Offence.

The case of *Garba vs University of Maiduguri* has been elevated to the status of a *Delphic oracle* especially with regards to the powers of disciplinary body to exercise jurisdiction when the issue of criminality is in issue. It has been argued in different fora⁸⁷ that the Garba's decision has greatly undermined the investigative and disciplinary jurisdiction of the Nigerian Universities over their students, more especially as it relates to examination malpractices. In practice, Universities do assume jurisdiction to try some examination malpractices misconduct as matters which fall within their internal domain. These is also in conformity with the statutes establishing these Universities which grant them not only the autonomy but also the power to discipline or even expel any of their students found guilty of misconduct including academic misconduct.⁸⁸

It should be noted that under the 1999 Constitution,⁸⁹ where a person is alleged to have committed any act or omission which offends the law, it is improper for a body other than a court or tribunal properly constituted to reach a verdict of guilty on such criminal activity of the person. Section 6 (6) (b) of the same Constitution specifically guarantees unhampered right to every person to go to court and seek a determination of any question as to his civil rights and obligations. In addition to this, is the Examination Malpractice Offences Act,⁹⁰ which creates and regulates offences relating

⁸⁷ See Ibidapo-Obe, A. (1987); "The Declining Disciplinary Power of the Universities" (A case comment on the decision of the Supreme Court in *Garba v University of Maiduguri*) in *Obafemi Awolowo University Law Journal*, January & July, p. 211; See also Fabunmi, J.O.(1991) "University Law: Maintenance of Law and Order in The Nigerian Universities", *Obafemi Awolowo Law Journal*, 7 & 8: p.10;

⁸⁸See for example; Ss 32, 33 & 34 OAU Act. see also Statute 9 (6) (1)(2)(3) of the ABU Act, Section 18 of both University of Nigeria Act, & University of Ilorin Act.

⁸⁹Section 36(1) CFRN, 1999.

⁹⁰Cap E 15, Laws of the Federation Republic of Nigeria, 2004

to examination malpractices both within and outside school environment. Further, the Act has specifically stated the offences – cheating at examination, stealing of question papers, impersonation, disorderliness at examinations, disturbances at examinations, misconducts at examinations, obstructing of supervisor, breach of duty, conspiracy, aiding, abetting, procuring and inducing the commission of offence of examination. Section 15(2) of the Examination Malpractices Offences

Act provides that all new proceedings⁹¹ regarding examination malpractice offences shall be brought before the court.

No doubt, it must have been on account of these constitutional and statutory provisions that it became imperative for the courts in some contention cases of examination malpractice to hold that University do not have competence to hear and determine such cases.⁹²

In *University of Uyo & 3 ors vs Linda OnyebuchiEssel*,⁹³ the respondent, a student at the University of Uyo, was allegedly involved in examination malpractice. The Examination Malpractice Panel and the Senate Appeal Panel set up by the University to investigate the allegations recommended her expulsion from the University, which was carried out. The respondent then filed a motion on notice at the high Court seeking an order of certiorari to quash the decisions of both panels and for her reinstatement.

The trial court held that the proceeding was in breach of fair hearing and granted the relief⁷ sought by the respondent except that of damages. Dissatisfied, the appellants appealed to Court of Appeal. Three issues were distilled by the court from the issues formulated by the parties. Among the issues was: -“Whether the trial Court was right in holding that the allegation of examination malpractice levelled against the respondent was in the nature of a criminal offence and

⁹¹From the date of promulgation.

⁹²See for example, *University of Uyo vs Essel* (2006) All FWLR (Pt.315) 81, *University of Ilorin vs Oyalana* (2001) 15 NWLR (Pt.737) 684

⁹³(2006) All FWLR (Pt.149) 81; see also *University of Ilorin vs Oyalana* (2001) NWLR 84, *Ugwumadu vs University of Nigeria* (2000) 7 NCLR 130

consequently, not within the domestic jurisdiction of the two panels set up by the University to determine.”

This issue, the Court of Appeal resolved in favour of the respondent thus:

Any accusation or allegation of examination malpractice is a serious criminal charge under section 3(16) of the Special Tribunal Miscellaneous Offences Act Cap. 40, Laws of the Federation of Nigeria, 1990 and it is punishable with 10 years imprisonment. Therefore, it is definitely not within the domestic jurisdiction of the two panels set up by the 1st appellant... by virtue of section 36(1) and (4) of 1999 Constitution, only a court of law or a judicial tribunal is competent to hear and determine a criminal charge ... furthermore, where infamous conduct or gross misconduct cannot be established without proving facts that would amount to an offence covered by the criminal code, the tribunal should yield to the criminal court for the trial of the criminal offence.⁹⁴

In *University of Ilorin vs Oluwadare*⁹⁵ the Applicant/Respondent, a student of the University of Ilorin, was allegedly involved in examination malpractice during the semester examination conducted by the appellants on 27th day of August, 1998. On that fateful day, the invigilator who caught him demanded the respondent to write a statement to that effect, which he refused. Based on the above facts, he was invited to appear before the University Student Disciplinary Committee to defend himself. Having appeared before the disciplinary committee he was found guilty of examination malpractice. The Committee therefore recommended to the school authority that he should be expelled from the University. However, the respondent did not await the outcome of his appeal to the Governing Council before rushing to the Court to institute an action. He prayed the court to declare that his expulsion from the University pursuant to an allegation of criminal offence of examination malpractice without his guilt having been established before a court of law or constitutional tribunal constitute a flagrant abuse of his right to fair hearing and as a result, the expulsion is unconstitutional, null and void, and an order of mandatory and perpetual injunction against the University.

The trial court granted the respondent prayers. The University not satisfied with the decision appealed to the Court of Appeal. While dismissing the appeal, the Court of Appeal held *inter alia*,

⁹⁴ (2006) ALL FWLR 81 at pp. 105-106, (per Adamu JCA who delivered the lead judgment)

⁹⁵ (2003) FWLR (Pt.149) 1199

that examination malpractice is a serious criminal charge and not matter within the internal discipline, once a person is accused of the commission of a criminal offence, he must only be tried by a court of law established under the Constitution where the complaints of the prosecutors can be ventilated in public in accordance with the law and where his constitutional right of fair hearing would be assured. The courts envisaged by the provision of section 36 of the 1999 Constitution are courts established under section 6 of the said Constitution. It is only that court that have exclusive jurisdiction to try a person alleged to have committed an offence.

The effect of the decision of the *Garba's case* has been far reaching, in fact the Court itself appreciated this much. Coker JSC in his concurring judgment dwelled on this extensively when he observed:

What if the misconduct committed by the student is of such a criminal nature and for which after due prosecution in a court of law the students is acquitted on some technical grounds? What if the misconduct of a student, beside the apparent criminal nature constitutes insubordination or wilful disobedience of lawful order or instruction? Would the Vice-Chancellor be inhibited from taking disciplinary action against such a student? What if, for instance, the prosecution failed because the prosecution refused to summon necessary witnesses to testify at the trial or if a vital witness was deliberately not called or could not be found or refused to attend even though summoned? Yet, the Vice-Chancellor has before him credible evidence which seems to him to justify disciplinary action against the erring student? These are areas in which the present decision of this court one day may call for re-consideration.⁹⁶

The Supreme Court has indeed reconsidered, at least, part of their decision in the *Garba's case*. The court has made attempts to ameliorate the effect of the case in some subsequent cases. For instance, Kayode Eso JSC held in *Federal Civil Service Commission vs Laoye*⁹⁷ that there will be exception to the rule in *Garba's case* where the accused person confesses to the allegation of criminal conduct. According to his Lordship:

It is not so difficult where the person so accused accepts his involvement in the acts complained of, and no proof of criminal charges against him would be required. He has, in such a case, been confronted with the accusation and he has admitted it. He could face discipline thereafter

⁹⁶*Garba vs University of Maiduguri.* ibid at p. 611

⁹⁷ (1989) 2 NWLR (Pt.67) 797

The above exception to the rule in Garba's case was re-emphasized recently by the Supreme Court in *Dangote vs Civil Service Commission of Plateau State*⁹⁸

It cannot be disputed that when there is an admission of the commission of the criminal offences alleged, the question of establishing the burden on the accuser does not arise. Accordingly, the question of violating the rights of the accused is not an issue. It seems to me preposterous to suggest that the administrative body should stay the exercise of its disciplinary jurisdiction over a person who had admitted the commission of criminal offences. The inheritable inference is that a criminal prosecution should be pursued thereafter before disciplinary proceedings should be taken. I do not think the provision of the law and effective administration contemplates or admits the exercise of such a circuitous route to the discipline of admitted wrongdoing.

This is also the position regarding misconduct in the University disciplinary hearing, in the case of *University of Calabar v Essien*⁹⁹ the Supreme Court per Igun JSC held that:

Where an employer dismisses or terminates the appointment of an employee on ground of misconduct all that the employer needs establish to justify his action is to show that the allegation was disclosed to the employee, that he was given a fair hearing, that is to say, that the rule of natural justice were not breached and that the disciplinary panel followed the laid down procedure, if any, and accepted that he committed the act after its investigation.

The general rule in the *Garba's case* which effectively remove the domestic jurisdiction of the University to entertain any case of misconduct tainted with criminality against a student held until the Supreme Court decision in *Esiagavs University of Calabar* the Supreme Court in the case acknowledged the fact that the University had the power to discipline a student within its internal rules even where the conduct involves some elements of crime. According to the court,

The University has authority within its premises to discipline any erring or misbehaviour student. The principle of fair hearing as envisaged in the constitution must, however, be the guiding principle in applying any sanction against a misbehaving student. If the act of the student amounts to a crime, the normal report should be lodged with the police but this will not preclude the University exercising its powers under its statute to punish misconduct by any student. The case of *Garba vs University of Maiduguri* has not precluded the University taking action against misconducting student within its campus.¹⁰⁰

The court in emphasizing the current position of the rule relating to the domestic jurisdiction of the University to entertain misconduct albeit with some element of crime went further:

⁹⁸ (2001) 4 S.C. (Pt. II) 43

⁹⁹ (1996) 10 NWLR (Part 477) 225, 262.

¹⁰⁰ *Op. citat* p. 404

It is perhaps tempting for a student who is suspended or expelled by a University to put himself in the garb or dress of inimitable “Garba” in the *Garba’s case* and cry blue murder for the suspension or outright expulsion. Are we now to understand that a University should be incapable of enforcing ultimate and extreme disciplinary measures of expulsions where the facts and circumstances of the case demand that it so acts. The celebrated case of *Garba vs University of Maiduguri* is not intended to be a court given licence and judicial umbrella to provide students of unbridled, recalcitrant and impetuous behaviour in the University.....no it is not. It is equally not intended to tie the hands of the College Authority and debar it from making an effort temporary to arrest a perceiving evil that is seen rearing its ugly head which if not nipped in the bud might conceivably raise Cain. To my mind what the University of Calabar and others-nay, the respondents did was not assumption of judicial powers ordinarily exercisable by the courts. A wide and horizontal construction of the decision of Garba’s case may have the unflattering and unexpected effect of sending discipline in our tertiary institution to the doldrums.¹⁰¹

In *Bamgboye vs University of Ilorin*¹⁰² where the appellant was dismissed by the University for examination malpractice involving falsification of marks on some scripts which is clearly a criminal conduct, the High Court, the Court of Appeal and the Supreme Court held that the disciplinary proceedings against the appellant before the Investigating Panels and the Governing Council culminating in the dismissal were valid. The Courts held that, based on the state of the pleadings, the issue of the criminal jurisdiction of the Governing Council did not arise. The appellant pleaded and tendered the charge (exhibit P6) and findings (exhibit D4) of the Governing Council. He raised the issue of the criminal jurisdiction in his final address before the trial Chief Judge and continued to raise it up to the Supreme Court, but the Courts refused to consider it on the ground that he has not pleaded it.

The Courts ought to have made a pronouncement on the competence of the Council to entertain the proceedings in view of the nature of the allegations involved.

The Supreme Court eventual made a pronouncement on the competence of the University Authority to entertain examination misconduct within its domestic jurisdiction. It was an appeal by the University of Ilorin against the decision of the Court of Appeal in the case of *University of*

¹⁰¹Ibid at p. 387 *per* Pat-Acholonu JSC

¹⁰²(1999) 6 S.C. 72 at 121

Ilorin vs Oluwadare.¹⁰³ The Supreme Court in allowing the appeal held *inter alia*; that examination malpractice offence is purely domestic affairs or internal affairs of the University appellant.

The Supreme Court in determining the extent of the University domestic jurisdiction in entertaining misconduct tainted with crime said:

For matters which involves serious criminal allegations against the state such as arson, stealing, indecent assault, etc. the suspects should, for obvious reasons, be tried in a court or tribunal properly so called under the Constitution. But where the matters involve the award of degrees, diplomas and certificates and matters incidental thereto, like examination malpractices, an aggrieved party, be he a student or a lecturer, should first exhaust all the internal machineries for redress before recourse to court. Where he rushes to court without first exhausting all the remedies for redress available to him within the domestic forum, he would be held to have jumped the gun and the matter would be declared bad for incompetence. In the instant case, the respondent appealed to the Governing Council of the University of Ilorin and ought to have waited for its decision before rushing to court.¹⁰⁴

The effect of the above decision is that the University Authority can effectively exercise disciplinary jurisdiction over its students for minor misconducts albeit tainted with some elements of crime. However, where the offences are offences against the State and are of serious nature and sophistication, the domestic disciplinary jurisdiction of the University cannot be invoked. Where the university domestic jurisdiction is invoked in minor misconduct, it must observe the rules of natural justice and acts within the confine of the enabling statutes. Otherwise, its decision will be declared nullity by the court.

Thus in *Federal Co-op. College & Ors vs Miss Adeniran*¹⁰⁵ the respondent was at all the material times a student of the first appellant. In February 2007, the respondent sat for English (GNS) course 201 examination. There were allegations of examination malpractice at the examination. Five students including the respondent were accused of master-minding the examination malpractice. A panel of the Academic Board of the 1st appellant was set to investigate the allegation. The respondent denied before the panel that she was involved in the alleged examination malpractice. Some of the students, however, gave statements at the panel that

¹⁰³(2006) 14 NWLR (Pt.1000) 751

¹⁰⁴Ibid at p. 781 per Tabai JSC

¹⁰⁵ (2012) LPELR-19736 (CA)

indicting the respondent. A second panel was constituted, heard the respondent but did not satisfied with her defence. It recommended the withholding of the respondent's Ordinary National Diploma Certificate (OND) for one semester as punishment for the examination Malpractice. The appellant gave effect to the recommendation. The trial court faulted the appellants' handling of the matter on ground of denial of fair hearing and for want of jurisdiction.

Dissatisfied with the trial court ruling, the appellant' institution appealed to the Court of Appeal.

The Court of Appeal held that:

An academic institution has the primary powers to discipline a student for examination malpractice: Because it is specially equipped with the skilled manpower to manage issues of examination malpractice or academic dishonesty of a student. I would like to emphasise herein that the decision in *Garba* should not be taken as a prohibition of instituting disciplinary measures against students where there has been a criminal charge or accusation.¹⁰⁶

3.6.3 University's Pure Academic Actions

Self-restraint adopted by the judiciary in exercising the power of review has left certain banks untouched or only rarely touched like policy decisions, taxation, foreign affairs, international agreements, defence strategies etc. These areas are not disturbed by the courts unless the decisions under challenge are constitutionally so fragile and unsustainable. Academic decisions of the Universities and other educational institutions requiring expertise and experience belong to the above category. If an academic decision is legal and lawful, the reasonableness and propriety of the same may not be questioned by the Courts.

It is to be reiterated here that all decisions and actions of the University are not academic decisions. When many of the decisions of such institutions are fully academic in content and nature, there is a still larger area of decision making power of such institutions in respect of their administrative powers, disciplinary jurisdiction, financial matters etc. Therefore, the truly academic decisions are to be distinguished from the administrative decisions of the academic bodies. Theoretically, purely academic decisions are treated as beyond the courts reach, though on

¹⁰⁶Ibid

facts, in some deserving cases the court do interfere. Therefore, the guiding principle and the proposition of law in so far as judicial interference of academic decisions are concerned stands as of today undisturbed that the court should be slow to interfere and should only seldom interfere in academic decisions of academic bodies. The reluctance for interference of the court is evident from the following decisions.

In *Akintemivis Onwumechilli*¹⁰⁷ The Council of the University apparently angered by the audacity of the students in taking the University to court early, directed the Faculty of Law to withhold the students' results. The Faculty of Law, disregarded Council directive, contending that Council had no power to issue such directive, considered the students' results along with others and sent same to Senate. Senate, of course decided not to consider the results of the three students. The three students sued the University, seeking an order of mandamus to compel the University to release their results. The trial court dismissed the application and the appeal to the Court of Appeal was also dismissed. The Supreme Court further dismissed the appeal and held that the action is premature as the Senate of the University and the University Council had never considered their results and could therefore not be compelled to release what was never considered.

According to Irikefe, JSC "it seems to be incontestable that the issues with this appeal is concerned belong to the domestic domain of the University as enshrined in the statute establishing it and are such not justiciable in a court of law."¹⁰⁸ The courts cannot and will not usurp the functions of the Senate, the Council and the Visitor of the University in the selection of their fit and proper candidates for passing and for the award of certificates, degrees and diplomas.

The Supreme Court in another case was invited to consider whether a University can lawfully suspend its student for belonging to a secret cult and whether the Court has jurisdiction to compel the University to release the student result in an examination he has not written. Thus in *Esiagavs*

¹⁰⁷(1985) 1 NWLR (Pt.1) 68

¹⁰⁸Ibid at p. 78

University of Calabar,¹⁰⁹ the Court held;

In so far as examinations are conducted according to the University rules and regulations and duly approved, and ratified by the University Senate, the courts have no jurisdiction in the matter. A court of law which dabbles or flirts into the arena of University examinations, a most important and sensitive aspect of university function should remind itself that it has encroached into the bowels of university authority. Such a court should congratulate itself as being party to the destruction of the university and that will be bad not only for the universities but also for the nation.”¹¹⁰

The Supreme Court also refused to interfere with the exercise of University discretion to award or withhold its degree in the case of *Magit vs University of Agric. Makurdi*¹¹¹ according to the Court;

A University is a degree awarding institution and can...neither delegate its degree awarding powers nor be stamped to make award where it does not see it fit to do so. For a court to use its awesome magisterial powers to compel a university to award a degree would in effect mean that the court has invested itself with necessary powers to fully appreciate the nuances taken into consideration to award university degrees... I would view with consternation and trepidation the day the court would immerse itself into the cauldron of academic issue which is an area it is not equipped to handle...It is my view that it is the indisputable right of a university to award or withhold the award of a degree and it is no business of the court to question its motives let alone compelling it to award a degree which it has stated a claimant is not qualified for...It alone possess the power to state whether a particular work is below standard or not...Is the court going to substitute its standard with that of the university? I think not.¹¹²

The leaner Justice concluded thus:

Let us pray that there shall never come a time when the court shall use its powers to constitute itself into a Senate of a university or a degree awarding body. When faced with a case of this nature, the court should exercise utmost caution knowing fully that it is not versed in the university method of assessing the intellectual work and is not vested with the power to arrogate itself the function of a university.When the court in the exercise of its constitutional duties unwittingly invests itself with the power to compel a university to award degrees then we should say goodbye to academic pursuit and excellence and cause to be reeled out from our universities half-baked people and ignoramus masquerading as intellectuals and scholars.¹¹³

Thus, glancing through the cases on the subject of academic matters, one would find that judicial non-interference in academic matters is the general rule and interference is the exception, provided the decision under challenge is of purely academic nature. Generally, courts refuse to scan through

¹⁰⁹(2004) 7 NWLR (Pt. 872) 366

¹¹⁰Ibid at p.388

¹¹¹Supra at p.37

¹¹²Ibid at pp. 257-259

¹¹³Ibid at p.259

the academic decisions and to probe into their legitimacy, particularly when the decision is taken by academic experts. But court will interfere when the impugned decision is prima facie illegal and irregular being violative of the provisions of the University Act, Statute or Regulations or is shockingly arbitrary, capricious and manifestly unreasonable or unjust or is visibly mala fide or in breach of any provision of the Constitution.

The University in asserting absolute discretion in academic decisions must comply with its own laws, rules and regulations. The court in its supervisory jurisdiction would be right to scrutinize and review the University laws and regulations to ensure that it had been complied with. Thus in *University of Nigeria Teaching Hospital management Board vs Nnoli*¹¹⁴ the Supreme Court per Oguntade JSC said: “where a public body fails to comply with certain procedural safeguards in an enabling Act or Regulations, there is a breach of a duty imposed on it and its decision in such circumstances is Ultra vires”. The Court had also interfered with academic decision of an institution when the advertised entry requirements of the said institution was reviewed upwards before students who applied on the basis of the advertised requirements could register. The court intervened when the institution refused to register the students who did not possess the new entry requirement, declaring the act of the institution unreasonable, unjust and arbitrary. The institution was compelled to register the students based on the advertised requirement.¹¹⁵

Again, the court will interfere where there is *prima facie* breach of fundamental human rights of any aggrieved student. Thus in appropriate cases where there is breach of fundamental human rights court would nullify the action of a University for instance in refusing to award a degree without just cause. In *University of Ilorin vs Dumade*¹¹⁶ the appellant University withheld the respondent Ph.D. degree over seven years on the ground of overstayed and the appellant went ahead and award the same degree to persons who overstayed longer than the Respondent. The Court held that the respondent action was not only malicious, capacious but made in bad faith and

¹¹⁴(1994) NWLR (Pt.363)376 at 412

¹¹⁵*Ogunmadeji & Ors vs Moshood Abiola Polytechnic* (2001) 1 CHR 372

¹¹⁶(2013) LPELR- 21383 (CA)

was compelled to award the respondent his Ph.D. degree.

In *UgwumaduvsUNN*¹¹⁷ the issue before the Supreme Court is whether the court has power to entertain matter deemed to be within domestic jurisdiction or forum of a University. The court emphasizing the supremacy of the Constitution over any other laws in Nigeria and the constitutional power of the courts to scrutiny any matters no matter how technical or complex; held *inter alia*:

Although it is within the domestic domain of a university, like the respondents in this case to inflict discipline and run its affairs as laid down by the enabling law, it must do so within the confines of the Constitution. Thus, a constitutional issue, like the issue of fair hearing raised in this case, transcends the concept of domestic jurisdiction of a University. Therefore, if in the process of performing its functions under the law, the civil rights and obligations of any student is breached, denied or abridged the court will grant remedies and reliefs for the protection of those rights and obligations.¹¹⁸

From the foregoing, it is obvious that the University exclusive jurisdiction over academic actions is subject to an observance of the fundamental human rights of the student. This is the one of the principle established by the case of *Garba vs University of Maiduguri* that any aggrieved student who feels that his fundamental human rights have been breached can bypass appeal to the Council and come to the court for redress.¹¹⁹

Discernible in the question of the exclusive jurisdiction of the University in pure academic decisions are two opposing principles. There is the principle that no issue should be beyond the competence of courts on one hand; the principle recognises the unlimited capacity of the superior courts of record to inquire into all matters no matter how technical or complex. Ranked against this principle is the principle that certain matters are better handled by domestic tribunal or institutions since a court may be less suitable to so do because of the technical nature of the matter, the expertise associated with the field, the unwritten traditions of the institutions and the effects of

¹¹⁷(2000) 7 CLRN 130.

¹¹⁸Ibid at pp. 137-138

¹¹⁹(1986) 1 NWLR (Pt. 7) 550 at p 554.

adversarial litigation.¹²⁰

From the case laws cited above, both in respect of non-interference and interference of the Court in academic decisions, it may be possible to draw a conclusion that the Court has never shown any enthusiasm or over-anxiety to interfere in academic issues. As far as possible, the Court was reluctant to upset or disturb the findings and decisions of the academic bodies consisting of experts and the University authorities. This was particularly so in respect of academic policy matters. At the same time, the Court did not want to run away from the realities in academic field and abandon their constitutional obligation altogether for the mere fact that they are being confronted with a University or an academic authority and the issue to be decided is an academic issue.

Through judicial review, the courts impose restraints on the exclusive autonomy of the Universities only to make them function under rule of law. Judicial interference in this regard, cannot therefore normally be considered as an encroachment into the academic freedom and autonomy of the University. The Court merely plays the role of an umpire, compelling the University authorities to stick on to the rules of the game, without playing the game itself. Consideration of natural justice, abuse of power, mala fides, violation of statutory provision, excess or lack of jurisdiction, breach of Fundamental Human Rights and violation of other principles of administrative law will definitely take the courts into areas that cannot be ordinarily fenced off as ‘academic decisions’ and therefore beyond the jurisdiction of the courts.

3.7 The Doctrine of *Forum Domesticum*

Forum domesticum according to the *Black’s Law Dictionary* is “a domestic court, this type of court decides matters (such as professional discipline) arising within the organization that created

¹²⁰Nwauche. E.S. Rethinking the Exclusive Jurisdiction of Nigerian Universities in Academic Matters. Retrieved from [www.ajol.info>article>viewfile](http://www.ajol.info/article/viewfile). on 23th February, 2014

it.”¹²¹ More often than not when Universities are sued, they argued or seek to rely on the above doctrine with a view to justify their sometime unlawful acts and /or decisions.

The courts have taken judicial notice of this doctrine. The Courts, ordinarily are not disposed to meddling into the internal affairs of the University, they are inclined to regard issues arising particularly from the discipline of students and the award of degrees by the University as its internal affairs, which it should resolve independent of any interference by the courts. The Courts have echoed and re- echoed this principle of law to the extent that it has almost become a mantra.¹²² The Court restated this position in the case of *Tawakalituvs Federal Republic of Nigeria*¹²³ thus:

The courts have been admonished to steer clear from intruding, dabbling and flirting with the conduct of examinations by universities and polytechnics and the award of their degrees, diplomas and certificates to persons found eligible and worthy both in learning and character, as this would tantamount to usurpation of the function of the Senate, Council and Visitor who are statutorily vested with such powers of selection of their fit and proper candidates for the award of such certificates, diplomas and degrees.

The foregoing cannot be interpreted as ousting the supervisory and reviewing jurisdiction of the courts in all matter arising from the internal affairs of a University. Neither should a University student still be viewed as an infant whose education is a privilege and whose fundamental rights can be trampled at will by the University authorities without due regard to the provisions of law while the Courts watch, indifferent, under the guise that they cannot tread the hallowed grounds of the University competence or for being domestic affairs or acts of the University.

A close look at the statutes creating Universities in Nigeria would reveal that they contain no provision ousting the jurisdiction of the Court, if it were the intention of the law-makers to oust the jurisdiction of the Court in University affairs they would have done so expressly. Even if there were to be such provision, it is a trite principle of interpretation that statutes ousting the

¹²¹Garner B. A. (2009), *Black's Law Dictionary*. (9th edn.) Thomas West Reuters Business. p. 725

¹²²Obanya, VS Locating the proper Forum for the Remedies of Aggrieved of Students in Tertiary Institution in Nigeria. Retrieved from <http://legalline.blogspot.com>

¹²³ (2001) All FWLR (Pt. 561) at page 1482, paras. B-C

jurisdiction of the court or derogating from individual rights are construed restrictively to preserve the jurisdiction of the right. Moreover, the Court would hold such provision unconstitutional as it would violate the provisions of section 4(8) of the 1999 Constitution of the Federal Republic of Nigeria. The court of Appeal upheld this view in the case of *University of Ilorin vs Adesina*¹²⁴ where it stated that:

.... there is no provision in the law that where a student is so deprived of his degree he or she shall not go to court as the Council shall be the final arbiter in such a case. Even if such provisions were made, it is unconstitutional by virtue of section 4(8) of the 1999 Constitution which provides that the exercise of the legislative powers of the National Assembly shall be subject to the jurisdiction of the courts of law and that neither the National Assembly nor the State Assembly shall make any law that oust or purports to oust the jurisdiction of a court of law.

The correct position therefore, is that the court is seised with jurisdiction, but on grounds of public policy, discretion and the fact the University authorities are more adequately and professionally equipped to handle such peculiar issues, the courts will not intrude into the domestic affairs of the University unless the civil rights and obligations of the Student is breached. Agreed that certain issues are essentially within the domestic jurisdiction of the Universities, the courts will not allow it to be used to deny staff and students of their rights to fair hearing. Accordingly, “if a matter is justiciable in Nigeria, the domestic nature of the dispute does not oust the jurisdiction of the court on the basis of section 6 (6) (b) of the 1979 Constitution.”¹²⁵

3.7.1 Exhausting Internal Remedies within the *Forum Domesticum*

It is trite that where a statute provides for a particular mode of ventilating a right, a party cannot come to court until he has exhausted such mode, it is now well settled, that an aggrieved student must first exhaust all available remedies within the forum domesticum of the University before rushing to court.¹²⁶ The Supreme Court espoused this principle of law in the case of *Sunday Eguamwense vs James Amaghizemwen*¹²⁷ where the court held that

¹²⁴ (2009) All FWLR (PT487), P.114, Paras. A- B.

¹²⁵ *Akintemiv vs Onwumechilli* (1985) NWLR (Pt.1) 68 at p. 382

¹²⁶ *Obanya, VSOp. Cit.*

¹²⁷ (1993) 9 NWLR (PT. 315) 1 at 25

...where some statutory conditions precedents are prescribed before a particular relief or remedy is claimed by court action, the aggrieved party must comply with and exhaust the prescribed conditions before the institution of a court action in respect of such a relief or remedy....I am of the view that he did a wrong thing indeed.... The provisions of section 236 of the 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in court.

In *Magitvs University of Agriculture Makurdi*, Ogbuagu JSC in his lead judgement said: "... the appellant did not appeal to the University Council against the said decision of the Senate. Therefore, the application to the trial court was premature." Also in *West African Post-Graduate Medical College v Okojie*,¹²⁸ it was held that a student who alleges unfairness in assessing her examination scripts is entitled to fair hearing; but must exhaust internal remedies before proceeding to court.

As Regards the discipline of students, the relevant statutory provisions for the above position lie in different sections of the various University Acts. For instance, Section 18(1)¹²⁹ of the University of Port Harcourt vests on the Vice Chancellor of the University of Port Harcourt, the disciplinary powers of the University over its students. This section confers far reaching disciplinary powers on the Vice Chancellor, which power includes amongst others, the power to rusticate and expel an erring student. Section 18(2) however provides as follows:

Where a direction is given under paragraph (c) or (d) of the last preceding subsection in respect of any student, the student may, within the prescribed period and in the prescribed manner, appeal from the direction to the Council; and where such an appeal is brought, the Council, shall, after causing such inquiry to be made in the matter as the Council considers just, either confirm or set aside the direction or modify it in such a manner as the Council thinks fit.

Paragraphs (c) and (d) mentioned in the foregoing subsection, refer to the power of the Vice Chancellor to rusticate or expel a student who appears to him guilty of misconduct. The purport of this provision, as has been judicially acknowledged, is that a student who is dissatisfied with the decision of the Vice Chancellor to suspend or expel him must first appeal to the University

¹²⁸(2003) 11 WRN 42

¹²⁹See also Section 18 of both University of Nigeria Act, 2004 & University of Ilorin Act, 2004.

Council, and until the Council determines his rights, he cannot come to court; otherwise, the court will hold his action premature. This provision has been viewed as a condition precedent that an aggrieved student must satisfy before coming to court to ventilate his grievance.

Although it was vigorously argued that the use of the word “May” in section 17(2) of the University of Ilorin Act, which has identical provisions with section 18(2) of the University of Port Harcourt Act reproduced above, gives the discretion to an aggrieved student to either appeal to the Council or pursue his case in a court of law, the Supreme Court however extinguished this line of argument in the case of *University of Ilorin vs Oluwadare*¹³⁰ and reasoned, per Ogbuagu JSC that since the student had already lodged an appeal with the Council, he was bound to await the outcome before approaching the court.

The effect of the above position of the law is that the jurisdiction of the Court will only crystallize when the internal remedies available to students as provided by statutes have been fully exhausted. Where an aggrieved student rushes to court without expending all internal machineries for redress in the domestic forum, he would be held to have “jumped the gun” and the court would hold his action premature. Thus, in the case of *University of Ilorin vs Adesina*¹³¹, the Court, having found that the Respondent had utilized all the internal mechanisms for redress and that she was granted pardon by the University, intruded into the otherwise sanctimonious affairs of the University and probed into whether or not the Respondent met 75% lecture attendance, and whether or not she sat for certain papers. The Court found that the University breached the civil rights and obligations of the Respondent by arbitrarily withholding her results, the Court then ordered the University to release same.

3.7.2. Inapplicability of Exhaustion of Domestic Remedies in Fundamental Rights Issues

It appears that the requirement of exploring all available channels for redress in the internal forum before coming to court does not apply to matters involving the violation of fundamental rights,

¹³⁰ (2006) 14 NWLR (Pt. 1000) 751

¹³¹ (2010) 9 NWLR (Pt.1199) 331

most especially that of fair hearing which is a common grievance of students against University authorities. Now, the position of the law is well settled that where a University (or any other institution) acts or purports to act in a judicial capacity, or acts in a quasi-judicial capacity in dealing with a student, it should observe the principles of natural justice as subsumed in the right to fair hearing contained in section 36 of the 1999 Constitution. The Supreme Court, has in a many cases¹³², held the right to fair hearing to mean¹³³ the fundamental and constitutional right of a party to a dispute to be afforded an opportunity to present his case to the adjudicating authority. This would also entail, amongst others, letting him know the offence with which he is charged, allowing him to make representations and giving him the opportunity to cross-examine adverse witnesses before condemning him.¹³³

Where a student is expelled from a University or severely punished without being afforded the opportunity of being heard, or on an allegation of a serious criminal offence, his right to fair hearing will be held to have been violated and in such an instance, he need not appeal his expulsion to the University Council, but he may approach the court at once. In a situation where the student is alleged to have committed a grave criminal offence, the domestic forum will have no jurisdiction to try the offender.¹³⁴

However, where the matters involve the award of degrees, diplomas and certificates and matters incidental thereto like examination malpractices, an aggrieved party, be he a student or a lecturer should first exhaust all the internal machineries for redress before recourse to court. Where he rushes to court without first exhausting all the remedies for redress available to him within the domestic forum, he would be held to have “jumped the gun” and the matter would be declared bad for incompetence.¹³⁵

¹³² *Adedeji v. Police Service Commission* (1968) NMLR 102; *Aiyetan v Nigerian Institute for Oil Palm Research* (1987) NWLR (Part 59) 48; *Olatunbosun v Nigerian Institute for Social & Economic Research* (1988) 3 NWLR (Part 80) 25; *Oyeyemi v Commissioner for Local Government* (1992) 2 NWLR (Part 226) 661; *Kotoye v. Central Bank of Nigeria* (1989) 2 SCNJ 31.

¹³³ See *Obanya, V.S. Op. Cit.*

¹³⁴ See *Garba vs University of Maiduguri. Op. Cit*

¹³⁵ See *University of Ilorin vs Oluwadare. Op. cit.*

It is evident from the above judicial pronouncements that the legal principle that mandates an aggrieved student to first exhaust the internal mechanisms for redress within the domestic forum before rushing to court appears to have been stated too broadly if it is construed to include a student who intends to enforce his fundamental rights to fair hearing.

Holding that a student must first submit to an internal body of the University before coming to court to enforce his fundamental right, may amount to vesting such body with jurisdiction for the enforcement of fundamental rights, an area which is the exclusive preserves of the High courts. Section 46 of the 1999 Constitution of the Federal Republic of Nigeria confers on the High Courts' exclusive jurisdiction over the enforcement of fundamental rights.

Nnamani JSC,¹³⁶ reasoned along this line when he stated that:

...it is to the University Council that the appellants could have lodged an appeal if the issues were such as could be dealt with within the statutes of the University. It seems to me fair to conclude that if, as indeed they felt that the appellants' fundamental rights had been breached it was to the High Court, and not the Visitor that they had to go for relief.

Even though Garba's case has not been overruled, it appears, with the greatest respect that the Supreme Court has subsequently failed to distinguish and restrict the application of this principle only to matters not involving the violation of fundamental rights. Thus, the Supreme Court has made sparse pronouncements on recourse to the forum domesticum of a University before approaching the court in a few fundamental rights cases such as in *Esiagavs University of Calabar* and *Magitvs University of Agriculture, Markurdi*, although the question as to whether or not the students exhausted the domestic forums was not one of the issues before the court in the said cases.

It appears the Supreme Court was mainly motivated to do justice, as the facts of the cases demanded, rather than an uninhibited reliance on judicial precedence.¹³⁷

¹³⁶ *Garba vs University of Maiduguri* Op. Cit. at p. 603

¹³⁷ See the dictum of Pats Acholonu JSC, in *Magitvs University of Agriculture, Makurdi* (supra) p. 259, Paras. C – D.

However, it should be noted that the doctrine of exhaustion of internal remedies is not casted in iron. There are some exceptions to the doctrine. In addition to the exception of fundamental right issues, a student may be justified for resorting to the court for redress where the internal remedies are unavailable, that is, not readily accessible; or where the internal remedies are ineffective, that is, will not produce a practical and real remedy to the grievance complained; or where the domestic remedies are insufficient, that is, incapable of redressing the complaint¹³⁸; or where the domestic remedies are unreasonably delayed.

3.8 Conclusion

There is little doubt that a University, as an academic community, can formulate its own standards, rewards and impose punishments to achieve its educational objectives. Atmosphere of peace and order is essential for the learning process, and this can only be achieved where the University administrators are vested with the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order where reasonably necessary to further the institution's educational goals. The University authority are however, obliged to observe the principles of natural justice in their disciplinary action otherwise such action may not withstand judicial scrutiny.

Ordinarily, there is a traditional distinction between the court's role in reviewing disciplinary actions of educational institutions, and the court's role in reviewing their academic decisions. In the case of disciplinary actions, the due process requirements of notice and fair hearing will be applicable. However, in cases involving academic decisions, colleges and Universities enjoy *forum* immunity, their decisions are not subject to the supervision or review of the courts to ensure the uniform application of their academic standards. The decision whether to dismiss a student for academic reasons requires expert evaluation of cumulative information with which courts are not equipped to deal; therefore, judicial intervention is not appropriate unless there is a challenge that

¹³⁸ *African Commission, Dawda Jawara v Gambia*, (2000) Communication Nos 147/95 & 149/96.

the action on the part of the educational institution was arbitrary and capricious or violative of its enabling Act.

The Supreme Court has also done well in restoring the University disciplinary jurisdiction in examination malpractice offences. This has to large extent boosts the conduct of examination in our Universities. What remaining now is realm of procedural fair play which requires that student charged with misconduct be informed of the nature of the charges and be given a fair opportunity to refute them, that the University not be bias or arbitrary in its actions. Have our Universities farewell in this regard? We shall consider this in the next chapter.

CHAPTER FOUR

AN ASSESSMENT OF THE APPLICATION OF THE PRINCIPLES OF NATURAL JUSTICE TO THE PRACTICAL EXERCISE OF DISCIPLINARY POWERS BY UNIVERSITY

4.1 Introduction

Historically, students rarely challenged adverse academic or disciplinary decisions outside their universities. The lack of students seeking external recourse may have been due to the existence of the University Visitor and for other reasons including ‘satisfaction with internal processes, an inclination to settle matters within the community, the costs of litigation, judicial deference to University decisions, and cultural attitude’¹. However, there was a change and a radical departure from the foregoing state of affairs in recent time. Recourse to courts by the University students is increasing alarmingly and the students’ main grudges are mostly denial of rules natural justice or non-compliance with laid down rules and regulations and breach of the University enabling statute.

The Vice-Chancellor is generally responsible to the Council for maintaining the efficiency and good order of the University and for ensuring the proper enforcement of statutes, Acts and Regulations.² This include the enforcement with respect to issues of discipline. The power to discipline given to the Vice-Chancellor is exclusive, and can no longer be exercised subjectively. In all circumstances, the power to discipline is wedged by the rules of Natural justice. The affected student or staff is always entitled to be given a hearing in such circumstances as would lead to disciplinary action being meted against him. Right to fair hearing is so fundamental that it could neither be waived nor taken away by a statue whether expressly or by implication.³

The point being made here is that the right to fair hearing is germane to every trial before a tribunal, panel of enquiry as well as the regular court. The practice in other jurisdictions, for

¹ Fernand N Dutille, (1996) ‘Law, Governance, and Academic and Disciplinary Decisions in Australian Universities: An American Perspective’ *13 Arizona Journal of International and Comparative Law* 69, 116.

² See article 3(2) (6) Statute 3 ABU Act.

³ *Osumahvs Edo Broadcasting Services* (2005) All FWLR (Pt. 253) 773

example, Britain and America, is that it is open to the beneficiary of the right to waive it. For instance, if the beneficiary is fully aware of the circumstances disqualifying an adjudicator from sitting and he neglects, omits or refuses to object, he is deemed to have acquiesced to the proceedings. The position in Nigeria is however different. It is fundamental law that the right to fair hearing, being constitutionally guaranteed rights, includes a public right which cannot be compromised, waived or lost by consent.⁴

Disciplinary and academic tribunals of the Universities occupy a unique place in the landscape of administrative law. Courts recognize that these tribunals are staffed with experts who are well-equipped to address issues that are unique to academic environments. Courts have also confirmed that the convenience and administrative efficiency associated with these tribunals militates against extensive judicial second-guessing of their decisions. For these reasons, courts are reluctant to interfere with the substantive decisions that these tribunals make.

In performing their disciplinary duty however, University disciplinary and academic tribunals must observe the principles of natural justice. Natural justice means at least two things. First, a student who is facing a disciplinary action, must know the case against him/her and this include the right to be heard, that is, the student must be given time to prepare an answer, being allowed to see and correct or contradict the evidence and assertions that have been made in support of the disciplinary action. All these must happen before a decision is reached against the student. The second thing is that the tribunal must make its decision without a reasonable apprehension of bias. The tribunal reaching the decision should be independent and has no manifest or latent interest in the issues at stake.

4.2 University Disciplinary Methods and Procedures

⁴*Ariori v Elemo* (1985) 2 NWLR (Pt.6) 211

The power to discipline students is vested in the Vice-Chancellor⁵ who has authority to delegate such power to a disciplinary board consisting of such members of the University as he may nominate.⁶ Under the various enabling statutes, the Vice-Chancellor can discipline students who are “guilty of misconduct”. “Misconduct” is not defined by the Statute, for instance section 33 (7)⁷ OAU Act provides that:

the Council, acting in accordance with the advice of the vice-chancellor and senate may make regulations governing the discipline of students and may prescribe in such regulations what acts or omissions on the part of students shall, for the purpose of this section, constitutes misconduct and until such regulations are made, the expression “misconduct” shall mean any such act or omission as the vice-chancellor may from time to time, so designate.

Where a student has been found guilty of academic misconduct, he may be prevented from University activities or the use of University facilities or he may be restricted in his activities or he may be rusticated or expelled from the University⁸.

Students Disciplinary Committee (SDC)

Student Disciplinary Committee (SDC) is a body or organ established by the University law. It is to assist the Vice-Chancellor in the onerous task of maintenance of discipline of the students in the University. Students who are dissatisfied with the verdict of the Student’s Disciplinary Committee have the right to appeal through the Vice-Chancellor to the Governing Council after the receipt of the letter communicating the decision of the Senate.⁹

⁵ See Sections 32, 33 & 34 OAU Act, Cap 02, LFN, 2004. see also Statute 9 (6) (1)(2)(3) of ABU Act, Cap A14, LFN, 2004; Section 18 of both University of Nigeria Act, Cap U 11, LFN, 2004 & University of Ilorin Act, Cap U 7, LFN, 2004.

⁶ Section 33 (4) OAU Act; section 18 (4) of University of Nigeria Act; section 18 (4) University of Ilorin Act.

⁷ See also section 21(18) Ambrose Alli University Act, 1991 as amended

⁸ Section 33 (1) (a-d) OAU Act; Section 18 (1) (a-d) University of Ilorin Act; section 18 (1) (a-d) University of Nigeria Act

⁹Hon. Justice KaluAnyah (Rt), (1987) NUC, Resource Management in the University System in Proceeding of the NUC/CVCIBC International Services ABU, Zaria Novs 9-10, P.84-98

For instance,¹⁰ Statute 9 (4) ABU Act provides: “Students and all other persons whatsoever attending the University for the purpose of instruction shall be subject to the disciplinary control of the University”. Statute 9 (6) (1) of the ABU Act provides for a Student Disciplinary Committee headed by a Deputy Vice-Chancellor as chairman with such members as the Senate may appoint. The Committee shall be responsible for recommending disciplinary measures to the Vice-Chancellor to be meted out to erring students. In the exercise of the responsibility for discipline of students, the Vice-Chancellor shall have regard to the advice of the Committee on Students Discipline as constituted above.¹¹ By implication, the foregoing statute does not give the Vice-Chancellor discretion in students’ discipline, the Vice-Chancellor in exercising responsibility for discipline students shall have regard to the advice of the Committee on students discipline as constituted.¹² The procedures for the discipline of students other than the foregoing shall be determined by the Vice-Chancellor after consulting the appropriate Board of Governors.¹³ Any rules of procedures for the discipline of students shall include, in the event of expulsion from the University, a right to appeal to the Council, provided that, this shall not include a right to appear personally before the Council.¹⁴

In University of Jos, the Students’ Disciplinary Committee was set up in furtherance of the powers of the Vice-Chancellor under Section 17 (4) of the University Act. The SDC, advice the Vice-Chancellor on all matters relating to the discipline of students as may be referred to it by the Vice-Chancellor.¹⁵

In University of Jos, where a student is involved in examination misconduct, the invigilator will request the student to write his or her statement in a form. The invigilator will write his own and

¹⁰See Akume A.A. (2007) “Universities Authorities and its Students under the Rule of Law: A case Study of A.B.U., Zaria. *Journal of Private & Comparative Law*, A.B.U., Zaria. Vol. 1, No. 1. pp 19-36

¹¹Statute 9, Section 6 (1) ABU Act.

¹²Ibid.

¹³Ibid. Section 6 (2) ABU Act

¹⁴Ibid. Section 6 (3) ABU Act

¹⁵University of Jos Calendar 1983-85, p. 90

submit both to the Head of Department who will now constitute examination misconduct committee. This committee will invite the student and the invigilator together with others whose statements may be found useful. After this a written report will be presented before the departmental meeting for discussion and recommendations. Thereafter, the matter will then be taken up at the Faculty Board for discussion and recommendations. After this stage, all materials (exhibits) statements and recommendations are forwarded to Senate Examination Misconduct Committee who will then invite the student.

The letter of invitation will spell out that allegation of examination misconduct has been levelled against the student and to appear to defend himself against the allegation before the committee. Failure to appear before the committee when invited constitutes misconduct. The date, venue and time will be indicated in the letter¹⁶. After listening to all the parties involved in the matter, the Committee makes recommendation to the Senate. It is the responsibility of the Senate to take decisions not the Committee.¹⁷

4. 3 Fair Hearing in the Exercise of the University Disciplinary Powers

A formal disciplinary hearing, consistent with the University's educational mission and statutes is a process whereby members of the academic community – students, faculty, and staff – meet to make determinations of fact. It is not a court proceeding. The goal is to find the truth through a fair, prompt, and effective process, respecting and preserving the rights of the accused student or staff, University community, the reporting party, and witnesses. Thus, the University tribunals are not required to have the trappings of a court and are able to determine their own procedures. This is positive as it will reduce the cost and time associated with hearing a matter.

¹⁶ See Internal Memorandum from the Secretary Senate Committee On Examination Malpractices/Misconduct Ref. AS/Uj?31/37 dated 17th June, 1992

¹⁷See generally **Aduba, J. N.** “*Constitution Guarantees in Disciplinary Proceedings in Tertiary Institution.*” [www.researchgate.net/publication/40439853/ Constitutional Guarantees in Disciplinary Proceedings in Tertiary Institution](http://www.researchgate.net/publication/40439853/Constitutional_Guarantees_in_Disciplinary_Proceedings_in_Tertiary_Institution) last accessed 2nd July, 2012

The hearing rule sets minimum standards of fairness in “adjudication” by bodies which in many instances bear no resemblance to courts of law. Clearly these rules cannot be as high as those rules prescribed by the courts for themselves. There are some principles, fundamental to the conduct of proceedings in courts, which are not firmly embedded in the fluid of *audi alteram partem* rule. However, there are certain basic rules essential for the operation of the principle of natural justice in the University disciplinary procedures. We shall examine these basic rules to see how well our Universities have done in adhering to these basic rules in their disciplinary actions.

4.3.1 Rule of Fair Hearing (*Audi alteram partem*)

This arm of natural justice consists of various elements that enable those affected by the administrative decision to participate effectively in the proceedings: either in their ability to present their case, or in their ability to respond to the case against them, etc. The right to fair hearing is a question of the opportunity to be heard. The right lies in the procedure followed in the determination of a case and not in the correctness of the decision arrived at in a case.

a. Notice

The first element of the right to know the case is the provision of notice of the allegations. The purpose of notice is to alert all individuals whose interests may be affected by a decision on the matters in issue and the proposed actions, so that they may take steps to protect those interests.

The requirement for notice in case of a student facing charges demands that the factual and legal charges should be made known to the student.¹⁸ It therefore follows that a student should not be tried before a disciplinary panel for an offence which he has not been notified. Many Universities

¹⁸The notice should include the following information: The time, date, and place of the hearing, or notice that the hearing will be held at a time and place to be specified in a later notice; a brief description of the offence or regulations reportedly violated, and a summary of the information (documents or other evidence and names of witnesses) to be presented at the hearing

disciplinary actions, when challenged in courts, have been nullified on the ground of failure to give the affected student or staff notice of the offence(s) for which they are being charged.

In *Akintemi & Ors vs Prof Onwumechilli & Ors*¹⁹ following an allegation of leakage of examination questions in the Faculty of Law, University of Ife, the Vice-Chancellor set up an investigation panel to investigate the allegations and make recommendations. The Panel invited students and lecturers including the applicants to give evidence. The Panel submitted its findings and recommendations to the Vice-Chancellor who on the basis of the recommendations, suspended the applicants for the rest of the session on the ground that they had fore-knowledge of the examination questions. The applicants challenged their suspension in the High Court claiming that there were no complaint or charge against them and that no hearing was afforded them on the report of the investigation panel. The trial judge, giving judgement to the applicants held that they were denied fair hearing.

Similarly in *Rapheal K. Ogundamisi 'Alias Sankara' & 2 Ors vs University of Jos*²⁰ the students were alleged to have been involved in a student disturbances. Though they were invited to clear themselves of the misconduct, they were never accused of any wrong doing nor were notices of charges issued against them. To their amazement later, a letter of expulsion was sent to them on the footing of their involvement in the disturbance. The trial judge quashed the letter of expulsion on the ground the students cannot be proceeded against without giving them the notices of charges which they have to answer. The person so invited to testify cannot be assumed to be aware of the nature of the allegation against him as there is nothing known to our jurisprudence like a charge by

¹⁹ (1981) 11 O Y.S.H.C. 457

²⁰ Suit No. PLD/j/55M/92 (unreported High Court Case)

presumption.²¹ The court have always drawn the vital and necessary difference and distinction between hearing a man as a witness in an administrative inquiry and hearing him in defence of his good name, his integrity or his conduct.²²

It is clear that studentor staff ought to receive some kind of notice of the allegation, as well as information about the proceedings that will follow, to enable them to prepare their case. In *Olaniyan&Ors vs University of Lagos*²³ the appellants' professors had their appointment terminated by the Council of the University following a Visitation Panel Report that they are not fit to hold leadership positions in the University. The three professors challenged the termination of their appointment contending that the purported termination was ultra vires the University and its Council. They claimed that the Council did not, before removing them, communicated to any of them the grounds of misconduct alleged against them to enable each of them reply to such grounds as required by Clause 7 of the Agreement or S.17 (1) of the Lagos University Act, 1967. The Supreme Court held that 'there was no evidence, let alone a finding, that the Council of the University of Lagos before removing the appellants and communicated to any of them the grounds of misconduct alleged against him to enable each appellant to reply to such grounds as required by Clause 7 of the Agreement or Section 17(1) of the Lagos University Act 1967. Kayode Eso JSC, in emphasizing the requirement to communicate to the affected professors the gist of the misconduct levied against them put it rhetorically when he said:

Removal for misconduct without the party affected being heard to be in public interest? I do not agree. What is to happen to the maxim; *Audi alteram partem* especially when he has the right under the statute to be heard? To go further to say it is in the interest of the professors, is, with every atom of respect, not very flattering to the intelligence of University professors.

The Supreme Court in *Garba vs University of Maiduguri*²⁴ stated that the denial of a party of fair hearing even by administrative tribunal or disciplinary board by denying him right to know the

²¹ *Egwuvs University of Port-Harcourt* (1995) 8 NWLR (Pt.414) 419

²² *Olaniyanvs University of Lagos* (1985) 2 NWLR (Pt.9) 599 at p. 623

²³ (1985)2 NWLR 599: See also *Eperokunvs University of Lagos*(1986) 4 NWLR 162

²⁴ (1986) 1 NSCC at 249

nature of the charge against him and confront his accusers is a denial of his right to fair hearing and so renders any decision thereby arrived at null, void and of no effect.

However, there are exceptions to the requirement of notice before taking disciplinary action. For instance, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of preventive or remedial nature. In *Esiagavs University of Calabar* the Supreme Court held *inter alia* that; a University in some circumstances can suspend student in order to prevent the rampaging act of such student from creating chaos in the University community or to abort a threatened disturbance atmosphere in the University from snowballing into uncontrollable situation.

This was also the decision of the court in *Abangvs University of Calabar*²⁵, the suspension of a member of staff without notice or hearing was upheld by the court. The plaintiff was suspended for bring thugs into the campus during ASUU election. The court decried the premature resort to court on the wrong perception that where there is an investigation without a charge or hearing by a tribunal for the determination of criminal aspects or flavour then the authorities have stepped into judicial activities. According to the court “to deny Vice-Chancellor power to suspect or put matter on hold to avert a situation in the University campus to degenerate to chaos would be ruinous of discipline and effective administration in the University system.”

Another exception is where it is impracticable to give notice or opportunity to be heard. The rule may be held to be impliedly excluded where the number of persons affected by a particular act or decision is so great that it manifestly impracticable for them all to be given notice or opportunity to be heard by the competent authority. In *West Africa Examination Council vs Akinkunmi*,²⁶ the contention of the counsel for the examination body that given the large number of candidates involved in the examination malpractice, it was impracticable to give notice or accord every candidate a hearing before the cancellation was upheld.

²⁵(2008) All FWLR (Pt. 403) 1365

²⁶(2008) 35 NSCQR 222

As a general rule, one who has himself impeded the service of notice of impending action cannot afterward be heard to complain that he has not receive actual notice. The rule is satisfied if one upon whom notice ought to be served obstructs service or negligently fails to notify a change of address.²⁷

b. Opportunity to be heard

Every person has the right to have a hearing and be allowed to present his own case. It is a basic principle of law that where a person's legal right or obligations are called into question, he should be accorded full opportunity to be heard and canvass the points he relies on before any adverse decision is taken against him with regards to such rights and obligations. A fundamental part of fair hearing is the ability to respond to allegations.

The case of *Egwuvs University of Port-Harcourt*²⁸ is a case of disciplinary action against a student. The student herein was dismissed for alleged examination malpractice. He was not asked to appear before any panel, neither was he accorded any hearing by the Vice-Chancellor who was vested with disciplinary power by the University of Port-Harcourt Act. He was only requested to see two lectures independently who asked questions. He was therefore expelled from the University. The High Court dismissed the student's case challenging his expulsion but the court of Appeal saw merit in his case and nullified his expulsion on the ground that he was denied fair hearing.

Question of the requirement of the need to be heard in Institutional disciplinary determination was before the court in *Dr. Taiwo Olaruntoba-Oju & Ors vs Professor Shuaib O. Abdul-Raheem and Ors*²⁹; in which the Vice-Chancellor of the University of Ilorin, dismissed 44 Professors and Lecturers in one fell-swoop, simply for participating in an ASUU strike. There was no attempt to query them or charge them before the Senior Staff Disciplinary Committee. The affected Lecturers were afforded no opportunity whatsoever to defend themselves.

²⁷ *Glynn vs Keele University* (1971) 2 All E.R 89

²⁸ (1991) 3 NWLR (Pt.18) p. 534

²⁹ (2009)26 WRN 1.

Nullifying the termination of the Lecturer's appointments, the Supreme Court per Adekeye JSC held as follows:

The nature of fair hearing to be observed in this context is as entrenched in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, as it encompasses the twin pillars of natural justice namely:

(a) *Audi alteram partem* (hear the other party)

(b) *Nemo judex in causa sua* (no one should be a Judge in his own cause)

It is equally a common law doctrine that in the determination of his civil rights and obligations a person is entitled to a fair hearing within reasonable time by a court or tribunal established by law.

Section 15(1) of the University of Ilorin Act guarantees administrative, academic and professional staff fair hearing before their appointment is terminated thus giving the exercise of such disciplinary powers a statutory flavour..... There is no iota of evidence that the procedure for termination of employment of the appellants as to fair hearing was observed in this case.

In *Kashim Ibrahim Ado & Ors. vs University of Jos*³⁰ the students were alleged to have been involved in student disturbance on 25th and 26th May 1992 at the Bauchi Road Campus, Hostels and Jos town. This was occasioned by lack water which had persisted for weeks on the campus. In the application to the High Court to nullify their letters of expulsion from the University, the students complained that the committee set up to look into the matters had not reported to the University. That the reports made against them was never disclosed to them and thus deprived them the opportunity to be heard. The court answered their prayers and ordered interim injunction against the University of Jos and also restraining them from interfering with the student status of the applicants.

Where a person is alleged to have done a wrong or accused of doing something untoward and therefore disagreeable, he should be informed so as to exercise his inalienable right to proffer a defence or answer before any adverse action is taken. In other words, the courts frown at any institutional body meting out disciplinary punishment without observing the rules of natural justice.³¹

³⁰ Suit No. PLD/J91/92(unreported High Court Case)

³¹ See *Magits vs University of Agric., Makurdi* (2005) 19 NWLR p. 256 (see also *Adeniyivs Governing Council of Yaba College of Technology* (1993) 6 NWLR (Pt.300) 426.

The Supreme Court in *Olaniyan & Ors vs University of Lagos*³² observed that since there was an allegation of misconduct against the dismissed professors, they should have been given an opportunity to defend themselves. According to the Court; “The procedure adopted by the council may be quick, convenient and time saving, but the dictates of justice demand that the legal principle of *audi alteram partem* must be obeyed no matter how cumbersome and inconvenient it may appear to the Council.”

The view of the Supreme Court in *Garba vs University of Maiduguri* sum it up.

The appellants being among the 104 witnesses allegedly interviewed can be said to have been “heard” but they cannot, having regard to the principles of natural justice, be said to have had an opportunity of knowing the case they were to meet, or an opportunity of being heard in reply to the serious allegations made against them. There was therefore in my view a serious breach of the principles of natural justice.³³

However, the Court has also recognised and identified certain situations that may not require notice and opportunity to be heard prior to suspension or removal of student from the University. Immediate removal is appropriate when students pose a continuing danger to themselves or to others or present a continuing threat of disruption to the educational environment. In these situations, the student may be suspended prior to receipt of due process, but must be given notice and a hearing as soon as reasonably possible. This was also the decision of the Supreme Court in *Esiaga v University of Calabar* where the Court held that the suspension of the appellant from the respondent University was not a breach of the appellant right to fair hearing since he was suspended pending a date he would be invited to appear before the University respondents disciplinary panel.

Opportunity to be heard may also be dispersed with where the person entitled to be heard absented himself without reasonable cause. In *Dr Raji v University of Ilorin*³⁴ the appellant was awarded a scholarship in Germany, he travelled before the approval of his study leave. The University

³²(1985)2 NWLR (Pt.9) 599: See also *Eperokun vs University of Lagos* (1986) 4 NWLR 162

³³(1986) 1 NWLR (Pt.18) 550; per Nnamani J.S.C. at p. 602-603.

³⁴(2011) All FWLR (Pt.435) 1832

stopped his salary and was issued query. The Governing Council asked the appellant to appear before the Staff Disciplinary and Appeal Committee (SDAC), the appellant replied giving reasons why he cannot come to Nigeria within the time stipulated to appear physically before the committee. Thereafter the respondent instructed the appellant to report back at the University within seven days or regard his appointment as having been terminated. The appellant was unable to return. The respondent terminated the appellant's appointment. On the argument that the appellant has not been given fair hearing, the court held that the appellant was given every opportunity to be heard though he chose not to make himself available to be heard.

In another case of *Udemah v Nigeria Coal Corporation*³⁵. The appellant was an assistant general manager, having risen to that position after five years of loyal service. In 1982 an administrative inquiry was set up to investigate some allegations of malpractices in the corporation. The appellant was invited twice to appear before the panel but he turned down the invitations. In November 1982 he was suspended and three month's salary in lieu of notice paid. He unsuccessfully sought a declaration that his suspension was contrary to natural justice and therefore void. On the issue of natural justice, Uwaifo JCA said:

Natural justice or *audi alteram partem* is not a sleepless and restless ombudsman or an ever weeping Jeremiah prying into or pleading over every private arrangement between parties for it to be modified in its implementation in order to achieve a particular result. When a valid and lawful contract has been entered between two parties, there can be no room for invoking or inviting natural justice to intervene if there are no particular rules and regulations in support of that course; or if there are no special occasions making a hearing or, indeed, that observance of the rules of natural justice imperative. The performance and obedience of such contract may well depend entirely on its terms and conditions, not on the intervention of natural justice, as some hope, descended in white robes through the clouds as an arbiter.

c. Disclosure of Evidence

In addition to knowing what the allegations are, the student has the right to know what evidence will be presented to and considered by the tribunal. Part of this principle is that the decision-maker should not hear evidence or receive representations from one side behind the back of the other. The

³⁵ (1991) 3 NWLR 477, 490, followed in *Taduggorosso v Gotom* [2002] 4 NWLR (Part 757) 453.

general principle emanating from Nigerian cases is that where material facts or prejudicial allegations have been made against a person, he must be given full particulars thereof in order to enable him prepare his answers.³⁶ “If material facts are not disclosed at all to a party who is potentially prejudiced by them, there is prima facie a breach of natural justice irrespective of whether the information came before, during or after the hearing.”³⁷

In *Saparavs University College Hospital Board of Management*³⁸, the plaintiff, a kitchen supervisor, in the employment of the defendant Board, was found in possession of certain food items believed to belong to the defendant Board. She was queried and although she claimed ownership of the food items and called witnesses to that effect. The defendant Board after some investigation held that the plaintiff stole the food items from the store and thereupon dismissed her. The defendant Board seemed to have based its decision on the secret information supplied by certain witnesses, who the plaintiff did not have an opportunity to confront. The plaintiff then instituted action claiming a declaration that the purported dismissal and the procedure adopted by the defendant in connection therewith were irregular, null and void, and were contrary to the procedure laid down in the conditions of service drawn up by the defendant for their employees and were also contrary to the rules of natural justice.

The Court, held that the non-disclosure of evidence and the identity of the witnesses to enable the applicant to confront or contradict them constitute a prima facie breach of natural justice and the court thereby declared the purported dismissal null and void.³⁹

There are exceptions to this rule of non-disclosure, there is recognition in the case law that the right of the student to know the case may sometimes need to be balanced against competing rights of

³⁶ See e.g. *Briggs vs Attorney General*, E.N (1963) 2 All N.L.R. 113; *Adedajivs Police Service Commision (1968) N.M.L.R*

³⁷ De Smith, S.A. *Judiciary Review of Administrative Action* (3rd ed.) p. 179

³⁸ Cited in Popoola, A. O. (2014). *LAW AND UNIVERSITY ADMINISTRATION IN NIGERIA: ISSUES, CHALLENGES AND PERSPECTIVES*. Paper Commissioned for Presentation at the Executive Education Programme organised for Vice-Chancellors of Nigerian Universities by the Association of Vice-Chancellors of Nigerian Universities: Le Meredien Hotel Uyo, AkwaIbom State.

³⁹ See also *Federal Co-op. college & Ors vs Adeniran* (2012) LPELR-19736(CA)

others and that the University is not a court and it may conduct its hearings in a manner that it considers appropriate. Thus, where disclosure of evidential material might inflict serious harm on the person directly concerned⁴⁰ or where disclosure would be a breach confidence or might be injurious to the public interest⁴¹. In such situations the affected person should nevertheless be adequately be apprised of the case he has to answer, subject to the need for withholding details in order to protect other overriding interests.⁴²

d. Right to Cross-Examine Witnesses

Again, the right to examine and cross-examine is part of the individual's right to respond to the allegations levelled against him⁴³. Cross-examination is an essential feature of the process by which truthful testimony is distinguished from falsehoods

Thus, every student who is before a University disciplinary tribunal for misconduct should be entitled to examine in person or by his legal representative the witnesses called by his accusers and to obtain the attendance and carry out the examination of witnesses to testify on his behalf on the same conditions as those applying to the witnesses called by his accusers. The objects of cross-examination are two-fold. In the first place, it seeks to elicit information concerning facts in issues or facts relevant to the issues favourable to the party on whose behalf the cross examination is conducted, and secondly, to cast doubt on upon the accuracy of the evidence in chief given against such party.⁴⁴

For ages, common law judges and lawyers have regarded the opportunity of cross examination as an essential safeguard of the accuracy and completeness of testimony and so they have insisted that

⁴⁰*Re Godden* (1971) 2 Q.B. 662. [undisclosed official psychiatric report on police officer; the court ordered disclosure to the officer's own medical adviser but not to the officer himself]

⁴¹*R. vs Home Secretary, ex. Parte Hosenball* (1977) 1 W.L.R 766 (name of informants, details of information, supplied to the police in respect of applicant for gaming club consents was not disclosure on the ground public interest] *Collymore vs A.G.* (1970) A.C. 538 [confidential information about industrial disputes and relations]

⁴²*R. vs. Home Secretary*, (1977) 1 W.L.R 766; *R. vs Gaming Board for Great Britain* (1970) Q. B. 417

⁴³See section 36 (6) (d) of the 1999 Constitution

⁴⁴See Cross on Evidence- Butterworths, London, (3rd Ed.)211; see also section 200, Evidence Act, Cap 112 LFN 1990.

the opportunity is a right and not a mere privilege.⁴⁵ Oputa JSC in his concurring judgment in *Garba vs The University of Maiduguri* succinctly and laconically reemphasized this position of the law, inter alia:

It is my humble view that fair hearing implies much more than hearing the appellants testifying before the Disciplinary Investigative Panel; it implies much more than summoning the appellants before the Panel; it implies much more than other staff or students testifying before the panel behind the backs of the appellants, it implies much more than the appellants being “given a chance to explain their own side of the story.” To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry the person accused should know what is alleged against him; He should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?⁴⁶

Similarly in *Federal Co-op. College & Ors vs Miss Adeniran*⁴⁷ the Court of Appeal held inter alia; that the appellants infringed on the respondent’s right to fair hearing by blocking her access to cross-examine the fellow students that testified against her at the sitting of the second panel of the Academic Board. According to the court:

The fact the respondent was not able to see the fellow students who gave evidence against her at the panel to cross-examine is enough.... she could not be said to have been given fair hearing when such fellow students were not made available for her to confront. This is enough to render the entire proceeding null and void

In *Prof. Akinyanju vs University of Ilorin*⁴⁸ the appellant was invited to appear before the Staff Disciplinary and Appeal Committee (SDAC) to show cause why his appointment with the respondent will not be terminated for act of misconduct. The respondent only witness known to the appellant was the former Vice-Chancellor incidentally the subject matter of the memo that led to the appellant being tried. On his request, he was assured that the witness will be made available for him to cross-examine however, the witness was not made available on the ground that he acted as the Vice-Chancellor, that the office is continuum and he could cross-examine the present Vice-Chancellor if he so wishes. The court held that shielding the former Vice-Chancellor who gave

⁴⁵Baker, T. R. “Cross-Examination of Witnesses in College Student Disciplinary Hearings: A New York Case Rekindles an Old Controversy,” 142 *Education Law Report*. 11, 22-24;

⁴⁶At p. 618

⁴⁷ (2012) LPELR-19736 (CA)

⁴⁸(2011) All FWLR (569) 1080 at 1132

damaging evidence against the appellant from being cross-examined was a denial of fair hearing.

According to the court:

I am of the candid view that the appellant did not misconceive the whole matters. Indeed, I reiterate that the dictum of Oputa JSC in *Garba vs University of Maiduguri*, at 617; cited by the learned counsel for the appellant in support of his submission that the decision to shield Professor Abdul Raheem from cross-examination is indubitably a denial of appellant's right to fair hearing, is very apposite to this case.

It is therefore necessary that the affected person in a disciplinary action should not only be given opportunity to confront his accusers and their witnesses but also to test the veracity of their evidence by cross-examining them. However, where the nature of the allegation and circumstances surrounding the issue does not call for physical appearance of the parties, written representation may be made to satisfy the element of hearing if allegations are disclosed to the affected student. In other words, hearing may be held on paper, and the student may merely be given the opportunity to submit objections and arguments in writing.

The above position was well illustrated in the case of *Dr Imasuen vs University of Benin*⁴⁹ the plaintiff complained that the Joint Committee of the Senate and Council never directed an inquiry was rejected by the court, upon undisputed evidence that in accordance with section 15 (1) of University of Benin Act there has been compliance with the *audi alteram partem* as evidence with exhibits affirmed that (plaintiff) appellant and the (defendant) respondent were in constant exchange of documents, e.g. query and answers and appearance and defence at all the stages of the panel of investigation and sitting of the Senior Staff disciplinary Committee (SSDC). "Thus the finding in respect of misconduct by the plaintiff arbitrarily upgrading all failed marks in his department was upheld and his retirement stood."

Natural justice requires that students should have the right to respond, but their rights in the academic disciplinary process are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial.

⁴⁹(2011) All FWLR (Pt.572) 1791 at 1912

In *Baba vs Civil Aviation Training Centre*,⁵⁰ the Court of Appeal after stating that refusal to permit cross examination of witnesses at an administrative hearing will surely be a denial of natural justice, however, went on to hold that deprivation of the opportunity to test evidence by cross examination is not violation of natural justice if the tribunal can and does decide merely on the strength of an inspection or oral or written submissions supplemented by its own local or specialised knowledge; or if the proceedings before an investigating body are only for the purpose of collecting information; if the evidence relates to questions of policy rather than to the facts in issue.⁵¹

e. Disclosure of Identities of Witnesses

If an allegation is made against a student, the role of the University authority or tribunal charged with the disciplinary process should be that of an impartial umpire, not necessary to find the student guilty, but to get to the truth. The tribunal should not adopt the tactics of springing up surprises on the student. It is therefore essential that names of prospective witnesses who will appear against student before the panel be disclosed to him before his appearance.

If the student demands to know the identities of the witnesses and the tribunal fails to release this information, the adjudication may not withstand external scrutiny. University disciplinary panel must be prepared to disclose the identities of witnesses under such circumstances. To do otherwise would violate fundamental fairness and expose the University to potential lawsuit for violating student's constitutional rights to fair hearing.

In *Garba vs University of Maiduguri* the appellants' students were allegedly found to have participated in the looting, destruction of property, arson and indecent assault by the Investigation Panel set up by respondent University. The appellants were never confronted with the witnesses who identified them as having participated in the rampage. The Investigation Panel also received

⁵⁰(1986) 5 NWLR (Pt.42) 514

⁵¹Eka, B.U. Op. Cit. p.294

evidence against them on their back which identify them as among the perpetrators of the destruction. They were never invited to the Disciplinary Board of the Senate and given a chance to answer to those serious allegations. The Supreme Court declared that the whole proceedings offended the principle of *audi alteram partem*. According to Eso J.S.C:

It is evident from this report that though criminal charges of arson, stealing and indecent assault were levelled against the students, there was nothing to show that the appellants had the opportunity of questioning the witnesses or that they were even present during the examination of those witnesses by the Panel. There was nothing to show that the charges were levelled against the appellants specifically and that they had the opportunity of defending themselves. All what we have is that investigation panel “interviewed 104 witnesses which included 76 students, 25 members of staff and 3 non staff”. The type of interview thus conducted remained unexplained.⁵²

In *Saparavs University College Hospital Board of Management*⁵³, the plaintiff, a kitchen supervisor, in the employment of the defendant Board, was dismissed on the basis of secret information supplied by certain witnesses, who the plaintiff did not know or had an opportunity to confront. This was held to constitute a breach of the constitutional fair hearing, the action for wrong dismissal was upheld.

Like the rule against non-disclosure of evidence, situations may arise that non-disclosure of the identities of witnesses may not constitute a breach of natural justice. Such situations include where the disclosure of the identity would be a breach of confidence or might be against or injurious to public interest. For instance, a student informant who informed on fellow student who is a cultist, the need to protect the identity of such student is very great, otherwise such student may be open to reprisal attack and there will be inhibition of detention or apprehension of cultists or riotous students, and might make it difficult to obtain certain classes of crucial information at all in the future. At this point, the interest of the aggrieved person has to be ranked against the protection of the other competing overriding interests.

⁵²Ibid. at p. 593

⁵³Supra at p.100.

f. Right to Legal Representation

In certain circumstances the right to present one's case may include the right to be represented by Counsel. The 1999 Constitution⁵⁴ contains provision guaranteeing the right of any person accused of any offence to defend himself in person or by a legal practitioner of his own choice. A denial of this right by any institutional tribunal may be construed by the court as a denial of fair hearing, this, however depends on the circumstances of each case.

Thus in *Narayan Das vs State*⁵⁵ it was held that denial of a right to legal representation at a departmental inquiry did not amount to a breach of natural justice because the nature of charge was such that it did not require the party to be conversant with the law and the charge related only to questions of pure facts within the knowledge of the party. By the same token, where the charge was of such nature or of great consequences, denial of legal representation would have meant denial of natural justice.

In *Odukale vs University of Ife*⁵⁶ the plaintiff request to be represented by a counsel in disciplinary action before the Council was rejected. The Council, after deliberations reduced his rank and then retired him. The plaintiff challenged the decision of the Council contending that he was denied fair hearing by not allowing him legal representation at the Council meeting. The trial court set aside the Council decision and ordered reinstatement of the plaintiff on the ground that he had not been giving fair hearing.

A tribunal, however, has the discretion to admit either a legally qualified or unqualified counsel to assist the person appearing before it, based on the facts of the case.⁵⁷ However, experience shows that administrative authorities are averse to legal representation or participation in decision-making

⁵⁴Section 6 (6) (c)

⁵⁵A.I.R 1968 Orissa 14

⁵⁶7 U.I.L.R. 391

⁵⁷*Kok Seng Chong vs Bukit Turf Club* [1992] 3 S.L.R.(R.) 772,

because of the belief that a speedy, cheap and common-sense determination of the issues can be achieved without lawyers. Admittedly, matters requiring urgent and temporary action in the University interest should not be inhibited by lengthy arguments and distinctions (for which lawyers are reputed), but it does not follow that the role of lawyer is negative in such cases. In trying to balance speed against justice, the positive role of legal representation should not be prejudged.

When assessing whether a party should be offered legal assistance, the adjudicator should first ask whether the right to be heard applies, and, secondly, whether counsel's assistance is needed for an effective hearing given the subject matter, bearing in mind the consequences of such a denial.

4.3.2 Rules against Bias and Interest. (*Nemo judex in causa sua*)

The second arm of the natural justice is the right to be heard by a non-bias decision maker. Purity in the administration of justice is so important that if there are any circumstances so affecting a person or body of persons called upon to determine the civil rights and obligations of fellow human beings, as to be calculated to create in the mind of a reasonable man a suspicion of those person's impartiality; those circumstances in themselves and by themselves alone, are sufficient to disqualify the person or persons from adjudicating.

a. Composition of University Disciplinary Panel

A reasonable person, will, naturally, be looking for the following in order to determine whether the "trial" was fair and whether Justice has been done: -

1. How was the tribunal or the *forum competens* composed? Was it composed of "judges" or "persons" whose impartiality and fairness were transparent; persons who, taking into account our common human weakness, can exercise a detached attitude towards the facts presented to them; persons who the respondent will have no cause to suspect or distrust; persons in whom the respondent reposed confidence? Justice in the final analysis, must be rooted in confidence and that confidence may be destroyed by the conduct and /or utterances of the *judex*- (the person adjudicating) – giving the impression that he is biased.
2. Was the person whose conduct....⁵⁸

⁵⁸LPDC vs Fawehinmi (1985) 2 NWLR (Pt.7) 300 at p. 383 per Oputa JSC

In the University context, there is a general recognition that people within the University will know each other and that this alone does not create a reasonable apprehension of bias. The question to ask ‘is the evidence capable of satisfying the test for a reasonable apprehension of bias.’ The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information.

In the celebrated case of *Garba vs University of Maiduguri* where the Supreme Court held *inter alia* that since the Chairman of the Investigating Panel which tried the appellants was the Deputy Vice Chancellor of the University and was a victim of the rampage, the necessary inference to be drawn was that there was a real likelihood of bias since the Deputy Vice Chancellor was thus a witness and a judge at the same time.

In *Prof. Akinyanju vs University of Ilorin*⁵⁹ the plaintiff had written a memo to the members of the Governing Council setting out impropriety of suspension of a fellow Professor salary in respect of housing loan by the Vice-Chancellor. The University authority had seen the stance of the plaintiff as confrontational and insubordination. The plaintiff was invited to appear before the Staff Disciplinary and Appeal Committee (SDAC). In the circumstances, it was found that the University Council Fact Finding Committee had bias in as much as it had taken the view of the plaintiff’s antecedent activist reputation had found him guilty and was merely send him to the SDAC for sentencing. The non-compliance with section 15(1) of University of Ilorin Act provision for fair hearing before dismissal was fatal to the termination of the plaintiff.

In *L.P.D.C v Fawehinmi*,⁶⁰ a legal practitioner was alleged to have advertised himself as “the famous, reputable and controversial Nigerian lawyer” in the “West Africa” Magazine issued in 1981 following the publication of his book titled: NIGERIAN CONSTITUTIONAL LAW REPORTS Volume One, 1981. Consequent upon a discussion of this publication at the Nigerian Bar Association Conference, three members of the Association’s Executive Committee formally

⁵⁹ (2011) All FWLR (Pt.569) 1080 at 1132

⁶⁰(1985)2 NWLR (Pt. 2) 300

made a complaint of advertising, touting and publicity to the Attorney General of the Federation whose statutory duty it was to initiate proceeding. He served on the lawyer a letter giving him 14 days to show cause why he should not be arraigned before the Legal Practitioners Disciplinary Committee. Without waiting for the 14 days to expire or for his reply showing cause or no cause, the Attorney General's Office drafted formal charges against the lawyer.

By the statutory arrangement the Attorney General was no doubt the accuser but also as the chairman of the Committee where the three other members who were the original complainants to the Attorney General also sat as members. The lawyer's application for an order of prohibition was granted and upheld in all three-tiers of the Nigerian Courts of record. According to the Supreme Court, the Attorney General was the accuser, the prosecutor and the judge at the same time. Such a proceeding is obviously null and void as being an infringement of the principle *nemo iudex in causa sua*. "Nothing can be worse than the instant case in seeking an example of breach of natural justice. The accusers are not just merely the judges but they are in fact impatient accusers, judges and undisguisedly so."⁶¹

The case of *Bendel State Civil Service Commission & Anor vs Buzugbe*⁶² also illustrates the operation of the rule against bias. Buzugbe was a civil servant in the defunct Bendel State. He had written a very critical and scurrilous petition against the Head of Service. A committee presided over by the same Head of Service investigated the conduct of Buzugbe in writing the petition. Based on the Committee's recommendation he was reduced in rank. He challenged the decision reducing him in rank in court and succeeded on the ground that the Head of Service being the target of the petition written by Buzugbe ought not to have presided over the Committee that investigated the conduct of Buzugbe for writing the petition. The Civil Service Commission appealed to the Supreme Court which upheld the decision of the trial court.

⁶¹*LPDC vs Fawehinmi* Op. Cit. per Eso JSC at p. 345

⁶²(1984) 7 SC p. 19

It is a settled law that a person or adjudicating body cannot be a judge in his own cause. This is a principle of natural law of considerable antiquity. The person to decide the rights and obligations of two contending parties should not himself be party to the cause. Where the judge is also a party to the cause he violates the sacred maxim of *nemo iudex in causa sua*, such adjudication will be null and void.

b. Investigative Panel vs Disciplinary Panel

Most⁶³ of the enabling statutes setting up the domestic tribunals in this country provide for two bodies: an Investigating Panel and a Disciplinary Tribunal.

For instance, section 11 of the Institute of Chartered Accountants Act⁶⁴ provides that:

“(1) There shall be a Tribunal to be known as The Accountants Disciplinary Tribunal (in this Act hereafter referred to as “the Tribunal”), which shall be charged with the duty of considering and determining any case referred to it by the Panel established by the following provisions of this section or ...

(3) There shall be a body to be known as the Accountants Investigating Panel (in this Act hereafter referred to as “the Panel”), which shall be charged with the duty of-

(a) conducting a preliminary investigation into any case where it is alleged that a member has misbehaved in his capacity as an accountant, or should for any reason be the subject of proceedings before the tribunal; and

(b) deciding whether the case should be referred to the tribunal.

The above provisions are similar to those in Section 15 of the Medical and Dental Practitioners Act⁶⁵, Section 16 of the Surveyors Registration Council of Nigeria Act⁶⁶ as well as section 13 of the Estate Agents and Valuers (Registration) Act.⁶⁷

It is apparent from the above that the role of the investigating panel is different from that of the disciplinary tribunal. The duty of the panel is simply to investigate an allegation, assemble the evidence and see whether such evidence shows *prima facie* case so as to justify the reference of the case to the tribunal, which has the duty of actually conducting the “trial” of the case. It is apparent

⁶³But not all statutes, for instance, Legal Practitioners Act creates only one body i.e. Legal Practitioners Disciplinary Committee which performs the dual roles of investigation and trial.

⁶⁴Cap 185 Laws of the Federation of Nigeria, 2014.

⁶⁵Cap 221 Laws of the Federation of Nigeria, 2014

⁶⁶Cap 425 Laws of the Federation of Nigeria, 2014

⁶⁷Cap 111 Laws of the Federation of Nigeria, 2014

from the foregoing that Investigative Panel can neither conduct the “trial” nor “determine questions affecting rights” of person(s) in matters refers to it.

The Supreme Court in *L.P.D.C vs Fawehinmi* emphasized the importance and difference of functions of these two bodies in disciplinary matters. In the memorable words of Oputa J.S.C;

Discipline in the Legal Profession is very necessary. I seriously doubt if this discipline can be achieved under the present Law-Act No. 15 of 1975. There is urgent need for an amendment of the law to provide for two ancillary but yet independent bodies namely: -

- a. An Investigative Panel which will conduct all necessary investigations regarding allegations of misconduct against a legal practitioner. If this panel is satisfied that there is prima facie case made out, then it will prefer charges. But it will not “consider or determine” those charges. That function which is really adjudicative:
- b. The Legal Practitioners Disciplinary Tribunal. This tribunal will then try the legal practitioner and if it finds him guilty, it will feel free to impose the appropriate penalty. To ensure the observance of the rules of natural justice, no one person will serve on both bodies. This will inspire confidence.

I seriously doubt if any legal practitioner can be successfully proceeded against; under the 1975 Act without dangerously infringing and flagrantly encroaching upon the sacred principles of natural justice.⁶⁸

Thus in *Akintemivvs Onwumechilli* the applicants counsel argued successfully that there were no complaint or charge against the three applicants; that they were not giving any hearing on the report of the Investigating Panel, upon which the Vice-Chancellor exercising his quasi-judicial power under section 32 of the University of Ife Edict 1970, expelled them and thus did not do so fairly and that the Investigative Panel chaired by Prof Adegbola was not a Disciplinary Board within the meaning of section 32 (4) of the University Law.

One of the high point of the decision in *Garba vs University of Maiduguri*⁶⁹ was the condemnation in very strong terms of the short cut procedure adopted in expelling the students. It was the view of the court that even if the student appeared guilty of the alleged offences he must still be seen to be treated fairly and in accordance with the hallowed principles of natural justice. In the case, there had been a violent demonstration by students resulting in wanton destruction of properties, arson,

⁶⁸*L.P.D.C. vs Fawehinmi*. Op. Cit. at 391

⁶⁹Supra at p.

looting and assault on persons. The Vice-Chancellor set up a Disciplinary Investigation Panels with the following terms of reference inter alia:

“(b) To identify the principal organisers and perpetrators of the disturbances....

(h) To apportion blame or give credit as the case may be to all individuals concerned and in the former case to recommend suitable disciplinary measures to be taken against the culprits.”

The panel met and during the conduct of investigations, 104 witnesses including students were interviewed. The appellants were among the 76 students interviewed. At the end of its investigations several students including the appellants were expelled. The Supreme Court in castigating this procedure declared:

Were the appellants heard by the Disciplinary Investigating Panel? In other words, what does it mean to be heard in this context? Does interviewing the appellants or calling them as witnesses before the Panel constitute the type of hearing envisaged by the Rules relating to Fair Hearing be they under the Rules of Natural Justice or under Section 33 of the 1979 Constitution?⁷⁰

The Court in answering the foregoing, stated that an Investigative Panel cannot determine the guilt of a witness or a party before it. The courts have always drawn the vital and necessary difference and distinction between hearing a man as a witness in an administrative inquiry and hearing him in defence of his good name, his integrity or his conduct. Investigating Panel are merely fact finding boards and their investigations do not constitute a trial. The court concluded thus;

When therefore the issue is who were those who went on a rampage at the University of Maiduguri on the 2nd of February 1983 and committed arson, malicious damage and indecent assault, the disciplinary Investigation Panel must have to conduct some *form of trial* to arrive at the answer that the appellants were the culprits. *If not, then one arrives at the rather awkward situation of finding “a witness” guilty of the offence alleged.* A witness may be found *guilty of perjury if he lies*; he may be believed, or disbelieved, as the case may be; but the central issues of liability or guilt does not attach to witnesses. So if in this case, the Disciplinary Investigation Panel regarded the appellants merely and solely as witnesses, they were wrong in their finding that the appellants were the culprits and in recommending disciplinary measures against them.

⁷⁰At p.616 per Oputa J.S.C

In *Friday Olabanjo Iwarere vs University of Ilorin Teaching Hospital Management Board*⁷¹ the Acting Head of an Accounts Department was dismissed on, among others, the grounds of professional incompetence resulting in a muddle up of the books of accounts in disobedience of lawful instructions, and negligence. His counsel complained that he was not given a fair hearing in that the applicant was merely asked to give assistance to the panel as a witness to produce some documents in his possession which he did as a witness and not as an accused, he was not confronted with any allegation or charge of wrong-doing or called upon to defend himself. He argued that the panel was a fact-finding one (investigative) and not a disciplinary one, as provided for by S.9 of Decree 10 of 1985 which laid down an elaborate procedure for the discipline of officers of the status of the applicant.

The court held that ‘The failure of the Board to comply with the provisions of Section 9(i) (a) (b) and (c) of the Decree 10 of 1985 which lay down the procedure for discipline of the applicant was fatal, and that the applicant’s fundamental human right to fair-hearing guaranteed by S.33 (i) of the Constitution and Section 9 of the Decree 10 of 1985 has been flagrantly infringed. The court thereby set aside the dismissal.

4.4 Breach of University Statute

Another aspect of the excesses of the Universities has been the violation of the provisions of the laws setting them up. Quite often, the University Vice-Chancellors find it easy to terminate the appointment of staff or rusticate students without due regard to the provisions of the statute setting up the said Universities. In this regard, the courts have made it abundantly clear that such actions are contrary to the law and cannot be allowed to stand. The altitude of the court of law in this area is reflected in the Supreme Court judgement where Anigolu JSC stressed the position thus:

To remove a public servant in fragrant contravention of the rules governing him, whether under contract or under provision of statute or regulations made

⁷¹Cited in Popoola, A. O. (2014). Law and University Administration in Nigeria: Issues, Challenges and Perspectives. Paper Commissioned for Presentation at the Executive Education Programme organized for Vice-Chancellors of Nigerian Universities by the Association of Vice-Chancellors of Nigerian Universities: Le Meredien Hotel Uyo, AkwaIbom State.

thereunder, is to act capriciously, to destabilize the security of tenure of the public servant, frustrate his hopes, and aspirations and thereby act in a manner inimical to order, good government and well-being of society.⁷²

The case of *Eperokunvs University of Lagos*,⁷³ established that where there is a laid down procedure for the termination of appointment of a University staff, the procedure must be followed by the appropriate University organ charged with the disciplinary responsibilities⁷⁴. In *Adekunlevs University of Port Harcourt*,⁷⁵ the appellants were students of the University of Port Harcourt. They were expelled from the University for being a members of banned fraternities namely, MAFIA and VIKING. The trial judge found that the allegation that the appellants were members of banned fraternities had not been established, that the report of the Security Department was a make belief, that there was no basis for the expulsion of the students and that the whole things show intrigue against the students. The Judge, however, applied *suo motu* the provisions of the Student's Union Activities (Control and Regulation) Decree No. 47 of 1989 and concluded thus: "In conclusion I hold very reluctantly that this court will not decree the order sought for by the applicants. I'll rather advise that representation be made to the President, Commander-in-Chief of the Armed Forces."

The students being dissatisfied with the judgment appealed to the Court of Appeal. The Court of Appeal unanimously allowing the appeal held inter alia;

It seems to me that these sections of Decree No 47 of 1989 are inapplicable to the instant case... On the evidence before the trial judge, there was nothing established that any fraternities were banned by the Federal Government in the University of Port Harcourt. There was no Gazette or Circular letter to show that the Viking or Mafia was banned. In effect, it comes to this that no such society has been proscribed or banned in the University of Port Harcourt. So there is no such society as envisaged in Section 2 (1) (b). It is clear therefore that the appellants have not committed any offence stipulated by Section 2 (2) of the said Decree No. 47 of 1989. There has been no proscription or offence committed.⁷⁶

The court concluded that the Vice-Chancellor in expelling the students did not act under any law, he acted arbitrarily. Neither Decree No. 84 of 1979 (University of Port Harcourt Act) nor Decree

⁷²*Adigun vs Attorney General of Oyo State* (1987) 3 SCNJ at 118

⁷³(1986) 2 NWLR (Pt. 9) p. 162

⁷⁴See also *Olaniyan vs University of Lagos*(1985) (Pt.9) 599; *Oloruntoba-Oju vs Abdul-Raheem* (2009) 26 WRN

⁷⁵(1991) 3 NWLR (Pt.181)

⁷⁶*Ibid* at p.550 per Omosun J.C.A

No.47 of 1989 is applicable to the case. The Vice-Chancellor did not act in pursuance of any Decree or Edict, the letter purported to expel the student was thereby quashed.

It seems that the University must observe its rules and regulations not only when dealing with confirmed staff but also with probationary staff. In *University of Jos vs Ikegwuoha*,⁷⁷ the respondent was offered a temporary appointment as lecturer II, he was later interviewed by full Panel of the appellant and was found appointable and his appointment was regularized. When he became due for confirmation, his Head of Department and Dean of his Faculty recommended him for confirmation in accordance with the Rules and Regulations of the appellant. The appellant acting on a protest of a few students instigated to write a petition against the respondent, refuse to confirm him. The Supreme Court held there was a breach of Section 22(vii) of the Confirmation of Appointment in the Condition of Service of Senior Staff University of Jos. The Court hereby order the appellant to confirm the appointment of the respondent.

This was also the decision of the court in *Alhassan vs Almadu Bello University & Ors.*,⁷⁸ the appellant was engaged by the first respondent. On the basis of anonymous letter, he was queried and later posted to the Agricultural College, ABU, the second respondent. On the request of the third respondent, Samaru College of Agriculture he was posted there and rose to the position of the College Secretary. He applied for leave to enable him contest for the chairmanship of the Senior Staff Association of Nigerian Universities (SSANU). But was advised against by the third respondent. He went ahead and lost the election. Subsequently, a query and letter of last and strong warning were issued to him. Eventually his appointment was terminated and paid three months in lieu of notice of his termination.

He challenged the termination as wrongful and sought order of reinstatement. The court held that the termination of the appellant appointment was contrary to Statute 8.5 of the First Schedule to

⁷⁷(2013) 9 NWLR (Pt.1360) 78

⁷⁸(2009)17 NWLR (Pt. 1169) 96

the ABU (Transitional Provision) Act and section 3(f)(iii) of the Regulations governing the Conditions of Senior Staff member and therefore null and void. The court held further that the provisions apply equally to probationary and confirmed staff as the provisions contain no distinctions.

The court has also held that a University is bound to accept the recommendation of its own Disciplinary Committee where it has hinged the fate of offender on the Committee determination. Thus in *Institute of Health ABU Hospital Management Board vs Mrs Jummai R. I. Isiyaku Mohammed*,⁷⁹ the plaintiff was interdicted on an allegation of theft of expired drugs despite the position of the defendant that the plaintiff fate would be determined by the outcome of report of Administrative Disciplinary Committee investigating the allegation which exonerated and recommended reinstatement of the plaintiff. She was dismissed. Notably, the Staff Regulation provides *inter alia* “the institute may at any time for good cause terminate your engagement by two months’ salaries in lieu of notice.” However, the plaintiff having been exonerated should ordinarily have been reinstated; but since the matter of stealing was a crime any view apart from the Committee’s report should have warranted reporting the matter for prosecution in a court of law. So essentially, it was held that the only authority that could reverse the Committee is court of law.

In *G. O. Olaofe vs University of Ibadan*,⁸⁰ the Council accused Dr Olaofe of insubordination and wanted him to apologise within a stipulated period to Council for his behaviour. He refused since he believed that what he wrote could not by any stretch of imagination be termed derogatory. He was thereupon suspended by Council without pay. He challenged this in Court as being ultra vires and void since Council has no power to suspend without pay according to S.9 (6) of the University of Ibadan Act. When the University realised how messy the matter was, it agreed to settle the matter out of Court and to refund the withheld part of Dr Olaofe’s salary.

⁷⁹(2011) 2 CLRN 127 at 135

⁸⁰ Cited in Popoola, A. O. (2014). LAW AND UNIVERSITY ADMINISTRATION IN NIGERIA: ISSUES, CHALLENGES AND PERSPECTIVES. Paper Commissioned for Presentation at the Executive Education Programme organised for Vice-Chancellors of Nigerian Universities by the Association of Vice-Chancellors of Nigerian Universities: Le Meredien Hotel Uyo, AkwaIbom State.

In *Clement Anoghenal falumevs Ambrose Alli University & 3 others*,⁸¹ the applicant was alleged of examination malpractice. He was not given any malpractice form to fill as required by law. Moment later a Committee was set up to try him. Yet he was not allowed to cross examine the witnesses of the respondents. The court held that non-compliance with s.11(c) and s.25 (1) (d) of Ambrose Alli University student handbook which requires service of the examination malpractice form on a student catch cheating in an examination as well as the refusal by the respondent to allow the applicant to cross examine the witnesses brought by the respondent constitute a breach of fair hearing.

In *Council of Federal Polytechnic, Mubivs Yusuf*,⁸² the court held: *inter alias* that for every accusation there must be a right to be heard, section 12(1) of the Polytechnic Act is very clear and any procedure for removal of an employee outside its scope will be illegal, null and void. In all the institutions set up by statute, it is incumbent that the statutory provisions be adhered to when it comes to removal of its officers from office because they owe their existence to their statute and statutory provisions governing them.

In the case, the appellant did not find the respondent guilty of the complaint against him; rather the Committee set up to investigate the allegations against the respondent complained of foul language and rudeness while before them and this the Council found as excuse to remove the respondent. The respondent was not availed the opportunity of being heard on these new allegations by the Committee. Thus, he was found guilty of what he was not confronted with. This is against the letters of the Federal Polytechnics Act, section 12(1). It is clear from the foregoing that the Council of the Federal Polytechnic, Mubi acted in contravention of the statute in terminating the appointment of the respondent. The termination is therefore null and void ab initio.

⁸¹ HEK/MISC/11/2010 (unreported)

⁸² (1987) 1 SCN J 11 at 17. See also *Akinyanju vs University of Ilorin* (2011) All FWLR. (Pt. 569) 1080

4.5 Critique of the Application of the Principles of Natural Justice in Universities Disciplinary Action

We have seen that the internal disciplinary and academic tribunals of higher institutions occupy a unique place in keeping peace and order in the University community. The University disciplinary tribunals serve important role in the enforcement of law and order for peace and stability in our Universities which is *sine qua non* for serious academic pursuit.

The principles of natural justice are undeniably an important thread in our legal heritage. The positive impact of the doctrine on public administration is very clear. It has become well-known and commonly practiced that University decision-making should be free of bias and conflict of interest, and that person affected adversely and directly by University administrative decision should be given a prior warning and opportunity to comment. University must adopt certain procedures during the course of a disciplinary hearing in order to achieve fundamental fairness or due process in line with its educational goals and objectives. However, the University tribunal needs not adopt the trappings of the court to attain this. What standard of natural justice is then adequate or required in the University disciplinary hearing?

Ordinarily, it cannot be said that natural justice impedes the University administration from implementing its statutory goals and objectives. An unyielding principle is that natural justice is merely a doctrine of procedural fairness. It has been claimed not to speak to the merits of an administrative decision. Then, can there be too much natural justice in the University disciplinary hearing? The fact is that the hearing rule of natural justice has developed in a way that does not strike an appropriate balance between competing considerations - fairness to the individual, as against practical administrative considerations, such as the importance of finality, efficiency and lack of formality in administrative decision-making. Natural justice is a doctrine of law, but it must develop sensibly as a doctrine of administrative law.

But indeed, there can be too much of a good thing. Excess can be as damaging as a deficiency.

a. Burdensome

The University disciplinary tribunal needs not adopt the trappings of the regular court in its disciplinary action but some basic elements of the doctrine of natural justice, but it seems that the requirements of the University tribunal in doing justice in administrative hearing is more onerous – even than the regular courts. The Courts hardly face any issue in the observance of the principles of natural justice. All that a court has to do is to schedule a date for hearing, give sufficient advance notice to the parties so that they can prepare for the hearing, allow sufficient time at the hearing for each party to present its case and to question the case presented by the other side, then retire to prepare a judgment that addresses and resolves the issues in dispute between the parties. There are also clearly-established principles to guide the court in this regard. Usually, too, the court will have the benefit of arguments by legal counsel in clarifying the issues and deciding how to rule on any procedural question. The long-experience of the judge in dealing with similar procedural questions is also a great advantage.

In summary, it is well known what a court has to do to accord natural justice. As a consequence, it is infrequent that a court decision is set aside for a breach of the hearing rule of natural justice.

Unlike the courts, the University tribunals are constituted by persons who may be experts in their own field but in most cases lack the requisite judicial or legal training for the adjudicatory function they perform. They don't have the luxury of time or incessant adjournments in administrative hearing; they make their own procedures which varies according to the circumstances of each case; they often adopt inquisitorial method which is most suitable for University disciplinary hearing rather than adversarial, as such they don't have the benefit of lawyers to clarify issues; no rules of evidence, procedures or orders to guide them. They are often to resolve disciplinary issues which require speed, time, flexibility and finality. Imposition of unnecessary legal formalism and trappings of courts will only lead to the University's internal discipline process to be less effective, rigid, protracting and more expensive.

It is no longer simple in University administrative decision-making to decide what is required to comply with natural justice. The guidelines provided by courts are often presented in soothing tones - ‘the principles of natural justice do not comprise rigid rules’⁸³, ‘natural justice ... requires fairness in all the circumstances’⁸⁴, and ‘procedural fairness, properly understood, is a question of nothing more than fairness’⁸⁵ - but the apparent simplicity and flexibility of that approach can mask the complexity of the administrative setting in which practical answers have to be found

b. Encumbers the Essential Criteria of Administrative Tribunals

Student facing disciplinary hearing is more concerned with certain essentials criteria in the University decision making process. They include;

- i. Speed. Students of higher institutions are admitted into various courses of studies with specific duration. What is essential to a student facing disciplinary action is a quick decision.
- ii. Finality. Student in a disciplinary hearing will often want to know what his position is and may not want to be subjected to a series adjournments and appeals and re-hearings to resolve the matter.
- iii. Cheapness. University disciplinary tribunal is cheap, nothing is required of the student, only to make his case to the best of his ability before the tribunal.
- iv. Flexibility. University disciplinary tribunal is not bound by the rules of evidence, and other complex procedures characterize the regular courts. The tribunal makes its procedures and practices which is most suitable to University disciplinary hearing. Students facing disciplinary action are able, solely to navigate their way easily in their Universities domestic tribunal.
- v. Accessibility. Student affected with University administrative action need to be able to receive a decision within the minimal time and formality.

⁸³*Heatley v Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487 at 513

⁸⁴*O'Rourke v Miller* (1985) 156 CLR 342 at 353

⁸⁵*Ridge vs Baldwin* (1963) (1) WB 569, 578,

A system of decision making that guarantees ultimate, absolute correctness or accuracy in decision making is likely to run counter to these desirable essentials decision making process in the University disciplinary hearing. Detailed fact-finding, careful balancing of issues, benefit of counsels' arguments, cross-examinations etc., undue judicialization of University disciplinary hearing or dressing up the University disciplinary hearing process with all the trappings of natural justice at each point in the continuum of disciplinary hearing, will grind to a halt the system and this is not to the advantage of the University, let alone the students.

Recourse to the court to settle disciplinary or academic dispute is clearly not an alternative to the University tribunals. *Garba case* took the Courts three years, *Magit* five years, *Oluwadare* eight years, *Esiaga* 13 years, from trial Court to the Supreme Court. Maintaining discipline in our Universities should not be that expensive and gruesomely long. The cost to the Universities in prosecuting disciplinary cases in the courts is exorbitant, it is too high a price for a University to pay for the privilege of enforcing discipline among its students.

c. Defeats the Doctrine of Exhaustion of Internal Remedies

The question of how, where and to whom students may challenge University decisions is a vexed one. Ideally, all such matters should be resolved by internal processes and procedures but this is not always the case. As students increasingly seek external redress, questions such as the nature of the legal relationship between the university and the student, exhaustion of internal remedies are being explored. It is fundamental principle of law that where a statute provides for internal remedies to an administrative decision, a party cannot come to court until he has expended such remedies, it is now well settled, that an aggrieved student must first exhaust all available remedies within the forum domesticum of the University before rushing to court.⁸⁶

The relevant sections of the University Acts vest in the Vice-Chancellors the disciplinary powers over the students, the Vice-Chancellor where authorize by statute may delegate this power to

⁸⁶See *University of Ilorin v Oluwadare* (2006) *Omwumechilliv*sAkintemi (1986)

disciplinary body nominated by him. In the University justice system appeal from the Vice-Chancellor decision lies to the University Council. Though, the court has done credible well in upholding that an aggrieved student must exhaust all internal machineries for redress in the domestic forum, before approaching the court, otherwise he would be held to have “jumped the gun” and the action premature. However, there are still some grey areas where the courts always insisting on the strict application of the natural justice rules, breach of fair hearing, thereby holding that the student may jettison the internal remedies in such instances and approach the court for redress.

This clearly violate the doctrine of exhaustion of internal remedies, in the sense that it erodes the disciplinary processes in the University justice system. The University appeal procedures is to avail the University to reconsider and cure any procedural defects that may exist at the lower level. Thus allowing a student to challenge the University decision on the flimsy ground that his ‘fundamental right’ is breached or about to be breached or that the University administrator failed to follow the strict trappings of natural justice should be discouraged. Aggrieved student should exhaust the provided internal remedies which of course is much cheaper, speedy and educative before resorting to the Court for redress.

In *R (Peng Hu Shi) v King’s College London*.⁸⁷ Mitting J, in dismissing a student’s application for judicial review of a disciplinary decision that resulted in the student’s expulsion, stated that ‘judicial review is a remedy of last not first resort ... [and as the claimant] did not, as she should have done, pursue her complaint to the Office of the Independent Adjudicator ... it is not appropriate, and was never appropriate, to bring this claim for judicial review.

d. The Rule of Bias in the University Disciplinary Action

⁸⁷ [2008] EWHC (Admin) 857 (9 April 2008) 45–46

The strict application of rules of the bias and interest in University discipline hearing must be tempered with realism. The fact is that people within the University community will know each other and that this alone does not create a reasonable apprehension of bias. In University domestic tribunal, the members of the panel are ingrained in the general ethos of the University; they are likely to have firm views about the proper regulation of its affairs, and they will often be familiar with the issues and conduct of the parties before they assume their role as adjudicators. It may be right and appropriate to require evidence of actual bias than a mere likelihood of bias before an educational institution decision is set aside by the court.⁸⁸

We should not lose sight of the fact that one is here dealing with disciplinary hearings presided over largely by laymen. Therefore, they cannot be expected to observe all the finer niceties that would have been observed by a court of law. University administrators are not necessarily power hungry, they exercise power to achieve justice between the parties, as it appears to them. Though, they are interested in protecting the University core values; that peace and order are maintained in the University community and that administrative decisions are taken promptly and fairly. They are not out to get or victimize any student or staff who breached the Institutional regulation. The point being made here is that a much lower standard of bias rule should be applied in the University hearing, some solid evidence, beyond mere employment or administrative capacity within the University, must be established to show bias on the part of the hearing body or its members

e. Overrides the University Disciplinary Decision

Another settled but questionable principle concerns the exercise of a court's discretion in University administrative decision is the extent and effect of the court intervention on the ground of breach of natural justice. Though, the courts have always insisted that they have no interest in the decisions of the administrators, and will not substitute their own decision with that of the

⁸⁸ De Smith S. A. op. Cit.

administrators. Lord Hilsham L.C once declared this in the case of *Chief Constable of North Wales Police vs Evans*.⁸⁹

“It is important to remember in every case that the purpose ...is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that authority constituted by law to decide the matters in question.”

This is salutary, at least in Nigeria. To say that the court on the ground of natural justice do not substitute its own decision is not entirely true. The illustrative examples are those involving certiorari and mandamus. An order of certiorari is one that quashes the original decision. But to quash simply means to reject or to refuse to accept. For example, in *OnwumenchillivsAkintemi* the three student respondents were suspended for examination malpractices, their application for order of certiorari quashing the order of suspension was granted on the ground that the rules of natural justice were breached in suspending the respondents. The intention of the University was to chastise the students for engaging in examination malpractices but this was effectively thwarted by the court. In no time, the suspended students were back on campus, and the University authorities can only watch helplessly.

In the case of mandamus, this is an order that compels an authority to act. When a public body is compelled to act, one cannot argue that the public body's decision not to act has not been changed by the Courts, and no one would say that the effect is different from an order of specific performance or mandatory injunction. In *University of Ilorin vs Adesina*,⁹⁰ the Supreme Court granted an order of mandamus compelling the University to release to the plaintiff her academic records including the Degree to which her completed course of study with the Defendant entitles her. This was also the decision of the Supreme Court in the cases of *Oloruntoba-Ojuvs Abdul-Raheem*⁹¹ and *Olufeagba & 43 Ors. vs Abdul-Raheem*⁹² where the Supreme Court issued an order compelling the defendants to comply with the directives of the Federal Government to reinstate the

⁸⁹ ([1982] 1 W.L.R 1155 at 1160

⁹⁰ (2014) LPELR-23019(SC)

⁹¹ (2009) All FWLR (Pt.497) 1, (2009) 13 NWLR (Pt.1157) 83

⁹² (2010) All FWLR (Pt. 512) 1033

plaintiffs to their employments purportedly terminated by the defendants for want of natural justice and fair hearing.

Cases of such intervention by the courts through the instruments of prerogative and non-prerogative remedies abound. In fact, the Supreme Court authoritatively declared in *Psychiatric Hospital Management Board vs Ayitacha*⁹³ that a court has the prerogative to review and overrule the decision of administrative panel where and when expedient. This approach is not only against educational Institution policies and principles but also capable of undermining or subverting discipline in the University system. We are not saying that the courts should not intervene in obvious cases of breach of natural justice or fair hearing but should do so as last resort and after such affected staff or student had exhausted the internal remedies.

Be that as it may, it is doubtful that the doctrine of natural justice as it has developed in recent years does allow Nigerian Universities sufficient scope to shape a code of fairness and discipline that is adapted and responsive to the Universities' circumstances. It is our considered opinion that high standard of natural justice in the University disciplinary action will stultify the basic desirable essentials of administrative decision making: - flexibility, informality, finality, accessibility, fairness, cheapness and expeditious resolution. In a view of a writer;

When pursued with obsessive legalistic vigour, 'natural justice' is often the enemy of real justice. ... [A]doption of complex procedures to comply with traditional principles of 'natural justice' has meant that many people are effectively prevented from getting any form of justice at all. Well-meaning lawyers, and others who are involved in the administrative review system, should be very careful not to encrust the system at the lower levels with a whole range of apparent safeguards which, in practice, will harm many people in great need and may be of largely illusory benefit for many other people.⁹⁴

f. Issues with Criminal or Human Rights Overtones

⁹³ (2000) FWLR (Pt. 9) 1510 at 1519, (2000) 11 NWLR (Pt. 677) 154 at 163 and 169

⁹⁴ Disney, J. (1992) Access, Equity and the Dominant Paradigm. In J McMillan (Ed.), Administrative Law: Does the Public Benefit? AIAL Administrative Law Forum. 1 at 7.

There is no doubt that students' disciplinary proceedings in Nigeria Universities are not very healthy. One of the problems is that disciplinary proceedings founded on a criminal misconduct are a nullity unless the criminal misconduct has been a subject of determination before a court of competent criminal jurisdiction. This is a clog on the powers of an institution to discipline its students. This trend has eroded the disciplinary power of the University since there are hardly any student misconduct not tainted with crime.

One cannot but agree with IbidapoObe⁹⁵ that in the context in which the students concerned (in the *Garba's case*) committed "(the) so called crimes, the limiting of the investigative and disciplinary role of the University over their legal "wards" (the students) is unduly restrictive, wrong in principle and is likely to precipitate a total breakdown of discipline in our Universities". The procedure suggested by the Supreme Court for dealing with acts of misconduct committed by students may not be the best approach.⁹⁶ According to him: "It does appear to be self-defeating to want to protect a priceless asset such as a student by exposing him to the harshness of the criminal justice processes of the larger society instead of the milder internal discipline of the University."

He further contended that subjecting students of our Universities and other institutions to routine criminal law and procedure for acts which within their social context are merely "political" in nature may stigmatize them for life and ultimately truncate the ardour of our youths.⁹⁷

The approach of the Nigerian courts in this regard is actually unduly restrictive. It is well established that disciplinary and academic tribunals cannot enforce external statutes, such as the *Criminal* or the *Penal code*. But the Universities are not enforcing the State laws but their rules and regulations. They are not imposing penal or criminal penalties but a mere disciplinary

⁹⁵Ibidapo-Obe, A. (1987) "The Decline Disciplinary Power of the Universities" A Case comment on the decision of the Supreme Court in *Garba vs University of Maiduguri*. *Obafemi Awolowo University Law Journal*, January and July, p. 214

⁹⁶*Ibid.* p. 219

⁹⁷*Ibid.* p. 219

sanctions. This is the view of the learned Professor of Law, Ben Nwabueze⁹⁸ on the *Garba case*⁹⁹ and we cannot but agree with him when he said:

The decision is clearly misconceived “both because a finding of guilt for a criminal offence by a commission of inquiry or a disciplinary committee is not a conviction for that offence, and because dismissal from a position based on such a finding is not a punishment but only a disciplinary penalty. Judicial power is not usurped by a finding of guilty which does not operate as a conviction for a criminal offence and which is intended to serve merely as a basis for disciplinary action. Disciplinary proceeding and criminal trial operate on completely different plans and serve entirely different purposes

The learned professor cited the Privy Council decision of *KarriappervsWijesimba*¹⁰⁰ where a Ceylonese Legislature in 1965 vacated the parliamentary seats of certain named persons who had been found guilty of bribery by a Commission of Inquiry. The Judicial Committee of Privy Council held that the removal of the culprits from their parliamentary seats was not in all the circumstances punishment for a criminal offence as to be a usurpation of judicial power.

What more, section 36(2) of the 1999 Constitution which allows administrative determinations did not discriminate between cases involving allegation of a crime and cases that do not, provided such determinations do not purport to determine criminal liability. A writer comments that “there is no special intrinsic characteristic of criminal conduct distinguishing it from non-criminal conduct. We can only say that it is a crime if, after first having enquired whether it is prohibited by law, it is also attended by the requisite legal procedure.”¹⁰¹ Thus a trial which is not for the purpose of penal sanction at the instance of the University’s administrative panel cannot therefore, be said to be a trial for a criminal offence.

This seems to be the position of the Supreme Court in *Bamgboye vs. University of Ilorin*, a case of examination malpractice, where the Court held, *inter alia*, that “where misconduct can be proved without the need to find the member guilty of act amounting to a criminal offence, a tribunal conducting disciplinary proceedings cannot be held to be trying a criminal charge.” We hope the

⁹⁸Nwabueze, Ben. (1992) *Military Rule and Constitutional*. Ibadan: Spectrum Law Publishing. p.86

⁹⁹See also *Abia State University vsAnyaike*(1997)3 NWLR (Pt 439), 646

¹⁰⁰(1976) 2 AER 485

¹⁰¹ Okonkwo and Naish. (1980) *Criminal Law in Nigeria*.(2nd Ed.) London: Sweet and Maxwell. p.2

Nigerian Courts can maintain this tempo and reasoning that the findings or determinations of a University disciplinary panel has nothing to do with imposition of penal or criminal remedies, finding a student of a University guilty of examination malpractice or other criminal misconduct is not for the purpose of meting out penal penalties against him but for imposition of a mere disciplinary sanctions.

4.8. Conclusion

Some of our Universities have suffered humiliating defeats in the courts, yet they persist in their defiance of the rule of law. Some of the reasons for this posture is the inability of some University functionaries to maintain a detached posture in the performance of their duties, overzealous to punish the alleged erring members of the University community. Some of them often act without proper legal advice, others who receive such advice ignore it because their minds are made up and are therefore closed. The courts have done creditably well in insisting on justice and fairness in the exercise of disciplinary powers but they too sometimes get overzealous. However, one area in which the courts have shown reluctance to intervene is the area of academic judgements- refusing to give order of mandamus compelling a University to award degrees. The underlying reason being that judicial regulation of this area of activity would be contrary to public policy.

It cannot be over-emphasized that the so-called right to fair hearing or natural justice by its nature, is merely a challenge or disapproval in the procedure followed in the determination of a case and not predicated on the correctness of the decision arrived at in the case. The bottom line to the doctrine of fair hearing envisage in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 as applicable in the determination of civil rights and obligation of citizens, is a trial conducted according to all the legal rules formulated to ensure that justice is done to all the parties. It requires the observance of the twin pillars of the principles of natural justice, namely *audi alteram partem* and *nemo iudex in causa sua*.

A hearing cannot be said to be fair, if any of the parties is refused a hearing or denied the opportunity to be heard, present his case or called evidence. The right to fair hearing is a question of the opportunity to be heard. Thus, where the rules of natural justice are adjudged breached, the court will throw out the correct decision in favour of the breach of natural justice. This is more so because the rights are so fundamental to the life, liberty and well-being of the individual, he can raise the issue of infringement like any issue of jurisdiction at any stage of the proceedings either at the trial or for the first time on appeal.

However, the principles of natural justice or the fair hearing provisions in the Constitution is not a shield for erring students in our tertiary institutions, it should not also be seen as a court giving licence to intervene in disciplinary or academic determination of the University at the slightest pretence; or to place too much burden on the University tribunal; or to be used as a means of overriding the University disciplinary decision. No, far from it, its observance is to ensure procedural fairness, to check arbitrary exercise of administrative power, and to repose confidence in the University disciplinary hearing. Ultimately, students or persons under the University disciplinary jurisdiction get what they deserve and no more.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This research has attempted to critically appraise the application of the principles of natural justice to disciplinary actions in Nigerian Universities. We examine the historical background of the doctrine of nature justice, its two pillars; *audi alteram partem* (fair hearing rule) and *nemo iudex in causa sua* (rule against bias). We tried to examine the gradual extension of the principles to the administrative sphere, and in doing this, we covered the period of uncertainty in the application of the principles to the administrative field occasioned by the dichotomy of administrative functions into “judicial or quasi-judicial” and “administrative”. We examine the fair hearing rule under the Constitution of the Federal Republic of Nigeria, 1999. The words “fair hearing” in section 36 of the 1999 Constitution has been employed to express all the requirements of natural justice in the determination of the civil rights and obligations of the citizens. The principles have been applied to administrative and adjudication process to ensure procedural fairness and to control arbitrary exercise of discretionary power of adjudicating.

We have tried to show that the University, being a creature of statute, is empowered to discipline its student. The University, through its principal organs exercise this power. The basis of the exercise of the disciplinary power is bore on the statutory relationship between the University and the student. In discharging its disciplinary duty, the University must observe the fundamental principles of natural justice when discipline student. In relation to students’ criminal acts, the law is that the Universities cannot treat such matters as belonging to their *forum domesticum*, student who commits criminal acts should be handed over to the police for prosecution in the regular court. We equally considered the University jurisdiction vis-a-vis the High Court in examination malpractice offence, the law is settled now that examination malpractice is matter within the competence of the University. The University enjoys exclusive jurisdiction in pure academic decisions and the court seldom interfere with such decisions, unless it is established that such academic decision is *prima facie* arbitrary, capricious, illegal or irregular, violative of the University Acts or the Constitution.

We have also shown that the University as an autonomous entity, has power to make rules and regulations for student conduct that are crucial and necessary to the maintenance of order and discipline in the University community. The University disciplinary tribunal is the body responsible to determine civil rights and obligations of the University citizens. Although the University disciplinary tribunal is not obliged to adopt the court-like procedures in its disciplinary proceeding, but must at least observe a minimum standards of fairness in its “adjudication” proceeding. The University authority must be prepared to observe the principles of natural justice and be an impartial arbiter in its disciplinary actions. The fundamental principles of natural justice have become part and parcel of our law and no institution has discretion to depart from it.

5.2 Findings

The following findings are drawn generally from this research-

- i. The application of the principles of natural justice to the University disciplinary actions are too demanding for the University Disciplinary Authorities.
- ii. It is difficult, if not outright impossible, to proceed against a student under the University Disciplinary Tribunal in the instances of misconduct tinted with crime. The Courts will quickly point out that the University Tribunals are not vested with criminal jurisdiction. For any student criminal misconduct, the University tribunals are now resorting to the omnibus ground of “breach of Matriculation oath” to discipline such student.
- iii. The Examination Malpractice Offences Act (2004) which vests jurisdiction on examination malpractices on the Federal High Court regarding Public Universities is yet to be amended in line with the Supreme Court decision in *Unilorin vs Oluwadare*.
- iv. The Court interferes with pure academic decision of a University where such decision is arbitrary, capricious, malicious, abuse of discretion, violative of the University Act, Statute, Rules and Regulations.

- v. Students and staff, despite the internal redress mechanism in the University forum, still resort to the court of law for redress.

5.3 Recommendations

The following recommendations are proffered to the above findings-

- i. The observation of the principles of natural justice is *sine qua non* to discipline of student in Nigerian Universities. Thus, it is no longer sufficient for a University to discipline a student where it appears to the Vice-chancellor that such a student has been guilty of misconduct. Any individual who is facing a disciplinary penalty, such as a suspension or expulsion for misconduct, must know the case against them. Second, the individual must be given an opportunity to correct or contradict the evidence and assertions that have been made in support of the case. Third, the University authority must make its decision without a reasonable apprehension of bias.
- ii. With regards to criminal misconduct, we want to suggest that the Federal Government may enact a law to regulate the proceedings of Administrative Tribunals, the Act may take the nomenclature of “Domestic Arbitral Tribunal (Special Provisions) Act’. The Act will empower any domestic tribunal to preside over those matters within its domestic jurisdiction notwithstanding that is criminal in nature provided it is defined in the University rules and regulations as misconduct. The Act must provide for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and contains no provision making the determination of the administrative tribunal final and conclusive. This in effect will strengthen the University autonomous and also encourage student and staff to exploit internal remedies available in the University forum. Where the University has jurisdiction to deal with all misconduct defined in its regulations, the institution will be able to

prosecute their cases within a minimum of time and cost. This suggestion is not made to prevent students from being answerable to the criminal law of the land; but to sanitize the unhealthy students'/University relationship, to avoid unnecessary prolong,expensive litigations and to enable the University exercising its autonomy in determine student that is fit and proper for its degree.

- iii. Although the University domestic jurisdiction in examination malpractice has been restored via the Supreme Court decision in *Oluwadare's case*, the jurisdiction cannot be exercised whimsically or capriciously. In exercising this disciplinary jurisdiction, the University must observe the principles of natural justice. In achieving this requisite requirement, we recommend as follows;

Firstly, in setting up the University disciplinary panel, the University authority must ensure a strict compliance with the enabling statute as to the composition of membership of the panel. Such a Panel should be properly constituted so that none of the members of the panel has personal interest in the case. The terms of reference must be within those recognized by the enabling law. Secondly, whenever a panel of investigation is to be set up to investigate incidences of examination malpractice, it is pertinent that persons invited as accused should be duly informed of the misconduct they are alleged to have committed and be allowed to make their own representations, to confront, challenge or contradict any evidence against them. Thirdly, issues of examination malpractice should not be treated hastily and with levity knowing fully well that the outcome of such actions may tarnish the concerned student's prospect for life. In addition, haste may lead to the matter being vitiated and the desired justice may be delayed. This position is informed by the consideration that it is better to err on the part of caution by retaining the misconducting student in school pending a full determination of the allegation/s against him. Finally, the provisions in the Examination Malpractices Act relating to and regulating examinations by any other body established

by the Government (Universities in this instance) should be expunged. It is our view, and rightly decided by the Supreme Court in *University of Ilorin vs Oluwadare* that the tertiary institutions are best equipped with the skilled manpower to handle examination malpractice in all its ramifications. Accordingly, there is a need for a radical review of the Examination Malpractice Act, Miscellaneous Offences Act and our criminal jurisprudence to bring them in line with this view.

- iv. There is a need for the University Administrators to be conversant with the laws setting up their institutions and to know the extent of the powers given to them by the various laws, rules and regulations in matters of discipline and making of academic judgement. They should also know that such power cannot be exercised arbitrarily or capriciously. In order to avoid the cost and minimize the number of lawsuits mushrooming in our Universities, it is crucial that University administrators understand the law and follow it. The University administration should learn to listen to the advice of the members in the Faculty of Law, if they have one and the Legal Unit within the University.
- v. There is a need to secure and maintain the independence and confidence in the University internal disciplinary and appeal processes. University Administrators must establish rules and guidelines that are procedural fair. A comprehensive review of these guidelines should be conducted as often as necessary to reflect changes in the law
- vi. In the course of this research work, it was abundantly clear to us that various rules and regulations exist for regulating students' conducts in the various Universities and different methods adopted by the Universities to deal with student misconduct. Where there are such rules and regulations, it is expected that every matriculant should be given copy. We hereby advise that the University authorities should intensify their efforts the more in seeing that copies of the University information hand books, and those Examination laws, Rules and Regulation are sufficiently distributed among students at the beginning of every academic session.

We also recommended that fresh students should be made to be aware of the existing laws regulating student conduct, rules dealing with examination malpractices and their appropriate penalties during their orientation programme.

BIBLIOGRAPHY

A. Books

- Abbott, C.M. (1970), *Demonstrations, Dismissals, Due Process and the High School: An Overview, Student Dissent in the Schools* (Eds.) Irving G. H. et al, Houghton Mifflin Company.
- Aguda, T. A. (1983), *The Judiciary in the Government of Nigeria*. Ibadan: New Horn Press.
- De Smith, S. A. (1980), *Judicial Review of Administrative Action*. London: Stevens & Sons.
- De Smith, S.A. (1980), *Judicial Review of Administrative Action*. (5th edn.) London: Stevens & Sons.
- Disney, J. (1992), Access, Equity and the Dominant Paradigm. In McMillan, J (Ed.), *Administrative Law: Does the Public Benefit?* AIAL Administrative Law Forum.
- Eka, B.U. (2011), *Judicial Control of Administrative Process in Nigeria*. Ile Ife: Obafemi Awolowo University Press Ltd.
- Goodhart, A.L. (1953), *English Law and Moral Law*. London: Stevenson & Sons Ltd.
- Herling, D. and Ann, L. P. (2004), *Briefcase on Constitutional & Administrative Law*. (4th edn.) London: Cavendish Publishing Limited.
- Iluomade, B. O. and Eka, B.U. (1980), *Cases and Materials on Administrative Law in Nigeria*. Ile-Ife: University of Ife Press.
- Kelly, J.M. (1964), *Audi alteram partem*. 9 Natural Law Forum 103.
- Massey, I. P. (1985), *Administrative Law* (2nd edn.) Lucknow: Eastern Book Company.
- Nwabueze, B. (1992), *Military Rule and Constitutional*. Ibadan: Spectrum Law Publishing.
- Okonkwo and Naish. (1980), *Criminal Law in Nigeria*. (2nd edn.) London: Sweet and Maxwell.
- Wade, H.W.R. & Forsyth, C.F. (2004) *Administrative Law*. (9th edn.) United Kingdom: Oxford University Press.
- Wade, H.W.R. (1971), *Administrative Law*. (3rd edn.) Oxford, England: Clarendon Press.
- Yakubu, J. A. (2003), *Constitutional Law in Nigeria*. Ibadan: Demyax Law Books.

B. Journals

- Akhabue, D. A. (2014), "The Legal Status of a Student in Nigeria University and the Law." *Journal of Social Sciences and Humanities (SCSR-JSSH)* Vol. 1, Issue 1.
- Akume, A.A. (2007), "Universities Authorities and its Students under the Rule of Law: A case Study of A.B.U.," *Zaria Journal of Private & Comparative Law, A.B.U., Zaria.* Vol. 1, No. 1.
- Baker, T. R., "Cross-Examination of Witnesses in College Student Disciplinary Hearings: A New York Case Rekindles an Old Controversy." *142 Education Law Report.*
- Bridge, J.W. (1970), "Keeping Peace in the Universities: The Role of the Visitor." *Law Quarterly Review.* 86
- Bruce, L., "Student Subjectivity and the Law." *Deakin Law Review,* Vol. 10. No. 2
- Cumming J. J., "Where Courts and Academe Converge: Finding Fact or Academic Judgment." *Australia & New Zealand Journal of Law & Education* 1327-7634 Vol 12, No 1.
- De Smith, S. A. (1960), "University Discipline and Natural Justice." *Modern Law Review,* Vol. 23.
- Dutile, F. N. (1996), "Law, Governance, and Academic and Disciplinary Decisions in Australian Universities: An American Perspective." *13 Arizona Journal of International and Comparative Law.*
- Edako, S. E. (2011), "Application of Natural Justice to issues in University Governance." *African Journals of Education and Technology,* Vol. 1, No. 2.
- Etudaiye, M.A. (2007), "The Doctrine of Natural Justice as an Arm of the Rule of Law in Nigeria." *Journal of Malaysian and Comparative Law,* Vol. 34.
- Fabunmi, J.O. (1991), "University Law: Maintenance of Law and Order in The Nigerian Universities." *Obafemi Awolowo Law Journal,* 7 & 8
- Goldman, A.L. (1966), "The University and the Liberty of Its Students - A Fiduciary Theory". *Kentucky Journal Law.* 643
- Ibidapo-Obe, A. (1987), "The Decline Disciplinary Power of the Universities.(A Case comment on the decision of the Supreme Court in *Garba vs University of Maiduguri*)" *Obafemi Awolowo University Law Journal,* January & July.
- Idowu, A. A. (1991), "Due Process and Student Academic Misconduct: A case study of Obafemi Awolowo University, Nigeria, from 1982-1988." *Obafemi Awolowo University Law Journal,* 7 & 8.
- Kamvounias P & Varnham, S. (2010), "Legal Challenges to University Decisions Affecting Students in Australian Courts and Tribunal." *Melbourne University Law Review,* Vol.34.
- Ndifon C.O & Ndifon R.A. (2012), "Public Examination in Nigeria and Punishing Malpractice: Human Right Perspective." *British Journal of Arts and Social Sciences,* Vol. 5, No. 2
- Nwazi J. N. (2005), "Scope of Disciplinary Power of Nigerian Universities on Examination Malpractice Offences: *University of Ilorin vs Oluwadare* Revisited" *Ife Law Juris Review,* Vol. 2, Part 2.
- Nwokeocha, N. I. (2005), "Legal control of Disciplinary Action in Nigerian Universities." *Journal of Public and International Law.* Vol. 1. No. 1.

Ogbu, O. N. (2003), "Fair hearing, Domestic Tribunals and Allegations involving a Crime." *Nigerian Bar Journal*. Vol. 1, No2.

Ogbu, O. N. (2007), "Fair Hearing and Contract of Employment: The Discordant views of Nigerian Courts." *Zaria Journal of Private & Comparative Law*, A.B.U., Zaria. Vol. 1, No. 1.

Okonkwo, C.O. (1996), "Discipline, Nigeria University and the Law. Lagos": Nigeria Institute of Advanced Legal Studies.

Oretuyi S.A. (1984), "Discipline of Students: A Vice-Chancellor must observe the Rules of Natural Justice." *Nigerian Law Journal (FDP)* Vol. 12, No. 1.

Perkins C. J. (1998), "*Sylvester vs Texas Southern University*: An Exception to the Rule of Judicial Deference to Academic Decisions." *25 Journal of College & University Law*.

Robinson, S. (1994), "The Office of Visitor of an Eleemosynary Corporation: Some Ancient and Modern Principles." *18 University Queensland Law Review*

Sadler, R. J. (1981), "The University Visitor: Visitatorial Precedent and Procedure in Australia." *7 University of Tasmania Law Review*

Smith, P.M. (1981), "The Exclusive Jurisdiction of the University Visitor." *97 Law Quarterly Review*

Sornarajah. M. (1979), "Natural Justice, Fairness and Administrative Functions." *University of Tasmania Law Review*.

Stephen Ofei (1988) "Do Students have Rights? Second Order" (New Series) *African Journal of Philosophy* Vol. 1.No. 1.

Wade, H.W.R. "Judicial Control of Universities." *Law Quarterly Review*. 85.

Warren, A.S. (1957), "Dismissal of Students: Due Process." *Harvard Law Review*. Vol.70, 1407.

Yang, S. Y. (2009), "University vs Student: Challenging the Contractual Understanding of Higher Education in Canada", *Lex Electronica*, Vol. 14.

C. Internet Sources

Aduba, J. N., "Constitution Guarantees in Disciplinary Proceedings in Tertiary Institution," retrieved from http://www.researchgate.net/publication/40439853/_Constitutional_Guarantees_in_Disciplinary_Proceedings_in_Tertiary_Institution. Accessed on 2nd July, 2012.

Aduba, J. N., Kpareuzue A. and Angwe B., "Discipline of Students under Nigeria University Laws and its Implication on Litigation Management in the University of Jos" http://www.researchgate.net/publication/40439885_Discipline_of_Students_under_Nigeria_University_Laws_and_its_implication_on_Litigation_Management_in_the_University_of_Jos. Accessed on 2nd July, 2012.

Alimi, L.O., "Administrative Justice within the Framework of the 1999 constitution," retrieved from <http://www.alimiandco.com/publications/Administrative%2520Adjudication%2520%And%2520Disciplinary%2520Process%2520Within%2520The%2520Constitutional%2520Framework.pdf>. Accessed on 4th January 2014.

Dalhatu M. B., "Natural Justice and the Exercise of Administrative Powers," retrieved from www.Nadr.co.uk/articles/published. Accessed on 2nd July, 2013 at 10:08 pm.

Lee, A. B. (2010), "Student Challenges to Academic Decisions: Legal and Policy Issues," Rutgers University and Edwards Angell Palmer & Dodge, LLP http://www.Stetson.edu/law/academics/highered/home/medi/2002/Student_Challenges_to_Academic_Decisions_PPT.pdf&ved. Accessed on 4th January, 2014.

Maier, J. (2009), "Disciplinary and Academic Tribunals: Procedural Issues," *Hicks Morley Hamilton Stewart Storie LLP*, retrieved from <http://www.hicksmorley.com/hm/4DisciplinaryAndAcademicTribunalsProceduralIssuesPaper.pdf&ved>. Accessed on 13th October, 2014

Obanya, V.S., "Locating the Proper Forum for the Remedies of Aggrieved Students in Tertiary Institution in Nigeria," retrieved from <http://legalline.blogspot.com>. Accessed on 22nd August, 2014

Odeleye D. O. (2013), "The Doctrine of Natural Justice under Civil and Military Administrations in Nigeria," *Journal of Politics and Law*; Vol. 6, No. 2; 2013 ISSN 1913-9047 E-ISSN 1913-9055 doi:10.5539/jpl.v6n2p231.

Riggs, C. G. & Jarvis H. E (2012), "Review of Academic and Non-Academic Disciplinary Procedures at The University of Guelph," *Hicks Morley, Human Resources Law and Advocacy*, retrieved from <http://uoguelph.ca/vpacademic/documents/Review/Academic/And/Non-Academic/Disciplinary/Procedure/At/The/University/Of/Guelph/July/2012.pdf&ved>. Accessed on 13th October, 2014.

Rochford, F. (2005), "Claims Against a University: The Role of Administrative," *Review in Australia and the United Kingdom. Education and the Law*, Vol. 17, No. 1/2, doi:10.1080/09539960500165259.

Sokolow, B. A. (2001), "The Right to Counsel in Campus Disciplinary Hearings: How Much Process Is Due?," retrieved from <http://www.nchem.org>. accessed on 22nd August, 2014.

Uwauche, E.S., "Rethinking The Exclusive Jurisdiction of Nigerian Universities in Academic Matters," retrieved from <http://www.ajol.info>article>viewfile>. Accessed on 23th February, 2014

D. Conference Materials

Hon. Justice Kalu A. (Rt), (1987), NUC, Resource Management in the University System in Proceeding of the NUC/CVCIBC International Services ABU, Zaria Novs 9-10.

Nnaemeka-Agu, JSC (1992), 1992 Judicial Lectures: Continuing Education for the Judiciary, M.I.J. Professional Publishers Ltd. Lagos.

Oputa, JSC (1988), "The Place of the Judiciary in the Third Republic- A Comment" All Nigeria Judges' Conference, Abuja.

Popoola, A. O. (2014), LAW AND UNIVERSITY ADMINISTRATION IN NIGERIA: ISSUES, CHALLENGES AND PERSPECTIVES. Paper Commissioned for Presentation at the Executive Education Programme organized for Vice-Chancellors of Nigerian Universities by the Association of Vice-Chancellors of Nigerian Universities: Le Meredien Hotel Uyo, Akwalbom State.