AN APPRAISAL OF THE ROLE OF LAW IN COMBATING EXAMINATION MALPRACTICE: A CASE STUDY OF AHMADU BELLO UNIVERSITY, ZARIA

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FACULTY OF LAW
AHMADU BELLO UNIVERSITY, ZARIA

NOVEMBER, 2017

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A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE -LLM

DEPARTMENT OF PUBLIC LAW
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NOVEMBER, 2017

DECLARATION

I declare that the work in this thesis entitled "*An Appraisal of the Role of Law in Combating Examination Malpractice: A Case Study of Ahmadu Bello University, Zaria"* has been carried out by me in the Department of Public Law, Faculty of Law. The information derived from literature has been duly acknowledged in the text and a list of references provided. No part of this project was previously presented for another degree or diploma at this or any other institution.

Halima MUHAMMED _____ _____
LLM/LAW/9083/2011-2012 Signature Date

CERTIFICATION

This thesis entitled: "AN APPRAISAL OF THE ROLE OF LAW IN COMBATING EXAMINATION MALPRACTICE: A CASE STUDY OF AHMADU BELLO UNIVERSITY, ZARIA" by Halima Muhammed meets the regulations governing the award of the degree of masters of laws – LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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Dr A. M. Madaki Member, Supervisory Committee	_____ Signature	_____ Date
Dr. K.M. Danladi Head, Public Law Department	_____ Signature	_____ Date
Prof. S.Z. Abubakar Dean, School of Postgraduate Studies	_____ Signature	_____ Date

DEDICATION

This thesis is dedicated tomy husband, Mal. Badayi Ahmed, and also to my parents, Alh. MuhammedZubairu and HajiaRafatYakubuMuhammed fortheir love and support.

ACKNOWLEDGEMENTS

I am most grateful to Allah (Lord of the heavens and the earth) for this opportunity and His mercies and blessings.

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ABSTRACT

This dissertation entitled"An Appraisal of the Role of law in Combating Examination Malpractice: A case Study of Ahmadu Bello University, Zaria"is aimed at examining the existing legal regime governing examination malpractice in Nigeria in particular relation to the study of the rules in operation in Ahmadu Bello University. The sources of information relied upon for this research are based on statutes, judicial authorities, articles in journal publications, conference papers, internet and relevant text material on the subject matter. However, the statement of problem justifying this research is that, most often students challenge the disciplinary powers of institutions of learning in examination malpractice cases on grounds of lackof fair hearing thereby creating doubts in the minds of the public as to the effective application of the existing law. In other words, to the public, it seems as if there is no specific law on the subject matter, hence the reason for the challenge posited by the students. Thus, the objective of this research is to examine the adequacy or otherwise of the existing laws on the subject matter in relation to the practical implementation by universities in Nigeria. Nevertheless, this research found (among others) that higher institutions do not report cases of examination malpractice to the Nigerian police force before taking actions (which sometimes include expulsion) against the wrong doer and thereby forgetting that it is a criminal matter which cannot be handled exclusively within the confinement of the higher institutions. Finally, this research was concluded by recommending (among others) that students who commit examination malpractice should be handed to the police before taking any action; and the institutions must ensure that fair hearing is strictly adhered to in the use of administrative panels.

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TITLE OF DISSERTATION:

AN APPRAISAL OF THE ROLE OF LAW IN COMBATING EXAMINATION MALPRACTICE: A CASE STUDY OF AHMADU BELLO UNIVERSITY, ZARIA

FINDINGS:

i. There is no strict adherence to the provisions of the Penal Code/Criminal Code and Examination Malpractice Act regulating examination malpractice by institutions of higher learning because in most cases, these institutions do not report the matter to the Nigeria Police Force.

ii. Practically, institutions of higher learning do not give credence to the principle of fair hearing in their use of Administrative Panels to regulate examination malpractice as shown in the case of *University of Ilorin vs. Oluwadare* (2009) All FWLR (pt.452).

iii. Currently, practice in institutions of higher learning with particular reference to A.B.U. Zaria is to the effect that students found to be involved in examination malpractice are withdrawn on grounds of breach of matriculation oath which is an act of circumventing the proper application of the law governing examination malpractice (that is the Examination Malpractice Act and the Penal/Criminal Codes).

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Law is an instrument of social control and criminal law above all has the greatest impact on the individual's way of life[1]. When criminal law is set out as a means of correction and control, as is the case under this thesis (where the role of law in the combat of examination malpractice is examined), it takes on a functional approach. It is therefore not just a question of what are the substantive provisions of law with respect to such conduct, but questions relating to the sociological and criminological aspect of law as well as the legal analysis of the efficacy of these laws are all pertinent. This fact led *Okonkwo* C. O to state that:

> *The more, fundamental question than what conduct is criminal are for instance, what is a crime? Why is a particular type of conduct made criminal? What is the object of the criminal law? How does the community react to the criminal act, why does it react the way it does? These and many other questions inevitably arise from a consideration of the criminal law……. One cannotignore its sociological conduct, because to every criminal trial (though it is not always recognized by the participants) some of these issues are present.*[2]

This present research therefore takes the path of a more analytical insight which goes beyond an answer to the question of what is the law on examination malpractice. The research seeks to examine the functional and sociological aspect of the laws on examination malpractice with a view to assess the effective use of these laws to tackle the problem.

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1. Karibi Whyte A.G (2005) History and Sources of Nigerian Criminal law. Spectrum books limited. Ibadan. p. 265
2. Okonkwo C.O and Naish (2009) Criminal Law in Nigeria, Spectrum books limited, Ibadan, Second Edition p. 18

The research topic: "An Appraisal of the Role of Law in Combating Examination Malpractice in Nigeria: A Case Study of *Ahmadu Bello* University*, Zaria",* is such that encompasses many concepts. One of such concepts central to this research is the concept of "law". The term does not have a universally accepted definition but has rather been defined differently with more universal characteristic that can be discerned through philosophical analysis.[3]

Scholars of law provided definitions from different perspectives which led to the emergence of schools of thought discerning every group's perspective. One of such schools, the Positivist School, headed by John Austin defined law as the command backed by threat of sanctions from the sovereign, to whom people have the habit of obedience.[4]The other major school of thought in the definition of laware the Naturalists. The scholars under the Naturalist School define law from the natural and moralistic perspective with regards to values and morals. Concepts like justice, liberty, and human right are within the board spectrum of moral values and this forms part of the naturalist scheme of moral values which can either be presented as a fundamental substratum underlying or as body of rules, principles over-riding positive law of a state.[5] Natural law scholars as Jean-Jacques *Rosseau* says law reflects essentially morals and unchangeable laws of nature.[6] likewise, Lon *Fullar* an outstanding Naturalist said that the connection between law and morality is a necessary one and that there is need for rules of law to comply with internal morality[7].

In relation to our research, the definitions above reflect one of the essences of the research because of the functional role of law identified in the definitions. Thus, *Karibi* Whyte opined that it is the rights, duties and privileges prescribed by the society which determine the conduct that

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3. Stanford Encyclopedia of Philosophy, "The Nature of Law http://platostandford. 27th august, 2015 at 5.45pm
4. Lord Llyod of Hamstead (1976), Introduction to Jurisprudence, Steven & Sons, London. Fourth Edition p.39.
5. Ibid p.93
6. Ibid pp. 88-89
7. Ibid

should be proscribed or excused and conduct that should be permitted.[8] In addition, he stated that the formulation of legal rules is to a very large degree based on ethical consideration and these on their part have their root in the religious, political, economic and moral foundation of the society.[9] It follows therefore, that law is not an empty set of rules without focus, but actually created deliberately to reflect the values and needs of the society. Thus, *Dambazau* A.B submitted in this respect that: "we can equally submit from the analysis of law that law provides the conceptual framework for the development of every society by providing the set of rules with which the society can bring about the needed and desired change".[10]

The Scholars shown above expounding the meaning and nature of lawdidanalyse the concept from the point of view of societal values, ideals and development. Law is thus perceived as an instrument of societal development and a means to achieve desired goal. If the desired change or goal is the correction of a societal problem, it means that such correction is the goal/object set for law. Therefore, in relation to this research, the object/ goal of law is to correct/ control the societal anomaly of examination malpractice.In order for law to attain this objective, there are factors which go beyond the abstract provisions of the law and they must be considered for an adequate understanding of this topic of research. The importance of this type of consideration was clearly reiterated by *Dambazau* A.B when he stated that: "it is therefore important to always relate law to the socio-cultural environment in which it operates rather than relying solely on its strict legal interpretation"[11]. Thus, the relevant point here is that, in view of the functional role of law under this research, it is important to go beyond the abstract strict legal provisions of the laws on examination malpractice. The research cannot appraise the role of law in controlling the

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8. Karibi Whyte A.G (2005). op cit. p.263
9. Ibid
10. Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. University Press Plc. Ibadan. p.14
11. Ibid p.1

crime of examination malpractice if the analyses of those factors which can affect the control of the problem are not put into consideration. Some of these factors have been put forward by legal scholars as follows. One of such factor is the criminological aspect of law. The study of criminology is relevant in ascertaining the extent of the use of law in any crime control.[12] This is largely because criminology is afield which is concerned with the study of delinquent and criminal behaviour, crime control and prevention, and criminal treatment and rehabilitation.[13] A careful study of criminology as it relates to the problem of examination malpractice would facilitate an understanding of the problem and the measures to bring about control/ prevention of the crime as it is our aim under this research.

Another factor which needs to be analysed in the consideration of the role of law in the control of the problem of examination malpractice is the socio-cultural factor which can be discernable from the society's economic, religious, political and moral spheres. Thus, *Karibi*Whyte stated that: the formulation of legal rules is to a very large degree based on ethical consideration, and these on their part have their roots in the religious, political, economic and moral foundation of the society.[14] In essence, the criminal law of a society is a reflection of the society's culture, which is why it is important to put these socio-cultural factors into consideration, so that, we may find out if the law can control the societal problem it was created to tackle.

Okonkwo C.O suggested some factors which can affect any criminal law and therefore they need to be understood. He stated these factors to be: the context of criminal law; criminal law and its administration; and judicial interpretation of the crime".[15]In our enquiry into the question of efficacy of the law on examination malpractice, we have to carry out the enquiry from some

12. Sirohi J.P.S (2007) Criminology and Penology. Allahabad law Agency, Faridabad. 6th Edition p.13
13. Ibid
14. Karibi Whyte A.G (2005) op. cit p.263
15. Okonkwo C.O (2009) Op cit. p.23

perspective and foundation. An analysis of the context of the law and its judicial interpretation is an index to show the ability of such law to control the crime in question.

Examination malpractice being the problem for which this research seeks a solution through law is also worthy of some explanations. It has been noted that examination malpractice is now a prevalent practice in Nigeria which cuts across the various levels of the education sectorand the problem has attained a frighteningly sophisticated proportion to the extent that it is just a little short of being institutionalized.[16] Examination malpractice has plugged the nation into dare problems: there is appalling falling standard of education; increase in corruption in public offices; creation of economic losses to the nation; culture of dishonesty and impunity; and inability of graduates of institutions to use knowledge acquired to get jobs.[17]

Historically, the first reported case of examination malpractice in Nigeria was in 1914, when there was leakage of question papers in the Senior Cambridge Examination.[18] And since 1914, the menace has been on the increase with officially reported cases within the West African Examination Council (WAEC) alone in 1963, 1967, 1970, 1973, 1974, 1979, 1985, 1987, 1991,1992 ,1993 and 1995.[19] Particularly, there was serious case of leakage of WAEC question paper in 1997 and the outcry in the wake of this incident led to the setting up of tribunal by the Federal Government to investigate the mass leakage and suggest possible measures to forestall future occurrence.[20] The Tribunal recommended severe punitive measures and as a follow up, the Federal Government promulgated the Examination Malpractice Decree No. 20 of 1984 and later No. 33 of 1999.[21] The 1999 Decree was adopted as an Act of the National Assembly upon the

16. Adebayo Hauwa. The Nature and Characteristics of Examination Malpractice Among Nigerian Tertiary Institution. http://diethauwa blogspot.com on 8th November, 2014 at 1.50pm
17. Ibid
18. OluAina (2009) Assessment and Contemporary Issues in Education. O.A.U Press, Ile-Ife p.27
19. Nsisong A. Udoh. Remote Causes and Counseling Implication of Examination Malpractice in Nigeria. www.studentpluse.com on 6thNovember , 2014 at 3.30pm.
20. Ibid
21. Ibid

nation's return to democratic rule. The Act is now cited as Examination Malpractice Act, Cap E15, Laws of the Federation of Nigeria.

In addition to the Act above, there are provisions in the various Criminal Code Laws and Penal Code Laws of the various States in Nigeria with respect to offences such as cheating and impersonation which can be used in the prosecution of suspected cases of examination malpractice. This was the court's position in the case of *NnamdiAzikwe* University vs *Nwafor*[22]. Likewise, there are internal rules/regulations created to curb examination malpractice in the various higher institutions of learning and examination bodies like WAEC, NECO and NABTEB.

In view of the foregoing, we can submit that there are laws/rules created as measures by Government to bring about the control of examination malpractice. The problem which forms the focus of this research is therefore not the problem of non-availability of relevant laws /rules to curb examination malpractice; rather, our focus is on those problems which have forestalled the effective use of available laws / rules.

1.2 Statement of Problem

In a bid to use law to control and combat the menace of examination malpractice in Nigeria, laws and rules have been put in place. These are the Examination malpractice Act;[23]some provisions under the Penal and Criminal Code Laws of the various States of the federation which cover some offences committed during examinations; and the various institutional/ administrative rules/ regulations of institutions of higher learning or examination bodies for the control of

22. (1999) NWLR (pt. 585) 116 CA.
23. Cap E15, Laws of the Federation of Nigeria (LFN), 2004.

examination malpractice.[24] Despite the availability of these laws and rules, the problem of examination malpractice is still prevalent and there are even problems which have hindered the effective use of these laws and rules. There is the problem of lack of application and enforcement of available laws on examination malpractice which is caused by lack of awareness of the fact that examination malpractice is a crime which ought to be reported to the police for further investigation and possible prosecution. It is as a result of the inability of institutions to report these cases to the police that prosecution rarely take place and thus, laws on examination malpractice do not get to be applied.

There is a second problem which involves students' claim to right to fair hearing. These students claim that institutions of higher learning are not vested with powers to determine cases of examination malpractice against them being criminal in nature because it would amount to a violation of their constitutionally guaranteed right under section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria.

This challenge by students of the use of institutional disciplinary powers in cases of examination malpractice creates uncertainties as to the exact extent of the university's exercise of its disciplinary powers in examination malpractice cases.

1.3 Aim and Objectives of the Research

The aim of this research is to assess the extent to which laws and rules on examination malpractice have been able to bring about the desired control of the menace of malpractice by

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24. For instance, in A.B.U Zaria, there is the Examination Management / Regulation created by the Senate and signed into use on 28th May 2011.

examining those problems which have forestalled the effective use of theselaws and rules. In view of the aim above, the objectives of this research are:

i. To analyse laws and institutional rules on examination malpractice in consideration of their effectiveness and responsiveness to the problem of examination malpractice.

ii. To examine the problem of examination malpractice as prevalent in Nigeria and particularly *Ahmadu Bello* University, *Zaria* with a view to looking at the use of law to combat the problem.

iii. To proffer measures needed to combat examination malpractice through the effective use of the available laws and rules.

iv. To examine the role of fair hearing in the administrative proceedings for examination malpractice cases in universities and determine the exact scope of the use of higher institutions' disciplinary powers in cases of examination malpractice.

v. To examine the object of criminal law by analysing non- custodial alternatives to punishment like probation and community service for young offenders such as university students as provided under the Administration of Criminal Justice Act, 2015.

1.4 Justification of the Research

The problem of examination malpractice especially in our higher institutions has created glaring problems in the Nigerian society. The problem has negatively impacted on our process of certification, the standard of education and the quality of graduates from our institutions. Thus,

the need to seek for effective ways to control the menace through law is very pertinent.This research is therefore useful to institutions of learning, government, examination bodies and student as a form of awareness about the seriousness of examination malpractice as a crime under the Nigerian law which is meant to be combated through the application of relevant laws.

1.5 Scope and limitation of Research

This research is restricted to the laws and regulations on examination malpractice in Nigeria with particular reference to *Ahmadu Bello* University, *Zaria*. It relates to examining the problem of examination malpractice vis- a- vis the extent of the effectiveness of available laws in the control of the problem.The scope of this research is also to study the following:

i. The measures taken by government to eradicate examination malpractice in Nigeria;
ii. Problems that have forestalled the application of relevant laws on examination malpractice;
iii. Issue of fair hearing in the determination of examination malpractice cases.

This research faces the limitation of scarcity of literatures on the subject matter of law and examination malpractice.

1.6 Research Methodology

The research adopts the use of the doctrinal method of research by reading through relevant books, statutes and cases on the subject matter of laws on examination malpractice. After

reading through, we shall make necessary deductions and analysis with close reference to the topic of research. Conclusions and suggestions would be drawn afterwards.

In addition to the above, empirical method would be employed through interview with stakeholders who can facilitate an understanding of the problem of the research. The responses gathered from the interviews would be analysed for use.

1.7 Literature Review

The topic of this thesis involves a review of examination malpractice laws and Rules from such perspective as to give an insight into the adequacy, efficacy, workability of these laws and those problems which have hindered their effective use. In view of the above, literatures which have analysed the various contexts of law and crime, legal analysis of the laws /Rules on examination malpractice and the subject matter of examination malpractice are all relevant to this study. Some of these essential literatures are reviewed below.

Lord Lloyd of Hamstead[25]analysed the meaning of law in his book and expounded views of many scholars who perceived law from many different perspectives. He stated that Hans Kelsen, of the Positivist school of law developed the pure theory of law and as a theory of law, it is exclusively concerned with the accurate definition of its subject matter.[26] It endeavours to answer the question, what is law? But not the question what ought it to be. It is a science and not a politics of law. The theory endeavours to free the science of laws from all foreign elements likejustice and value.[27] In addition, Lord Lloyd stated that John Austin who is also a positivist sought to show what law really is as opposed to moral or natural law notion of what law ought to

25. Lord Llyod of Hamstead (1976), Introduction to Jurisprudence, op cit. pp. 79-308
26. Ibid p.307
27. Ibid

be. To Austin, the command of the sovereign is essential in knowing what law is. And that international law and constitutional law and customs are mere positive morality.[28] Lord Lloyd also analysed the other school of thought in the definition of law. He stated that natural law at some period its appeal may have been essentially religious or supernatural, but in modern times, it has formed an important weapon in political and legal ideology.[29]Essentially, it has afforded a valuable aid to the powers that be desirous of justifying the existing law and the social and economic system it embodies. For by regarding positive law as based on higher law ordained by God or by divine natural person, the actual legal system thus acquire a sanctity it would not otherwise possess.[30]

The analysis on the meaning and nature of law as carried out in the literature above shall avail us of a better understanding of the role of law as perceived under this research. Under this research, law is used in its functional aspect, because law is expected to play a pivotal role in the control of examination malpractice. It follows therefore that an explanation of law in its functional dimension shall enhance our task of appraising the functional role of law under this research.

The work of *Okonkwo*C.O and*Naish*[31] is another relevant literature to this research because it deals with issues such as the sociological context of law and crimes,and these are issues for analysis in this research. The authors stated that the more fundamental question which must be asked for a full appreciation of the significance of criminal law is questions like: what for instance is a crime? Why is a particular type of conduct made criminal? What is the object of the criminal law? How does the community react to criminal law and why does it react the way it does? These and many other questions inevitably arise from a consideration of the criminal

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28. Ibid pp.178 and 179.
29. Ibid pp.79-81.
30. Ibid.
31. Okonkwo C. O and Naish (2005) Criminal Law in Nigeria. Op cit. pp. 18-42

law[32]. That one cannot ignore the sociological context of law. They went further to look at those factors which affects criminal law from three contexts. They looked at the legislature and the context of criminal law; the criminal law and its administration, and finally the judicial interpretation of crime.[33] In the same literature, they looked at the meaning of crime and submitted thereby that the possibility of punishment is not the only distinguishing mark of a criminal trial, but it is probably the most important and so the criminal code singles it out when in section 2 it defines offences as:" act or omission which renders the person doing the act or making the omission liable to punishment under the code".[34] He also stated that the object of criminal law being the punishment of a convicted offender, it is important to ask what is the object of punishment. [35] Thus, the link between crime and punishment is established, and the necessity to understand the principle and object of both so as to ascertain their effectiveness in any particular case cannot be under estimated in any study which involves an enquiry into the efficacy of a particular criminal law.

The literature above shall facilitate our understanding of those factors which affects the efficacy and enforcement of the laws an examination malpractice in Nigeria. Thus, the present research seeks to analyse laws on examination malpractice from some of the context presented in this literature. The contexts of criminal law and administration with that of criminal law and judicial interpretation would particularly be useful to our research. This research is about the efficacy of the relevant law and therefore any insight into the administration of criminal law and its judicial interpretation is relevant to our enquiry.

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32. Ibid p. 18.
33. Ibid p.23.
34. Ibid p. 19.
35. Ibid p. 28

In another literature expounding the meaning, nature and causes of crime, *Abdulrahman BelloDambazau* examined the meaning of crime and its criminological perspective in his book[36]. He examined the different definition of crime from a criminological perspective from various legal scholars. He stated that while the classical school dealt with the legal definition of crime, the positivist school defined crime in the context of disease by seeking the definition of crime in the criminal, not the criminal law.[37] Likewise, from the social context, *Durkheim* defined crime as a social product, determined by social conditions, capable of being controlled only in social terms.[38]*Dambazau*however defined crime in his own words as a violation of the rules agreed to be respected by all members of the society and upon which the rest members of the society mete sanctions upon those guilty of the violation.[39] The Author also looked at the function of law and stated that a major objective of criminal law is the prevention and control of crime. Crime is considered a public wrong or wrong against society. When a crime is committed therefore, it is the state that suffers. It is for this reason that the state, rather than the individual prosecutes and punishes the accused or person found guilty.[40] In addition, while explaining the function of law, the Author identified criminal law as an instrument of education as well as coercion, shaping behaviour through its moral as well as through fear of punishment. That when the law is educating effectively, people conform to it because they want to; law-abiding behaviour becomes

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36. Dambazau A.B (2011) Criminology and Criminal Justice, Spectrum book limited.Ibadan.pp. 48-98.
37. Ibid p. 49.
38. Ibid p.49.
39. Ibid p. 50.
40. Ibid p. 55.

a matter of habit, of voluntary choice, rather than a means of avoiding punishment. He further stated that in a large and complex society ….. respect of law….. is a more effective instrument of social control than fear of punishment.[41] The text also looked at the causes of crime and the various theories put forward by legal scholars. He examined the following as those factors identified as causing crime. Biogenetic factor, psychological factor, personality theory, social and environmental factor like poverty, unemployment, corruption and drug abuse. The author however submitted that criminal behaviour cannot be explained by a single factor because humanbehaviour is a complex interaction between genetic, environment, social, psychological and cultural factors.[42]

The literature above examined many factors which are of concern to our research. Factors such as the functional definition of crime, causes of crime and the need to create awareness and education with respect to offences so as to enhance effectiveadherence to the criminal law. This research involves an understanding of the meaning and nature of crime, its causes and how to bring about control of criminal behaviour. It is therefore of the essence to consider literatures such as this one in our effort to understand these issues.

In another text by *Abdul-RahmanBello Dambazau*[43], he defined law and crime by analyzing the relationship between the two. He stated that law is very creative in its capacity to

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41. Ibid p. 56.
42. Ibid p. 57.
43. Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. Op cit. pp. 1-35.

develop and change.[44] He defined law as the collection of rules identified by the sovereign, with the reciprocal recognition by the people being governed and enforced through the machinery of justice.[45] He also looked at the function of law and submitted that if by function we mean purpose, than law exist solely for the protection of society to the extent of economic, political, social and moral survival.[46] He went further to analyse each of the above factors as it is related to law. *Dambazau* specifically looked at the role of punishment in the enforcement of any law and stated that there is no law without punishment or no punishment without law (*nullapoena sine lege*) because punishment is one of the basic mechanism for the enforcement of law.[47] The Author looked at the definition of crime while stating that any discourse on crime prevention and control must necessarily be proceeded by a definition of the phenomenon called crime. Thus, he defined crime as something which threatens serious injury to the community or something committed with evil intent.[48]This literature is important to our research as it affords us the basic knowledge of law, crime and the functions of law which all form the foundation of our research. Likewise, because this research shall involve an analysis of the political, social, economic and moral perspective of the law on examination malpractice, this literature shall be useful in this direction.

Chinua Asuzu deals with the issueof academic discipline in matters which are criminal in nature like examination malpractice in his book.[49] He analysed the use of administrative tribunal /

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44. Ibid p. 4.
45. Ibid p. 4.
46. Ibid p. 14.
47. Ibid p. 21.
48. Ibid p. 23.
49. Chinua Asuzu (2010) Fair Hearing in Nigeria, Malthouse press limited, Surulere, Lagos. pp. 131-171

panels in matters of examination malpractice. The author considered several cases, particularly the case of *Garba* vs University of *Maiduguri*[50] and the legal principles laid down by the Supreme Court. He stated that the rule of prosecution before discipline is inescapable from the reading of *Garba*'s case[51] and that of the Supreme Court in *Dongtoe* vs Civil Service Commission, *Plateau* State[52]where the court affirmed and restated the general principle enshrined in the constitution and decided by our courts, that where there is allegation of criminal wrong against a person, the jurisdiction to determine the allegation (sic) is vested in the court and the exercise of such jurisdiction cannot be usurped by any administrative tribunal.[53] Thus, the Author views as correct law the principle that when the matter before any administrative panel (like the University disciplinary committee) involves a crime, then their must first be a determination of the matter by a court of law before any disciplinary measure can be carried out against such a person. And specifically, the author reiterated the need for fair hearing in disciplinary cases of students and submitted that the cancellation of academic results on ground of cheating is a determination within the intendment of section 36(1) of the constitution and therefore, the candidate must receive fair hearing before his examination results are cancelled.[54]

Chinua's textabove analyses the disciplinary powers of institutions or examination bodies in matters of examination malpractice and this type of analysis is the focus of our present research. Thus, the literature shall enable us see the judicial perspective of the use of institutional rules and Committees for cases of examination malpractice.

In an article written by C.O *Ndifon* and R.A *Ndifon*[55] the problem of examination malpractice

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50 (1986) NWLR (pt.18) 550

51 Chinua Asuzu (2010) Fair Hearing in Nigeria. Op cit p.149

52 (2001)NWLR (pt.717)132

53 Chinua Asuzu (2010) Fair Hearing in Nigeria. Op cit p.155

54 Ibid p.135

55 Ndifon C.O and Ndifon R.A. Public Examinations in Nigeria and Punishing Malpractice: Human Right Perspective. http:// www. . bjournal. Co. uk /BJASS, 6th November , 2014 at 11.16 am.

wasanalysed from a legal perspective. The paper explored the guarantee of fair hearing in the use of institutional rules by institutions of higher learning and examination bodies for cases of examination malpractice. The writers noted that until the mid-seventies, punishment resulting from any act of indiscipline including examination malpractice was largely an internal matter of the respective institutions and Bodies but that towards the end of the seventies, those affected by the decision of these bodies / institutionsbegan to challenge the outcome in court, mostly on grounds of procedural unfairness or non-compliance with laid down rules.[56]The article also analysed court cases/interpretation with respect to the crime of examination malpractice. The writers looked at the issue of fair hearing in administrative procedure and submitted that theissue of fundamental right is central to any quasi-judicial determination inNigeria.[57]The writers also reviewed cases of examination malpractice like University of *Uyo*&ors v.*LindaOnyebuchiEssel*[58] and University of *Ilorin* v.*Oluwadare*[59]. In *Essel's*case, the court held that any accusation or allegation of examination malpractice is a serious criminal charge…… therefore it is definitely not within the domestic jurisdiction of the two panels set up by the university.They also considered the case of University of *Calabar* v*Esiaga*[60]where the Supreme Court acknowledged the fact that the university had the power to discipline a student within its internal rules even where the conduct involves some element of crime. The writers submitted that the removal of domestic jurisdiction of the university to entertain any case of misconduct tainted with criminality against a student held until *Esiaga'*s case and after a consideration of the

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56 (1986) NWLR (pt.18) 550
57 Ndifon C.O and Ndifon R.A op cit. pp. 1-10
58 (2001)NWLR (pt.717)132
59 (2003) 3 NWLR (pt 414) 419.
60 (2004) 6 MJSC.

Supreme Court decision in the case, they stated that the power to discipline an earring individual comes with its own responsibility and for the purpose of this paper it is the obligation, and indeed the duty to accord the culprit or erring individual a fair hearing.[68] The matter analysed under this article is of utmost importance to our research in view of our statement of problem. One of the problems for analysis under this research is the issue of student's challenge of their institution's disciplinary powers in cases of examination malpractice. This problem has been analysed in this article and would therefore be a valuable tool for our own analysis.

All the literatures reviewed above are relevant to our research by virtue of their analysis of such matters which shed more light on the topic of research and its statement of problem. The literatures delved into matters such as the meaning of law and crime, the sociological/ criminology context of crime, natureof the crime of examination malpractice, judicial interpretation of institutional use of their internal rules/ regulations with respect to cases of examination malpractice. All these matters discoursed in these literatures are also matters for analysis under this research. However, as distinct from the work of the Authors above, this research goes beyond an analysis of just these issues in isolation. This research goes further than these literatures to see how all these matters have hindered or affected the application and enforcement of the available laws/ rules on examination malpractice. This research is a specific focus on those problems which have affected the application of the laws/ rules on examination malpractice especially as presented in *Ahmadu Bello* University, *Zaria.*

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61. Ndifon C.O and Ndifon R.A. Public Examinations in Nigeria and Punishing Malpractice: Human Right Perspective. http:// www. . bjournal. Co. uk /BJASS, 6th November , 2014 at 11.16 am.

1.8 Organizational Layout

This dissertation is divided into five chapters. Chapter one gives a brief overview of what the research entails and lays the foundation for further analysis. It captures the basis and focus of the research topic; the problem which led to the research; the necessity and the relevance of the research are all explained under this chapter. Literatures related to the topic are briefly reviewed, the scope of the research and methodology adopted are also explained under this chapter.

Chapter two of the dissertationlooks at the nature of examination malpractice especially as a crime under the Nigerian law. The chapter also discusses the laws and rules created to curb the problem of examination malpractice. In addition, it looks at the meaning of crime and the link between crime and punishment as a tool for crime control and prevention.

Chapter three entails an examination of an actual situation of the use of law/ rules to control the menace of examination malpractice. The chapter makes particular reference to*Ahmadu Bello* University, *Zaria* and looks at the application of relevant laws and rules; assessment of these laws and rules; and examine the problems associated with the law/rules.

Chapter four examines the problem of student's challenge of their institution's disciplinary powers in matters of examination malpractice on grounds of fair hearing as a matter for legal critique discoursed under these two headings: the disciplinary powers of institutions of higher learning to determine matters of examination malpractice; and the legal safeguards of students' fundamental right to fair hearing in disciplinary matters.

Chapter five is the conclusion of the research. The chapter contains summary of the work, the findings made under the research, suggestions and recommendations.

CHAPTER TWO

LEGAL FRAMEWORK FOR COMBATING EXAMINATION MALPRACTICE IN NIGERIA

2.1 Introduction

Examinations are administered for certain purposes and that is why *Alutu* defined examination as a process of measuring how much knowledge a student of an institution of learning has acquired exposing him or her to definite course of instruction.[1]It becomes clearer that some of the purposes include the evaluation and measurementof the learning processes. Examinations have also been said to be, till date, the best tool for an objective assessment and evaluation of what learners have achieved after a period of schooling.[2] Thus, in view of the importance of examination as highlighted above, its processes ought to be such as to ensure its credibility and reliability. Unfortunately, malpractices have over the years marred examination processes while cutting across all levels of our education including institutions of higher learning.[3] It is therefore, as part of measures to control the menace that the government of Nigeria uses the instrument of law to prohibit certain acts as offences of examination malpractice. Thus, under this chapter, our focus is to enquire about those legal instruments created to curb the problem. Thus, the Federal Government of Nigeria enacted the Examination Malpractice Act.[4] In addition, there are provisions in the Criminal Code and Penal Code Laws of the various states in Nigeria which prohibits acts such as cheating & impersonation and these acts have been held by the courts to constitute examination malpractice when committed during examinations.[5]There are also

1. Adebayo Hauwa. The Nature and Characteristics of Examination Malpractices Among Nigerian Tertiary Institutions. http://diethauwa.Blogspot. Com. On 6th November, 2014 at 2.10pm.
2. Pat P. Iwebo, "Examination Malpractice: Dangers, Consequences and Way Forward". In: The Sword, page 41, Vol. 1 No.2 Oct. 21 – Nov. 18, 2013.
3. Adebayo Hauwa. The Nature and Characteristics of Examination Malpractices Among Nigeria Tertiary Institutions. Op cit.
4. Cap E15, LFN, 2004
5. In the case of Nnamdi Azikiwe University (NAU) v. Nwafor (1999) NWLR (pt 685) 116 CA, the Court held that the provisions of the criminal code law of Anambra State on cheating was applicable in a case of examination malpractice .

institutional rules created internally by various institutions of higher learning and examination bodies for the internal control of their examinations which are being used to prohibit examination malpractice.[6]

In view of the aforementioned, our focus in this chapter is an analysis of the various laws/rules with respect to examination malpractice and those issues which are related to an understanding of the provisions of these laws and rules. In order to examine and analyse these legal framework, the chapter shall look at the subject matter of examination malpractice in terms of its history, types and nature. In addition, we shall see those acts which have been criminalized as examination malpractice and what it entails to brand such acts as crimes by looking at the meaning of crime and the essence of punishment in the determination of those acts which constitute crime.

2.2 Examination Malpractice in Nigeria.

2.2.1 Meaning and nature of examination malpractice

Examination malpractice has been defined variously by many scholars and educationists. *OluAina*defined it as:"any irregular behaviour exhibited by candidates or anybody charged with the conduct of examination".[7] The West African Examinations Council (WAEC) in 2003 defined examination malpractice as:"any irregular behaviour exhibited by candidates or anybody charged with the responsibility of conducting examination in or outside the examination hall, before, during or after such examination has been conducted".[8] Salami defines it as: "an improper and dishonest act associated with examination with a view of obtaining unmerited

6. For instance in A.B.U Zaria there is the Examination Management/Regulations created by the institution's Senate for the control of its examination.
7. OluAina (2009). Assessment and Contemporary Issues in Education, OAU Press Limited, Ile – Ife. p. 27
8. Adebayo Hauwa, The Nature and Characteristics of Examination Malpractice among Nigerian Tertiary Institutions. Op cit. pp.1-2

advantage".[9]While *Shonekan* defines it as "any act of omission or commission that contravenes the rules and regulations of the examination body to the extent of undermining the validity and reliability of the tests and ultimately, the integrity of the certificate issued".[10] Furthermore, the Examination Malpractice Act defines it as: "an act which constitutes an offence under the Act".[11]After a careful consideration of the various definitions above, we can submit that examination malpractice means any wrong doing related to the conduct of examination which contravenes laid down laws/ rules created to bring about control and due administration of the examination.

The effect of examination malpractice to any society is such that it destroys the essence and rudiment of education. The problem of malpractice also has its social, economic and moral effects. Malpractice brings about economic wastage in terms of cost of buying examination forms and school fees that would end up to be of no use because of the cancelled results or expulsion of the student.[12]Also economic waste in the form of opportunity cost to the nation and socially, the actualization of the goals of education will continue to be a mirage if the scourge of examination malpractice is not eradicated.[13] Morally, malpractices lead to loss of credibility because a country that becomes noted for examination malpractices losses international credibility.[14]In addition, malpractice leads to corruption in the society because if the problem continues to be endemic, as leaders of tomorrow who have gone through a school system characterized by academic fraud and dishonesty, the youths of the country will sow and nurture this fraudulent behaviour in any organization they find themselves.[15]

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9. Uzoigwe G.O, Corruption in Education and Assessment System: The WAEC Experience in Nigeria. http://www.raea.inf on 10th November, 2014 at 10.30 am.
10. Ibid
11. Section 19 of the Examination Malpractice Act, cap E15 Laws of the Federation of Nigeria(LFN).
12. Pat Iwebo, "Examination Malpractice: Dangers, Consequences and Way Forward". Op cit. p.41
13. Ibid
14. Ibid
15. Ibid

Historically, the first publicly reported case of examination malpractice in Nigeria occurred in 1916 when there was leakage of question papers in the senior Cambridge examination[16]. Since then, the menace has been on the increase. Within West Africa Examinations Council alone, there were officially reported cases of malpractice in 1963, 1967, 1970, 1973, 1974, 1977, 1979, 1981, 1985, 1987, 1991, 1993 and 1995.[17] The first serious case of examination malpractice in Nigeria was the leakage in 1977 of the West African Examinations Council (WAEC) question paper for the West African Examinations (*Onyechere*, 1996)[18]. The outcry of WAEC in the wake of this incident led to the setting up of a tribunal by the Federal Government of Nigeria to investigate the mass leakage and to suggest possible measure to forestall future occurrence. The tribunal in its report recommended severe punitive measures. And as a follow up, the federal government promulgated the Examination Malpractice Decree No 20 of 1984 and later No 33 of 1999 in which severe punishment against perpetrators of examination malpractice were clearly enshrined.[19] It is the 1999 decree that is now adapted as an Act and cited as the Examination Malpractice Aet.[20]The Examination Malpractice Act is applicable to all cases of examination malpractice in Bodies established for purposes of examination and this includethose cases from higher institutions of learning like A.B.U *Zaria.* This is by virtue of the provision of section 19 of the Act. The section provides that the Act is applicable to examinations conducted by examination bodies and also defined examination bodies to be, any body established by government to conduct examination.

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16. OluAina (2009) Assessment and Contemporary Issues in Education. Op cit. p 27
17. Ibid
18. Nsisong A Uhoh Remote Causes and Counseling Implication of Examination Malpractice in Nigeria http://www.studentpulse. Com on 9th November, 2014 at 10.30am.
19. Ibid
20. Cap E15, LFN, 2004.

The menace of malpractice is also prevalent in our institutions of higher learning as shown by the sample statistic of students expelled, rusticated and those warned at A.B.U *Zaria* between 2009 and 2014 asfollows:

Academic Session	**No. of Cases for expulsion**	**No. of Cases for Rustication**	**No. of Cases for warning**
2009/2010	25	30	9
2010/2011	18	28	3
2011/2012	27	32	2
2012/2013	16	21	2
2013/2014	19	22	1

Source: Examination Malpractice Records at A.B.U *Zaria* Academic Office obtained on 27th February, 2015.

2.2.2 Types of Examination Malpractice

For the purpose of our research, we shall consider the categorization provided under the Examination Malpractice Act and that of*Ahmadu Bello* University, *Zaria* as provided under the institution's Examination Management/ Regulations. The Act provides for the following types of examination malpractice in sections 1 all through to 12:

i. Cheating at examination;
ii. Stealing;
iii. Impersonation;

iv. Disorderliness ;

v. Disturbance at examination ;

vi. Misconduct at examination;

vii. Obstruction of supervisor;

viii. Forgery of result slip;

ix. Breach of duty;

x. Conspiracy, aiding etc.

The definitions of these acts are also provided under the Act as follows:

i. Cheating at examination: Section (1) (a) to (d) defines it as, when a person who in anticipation of, before or at any examination by any fraudulent trick or device or in abuse of his office or with intent to unjustly enrich himself or any other person procures any question paper produced or intended for use at any examination, or procure from or induces any other person to deliver to himself or another person any question paper intended for use at any examination, or buys, sells, procures or otherwise deals with any question paper intended for use or represented as a genuine question paper.

ii. Stealing: Section 2 of the Act defines this type of malpractice as when a candidate who at examination, by any fraudulent trick or device or with intent to cheat or secure unfair advantage for himself or any other person, steals or otherwise appropriates or takes, a question paper, an answer sheet or a script of any other candidate commits an offence.

iii. Impersonation: defined under section 3 of the Act as a person who at an examination falsely represents himself to be a candidate sitting for the examination; or writes or attempts to write a paper in the name of some other person.

iv. Disorderliness during examination: defined under section 4 of the Act as a candidate, at an examination, who leaves the examination hall or any other place appointed for the examination and mixes up with any other with intent to cheat or secure any unfair advantage for himself or any other person.

v. Disturbance at examination: defined under section 5 as a person who, at or near examination hall or any other place appointed for an examination has in his possession any offensive weapon or other materials or uses any other person to act in a disorderly manner for the purpose of disrupting the conduct of an examination or of harming, intimidating, assaulting or obstructing any person involved in the conduct of the examination.

vi. Misconduct at examinations: Section 6 of the Act defines it as a candidate who misconducts himself in an examination hall or any other place appointed for an examination; or fails to obey any lawful order of the person concerned with conduct of the examination.

vii. Obstruction of Supervisor: this is defined as when a person wilfully obstructs a supervisor or any person concerned with conduct of the examination.

viii. Forgery of Result Slip: Section 8 of the Act defines it as a person who forges, or fraudulently or without lawful order alters or in any other way tampers with the scores of

candidates as contained on a result slip or certificate duly issued by an examination body, commits an offence.

ix. Breach of duty during examination: this is defined under section 9 as when a person who is for the time being under a duty to discharge any function with respect to an examination, without reasonable cause, before, during or at an examination or at any time thereafter fails to perform or discharge that duty; or performs that duty fraudulently, negligently, perversely or recklessly.

x. Conspiracy, Aiding: this is when any person conspires with, abets or counsels any other person to commit an offence, or attempts to commit or is an accessory to an act or offence, or incites, procures or induces any other person by any means whatsoever to commit an offence under this act.

The *Ahmadu Bello* University, *Zaria* Examination Management/ Regulations[21] also provided for the following types of examination malpractice:

i. Impersonation;
ii. Introduction/use of foreign materials;
iii. Exchange of relevant materials in the examination hall;
iv. Theft/removal/replacement of examination scripts or material;
v. Destruction of examination scripts/materials;
vi. Copying from cheat notes;

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21. The A.B.U Zaria Examination Management/ Regulations created by the Senate and signed into use on 28th may, 2011.

vii. Consulting cheat notes outside the examination hall during examination;

viii. Facilitating/abetting cheating;

ix. Use of mobile phones and/or other such communication or electronic gadgets;

x. Life threatening assaults to an invigilator, examination official etc;

xi. Wilful destruction of exhibit;

xii. Soliciting of marks or change of grades;

xiii. Non-submission of script;

xiv. Non-appearance at the Examination Irregularities and Malpractice Committee;

xv. Insulting an invigilator, examination officer etc;

xvi. Mutilation of answer scripts

2.3 Legal frameworks for Combating Examination Malpractice in Nigeria

In Nigeria, there are basically three kinds of legal instruments for the control of examination malpractice. These are: The Examination Malpractice Act[22]; some provisions under the Criminal Code Law and Penal Code Laws of the various States; and administrative/institutional Rules on examination malpractice in the various examination bodies and institutions of higher learning (for instance, the Examination Management/Regulations of the *Ahmadu Bello* University, *Zaria*).

22. Cap E15, Laws of the Federation of Nigeria, 2004.

A. **The Examination Malpractice Act**:this law was promulgated as Examination Malpractice Decree in 1999 and later adopted as an Act which is now cited as the Examination Malpractice Act. The Act makes provision for twelve (12) different types of offences: cheating during examination; stealing; impersonation; disorderliness at examination; obstruction of supervisor, forgery of result slip; breach of duty; conspiracy and aiding; conviction for alternative offence; and offences by Bodies corporate.

The act provides punishment for persons convicted for these offences. The common punishment which cuts across all the offences (except for the offence of disorderliness at examination, misconduct at examination and breach of duty) is that of a fine of ₦100,000 or imprisonment for a term not exceeding 3 years or both in the case of a person under the age of 18 years, in the case of a principal, teacher, invigilator, a supervisor, an examiner, an agent or employee of an examination body, it is imprisonment for a term of 5 years without the option of fine. In case, of any other person apart from the aforementioned, it is imprisonment for a term of 4 years without the option of fine.

In the case of the offences of disorderliness at examination, misconduct at examination and breach of duty, the punishment is a fine not exceeding 3 years or both such fine and imprisonment. The act also addresses the issue of court jurisdiction. The Act vests jurisdiction on the Federal High Court in its Section 14. However, in the case of a child or young person, section 13 of the Act states that they shall be dealt with under the provisions of the Children and Young Persons' Act.

There are few cases where the Act has been applied. For instance, in the unreported case of Commissioner of Police vs*ItunuoluwaOdutayo*[23], the child offender was charged for impersonation during examination and after the child admitted the offence, the court held by applying the Examination Malpractice Act that in view of the facts as stated by the prosecution and duly admitted as the truth by the child offender and the confessional statement of the child offender (Exhibit A), the child offender is hereby liable as charged. That the law (the Examination Malpractice Law) imposes a sentence of a fine of ₦100,000 or imprisonment for a term not exceeding 3 years or both the fine and imprisonment. That however, the child offender is hereby sentenced to pay the fine of ₦100,000

(b) **Provisions under the penal and criminal codes**:There are provisions in the penal and Criminal Code Lawsof the various states which have been held by the courts as law under which a case of examination malpractice could be tried before a court of law. Acts which amount to offences under these Codes arestill treated as such when they occur during examination. In the case of *NnamdiAzikwe* University vs*Nwafor*[24] where the respondent was alleged to have been caught copying and exchanging answer scripts with another student during an examination by the appellant and consequently the university setup an examination malpractice committee to

investigate the accusation and the committee found the respondent guilty. The court held that the proper test for determining whether an allegation is of a criminal nature is to look at the charge or the allegation itself. That the allegation against the respondent by the appellant constitutes an offence under Section 392 of the Criminal Code and a charge could have been properly laid under the Criminal Code, Cap 86, Laws of Anambra State.

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23 Charge No. FCL/CRI. 55/2012. In the Chief Magistrate's court of Lagos State holden at Court No. 1, Surulere – Family Court on 28th February, 2014(unreported).

24. (1999) 1 NWLR (pt 685) 116 CA.

In view of the court's position above we can submit that whenever an act which is already prohibited under the Penal and Criminal Codeoccurs during examination, it would be taken to be a crime as provided under these laws and it would not matter that it took place during examination.It would be expected that persons concerned be prosecuted. The test seems to be whether the allegation constitutes an offence and not whether it happened during examination or not. Thus, allegations such as cheating, impersonation, fraud and assault which took place during examination could be prosecuted under the penal andcriminal codes.

We must note that neither the penal code nor criminal codehave specifically labelled any act as the offence of examination malpractice. The codes are therefore restricted only to those malpractices which are acts already prohibited under the codes as offences ordinarily, irrespective of the examination situation.

(c) Institutional Rules/ Regulations on Examination Malpractice:most institutions concerned with examinations like institutions of higher learning and examination bodies have created internal Rules for the control of the conduct of their examinations. The powers to make these rules are usually derivable from these institutions' power to control the conduct of their examinations[25]Thus; the court recognized this power in the case *of W.A.P.G.M.C v. Okojie*[26]when it held that the university and academic community works within its statute or charter. Those decisions are made by those in charge of these institutions in many expert fields and the

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25. For instance, section 7 (g) and (h) of the NECO Establish Act, Cap N37, 2004 which grants the Council powers of general control of the conduct of her examination.
26. (2004) 2 NWLR (pt 857) 232 CA.

law empowers them to exercise their discretion on matters within their jurisdiction. In view of this case, we can submit that it is by virtue of the powers of universities to hold examinations and provide for the discipline of members of the university that rules and regulations to curb examination malpractices are made. For instance, Ahmadu Bello University, Zaria has put in place its Examination Management/Regulations. These Regulations are used by the institution to investigate malpractice cases so as to discipline erring students. These regulations form part of the legal frame work for examination malpractice because they are the legal basis for the control of examinations in these institutions. Likewise, these Regulations are used by the Committees/ Panelscreated thereunder to perform the quasi-judicial function of investigating malpractice cases andmaking recommendations to the authorities of the university.

The A.B.U *Zaria*, Examination Management/Regulations makes provisions prohibiting certain acts as malpractices under its section A (i) (ii) and (iii) as follows: impersonation; introduction/use of foreign material; exchange of relevant materials in examination hall; theft/removal/replacement of examination scripts or material; destruction of examination scripts/materials; copying from cheat notes; facilitating/abetting cheating; use of mobile phones and/or other such communication or electronic gadgets; life threatening assaults to an invigilator,

examination officer etc.; wilful destruction of exhibit; soliciting for marks or change of grades; non submission of script;non-appearance at the Examination Irregularities and Malpractice

Committee (ERIC); insulting an invigilator, examination officer etc.;introduction of fake examination card or identity card; and mutilation of answer script.

There are three types of sanctions prescribed under the Regulations as follow: expulsion from school, rustication for one year and written warning.

The Examination Irregularities and Malpractice Committee (ERIC) created under the Regulations[27]has been very active and functional, investigating malpractice cases at faculty level while applying the provisions of the regulations[28].

2.4 Examination Malpractices as a Crime

In the preceding part 2.3 of this chapter above, we noted that certain conduct have been labelled examination malpractice which constitutes crime under the laws in Nigeria. Our task under this part of the chapter is an enquiry into the concept of crime and what it entails to label an act as a crime. In a research such as this onewhich focuses on the use of law for the prevention and control of the crime of examination malpractice, an understanding of the concept of crime prevention andcontrol must necessarily be preceded by a definition of the phenomenon called crime[29].

The word crime is the most elusive of all definitions in the lexicon of legal and criminological terms, and there is no generally accepted definition of crime that is of universal application[30]. In addition, what is a crime at one time may not be a crime at another and vice versa. The law is forever changing, adding new crimes to the catalogues and modifying, altering and repealing former ones[31].

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27. Section A(ii) (c) of the A.B.U Zaria Examination Management / Regulation.

28 For instance by September, 2012 the case of one Yusuf Suleiman Armayau of the Faculty of law was investigated. As recorded note minutes of the committee meeting held on 20th September, 2012 at the faculty of law mini-conference room.

29 Dambazau A.B (1994) Law and Criminality in Nigeria:- An Analytical Discourse. University Press PLC, Ibadan, p. 23

30 Ibid p. 30- 31.

31 Sirohi J.P.S (2007) Criminology and Penology. Allahabad law Agency, Faribadab, 6th edition, p 19.

Thus, crime is essentially relative and inter-dependent on otherfactors, it varies with law and the condition that evoke it are equally variant.[32] Despite the above submission by scholars of law, some definitions of crime have been put forward by some legal writers. "Sir James Stephen (1829-1894) in his book: History of Criminal Law (1993) gave the standard legal definition of the time in which he stated that, crime was some act or omission in respect of which legal punishment may be inflicted."[33] Sociologist on their part define crime as an anti-social behaviour and to this end, Durkheim defines crime as an act which offends strong and defined states of collective conscience[34].

Lord Devlin on his part stated that with respect to crime, there is a public morality which is an essential part of the bandage which keeps society together and that society may use the Criminal Law to preserve anything else that is essential to its existence.[35]Sirohi JPS presented a definition as follows: Crime is a set of circumstances for which the law permits imposition of a criminal penalty. Thus, crime is not a natural phenomenon but a legal one; whatever the law makers define as crime is crime. Crime is not intrinsic; that is one cannot identify characteristic other than the law maker's fiat from which it is possible to distinguish criminal from non-criminal circumstances.[36]

Dambazau A.B submitted that crime can be defined as an act or omission against public interest, which is proscribed by law enacted by the legislature in the overall interest of the society and for which prescribed punishment is attached in event of violation[37].

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32 Ibid
33 Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. Op cit. p.23
34 Ibid pp.30-31
35 Dambazau A.B (1994) Criminology and Criminal Justice. Spectrum Book Limited, Ibadan. p 50.
36. Sirohi J P S (2007) Criminology and Penology. Op. cit. p.22
37. Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. Op cit p.26

The Panel and Criminal Code in Nigeria while using the word offence defines it as: "an act or omission which renders the person doing the act or making the omission liable to punishment".[38]

From the considered definitions of crime above, we can submit that the concept of crime is concerned with the State's prohibition of a wrong by way of making laws to forbid such act or omission and prescribing sanction(s) for the violation of such prohibition. Thus, crime is a behaviour which has been proscribed by law and made punishable.We note that the key elements in the definition of crime are: the State's proscription of the act and the prescription of punishment. This element led *Dambazau*A.B to state that the connection between crime and punishment has remained the key element in the legal concept of crime and he quoted*Okonkwo*: "the possibility of punishment is not the only distinguishing mark of a criminal trial, but it is probably the most important one."[39]This fact led Lord Atkin in the case of Proprietary Articles Trade Association v. A.G for Canada[40] to state that: "The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one is the act prohibited by penal consequence?"

In relation to our research, the analysis of the concept of crime is to enable us discern whether examination malpractice fits into the definition of crime and whether it possesses such elements which are key to the concept of crime. There are two key elements in the definition of crime: a proscribed behaviour by law created by the state and the prescription of a punishment. The Examination Malpractice Act[41]and some part of the Penal and Criminal Codemake provisions prohibiting acts such as cheating during examination, disorderliness during examination, forgery of result slip and impersonation etc. These laws also provide punishment for violators of these

38. Section 3(1) of the Penal Code and Section 2 of the Criminal Code, Cap C38 & P19, LFN, 2004
39. Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. Op cit p.26
40. (1931) A.C 310 at 324 (p.c)
41. Cap E15, LFN, 2004.

provisions. It is also noted that these laws are in existence by virtue of their being enacted asAct of the National Assembly and laws of the State Houses of Assembly. In view of the foregoing, we can submit that all those acts listed as examination malpractice under the Examination Malpractice Act and Penal Code/Criminal Codeare indeed crimes because they are acts proscribed by State laws and the laws also prescribe punishment thereto.

The courts in Nigeria have also made it categorically clear that the act of examination malpractice is a crime in Nigeria. In the case of University of *Ilorin* v *Oluwadare*[42]the court held that what amounts to a misconduct may notnecessarily amount to a criminal offence. It is therefore necessary in determining whether an act amounts to a crime,to look at the allegation made against the person. In the instant case, the allegation made against the respondent is that of examination malpractice. If the respondent had been found guilty of the said allegation by a competent court of law, he would be liable to punishment under the Act that regulates examination malpractice. In that case, what was alleged against the respondent amounted to a criminal offence. The court further held that examination malpractice is a serious criminal charge which can only be tried in a competent criminal court or a tribunal set up under the constitution.

In the case of *NmandiAzikwe* University v *Nwafor*[43]therespondent was alleged of cheating during examinations. Consequently, the university set up an examination malpractice committee to investigate the allegation and they found him guilty of the act. The respondent went to court on that basis, judgment was given in his favour in the trial court and so, the appellant appealed to the court of appeal. The court held that the proper test for determining whether an allegation is of a criminal nature is to look at the charge or allegationlevelled itself. In the instant case, the

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42. (2003) 3 NWLR (pt. 808) 557 CA
43. (1999) NWLR (pt 585) 116 CA.

allegation levelled against the respondent was that he was caught copying and exchanging answer scripts with another student during examination. It is from this allegation the court would determine the criminality or otherwise of the charge against the respondent. That there is no submission of the learned counsel for the appellant that the conduct of the respondent at the examination did not constitute an offence. The allegation was held to constitute an offence under section 392 of the Criminal Code cap 86, laws of Anambra State. That by virtue of section 392 of the criminal code, examination malpractice is an offence.

In the two cases considered above, the court has stated the test for the determination of the nature of an allegation such as examination malpractice to be whether such act has been defined as a crime under the law. Thus, the court submitted that examination malpractice is a crime by virtue of the laws in Nigeria.

Having considered the legal definition of crime, the provision of the law proscribing examination malpractice as a crime and the court's opinion on the crime of examination malpractice, we can submit that examination malpractice is a crime under the Nigerian Laws.

2.5 The Role of Punishment in Combating the Crime of Examination Malpractice

In a research such as this one which analyses the role of law in the fight against the crime of examination malpractice, it is of utmost importance to also examine the role of the one central element in the control of crime, which is, the concept of punishment. Punishment is so central to any discourse on crime that it is said to be the object of criminal law.[44] The connection between crime and punishment is said to remain the key element in the legal concept of crime and the

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44. Okonkwo C.O and Naish (2009) Criminal Law in Nigeria, Spectrum Book Limited, Ibadan, second edition. p.28

possibility of punishment as observed by *Okonkwo* is not the only distinguishing mark of a criminal trial but it is probably the most important one.[45] Thus, punishment is one of the basis of the use of any criminal law to correct the unwanted behaviour. The society's intervention in the control of any behaviour which has been tagged criminal is through the effective use of punishment. In view of the importance of the role of punishment to our discourse on the control of examination malpractice through the effective use of law, we shall examine closely the concept of punishment and how it relates to the control of crime.

Meaning of punishment: Punishment is defined according to Black's law dictionary as any pain, penalty, suffering or confinement inflicted upon a person by the authority of law and the judgment and sentence of a court, for some crime or offence committed by him or for his omission of a duty enjoined by law.[46] The lectric law library defines it as some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanour, or for the judgment and command of some lawful court.[47]H.L.A Hart advanced some elements and conditions of punishment in his own definition.[48] In his work titled "Punishments and Responsibility" (1963), a legal mode of punishment he called the *flew-Benn-Hart* model was presented[49] He stated that he will define the standard case of the concept of punishment as containing five elements or conditions for correct application of the concept of punishment. Hart argues that punishment:

i. Must involve pain or other consequences normally considered unpleasant

ii. Must be for an actual or supposed offender for his offence

iii. Must be intentionally administered by human beings other than the offender

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45. Dambazau A.B (1994) Law and Criminality in Nigeria: An Analytical Discourse. Op cit p.26
46. Black's Law Dictionary. Free online legal Dictionary http://the Lawdictionary.Org on 6th November, 2014 at 9.45 am.
47. The Lectric Law Library. http: // www.lectric.com 6th November, 2014 at 10am.
48. Thomas McPherson. Punishment: Definition and Justification. http: // jthomaniu. Org. 8th November, 2014 at 10.20am.
49. Ibid.

iv. Must be imposed and administered by an authority constituted by a legal system against which the offence is.[50]

We can decipher the meaning of punishment to involve the infliction of some pain or loss of something deliberately meted on someone who has been found guilty of an offence. We now proceed to examine the object / justification for punishment.

Object / justification of punishment: There are many objects of punishment discussed by scholars. These objects include retribution, deterrence, rehabilitation, incapacitation and education. These objects have been grouped into two main camps. These camps are the retributive theorists who are called conservatives and the liberals / humanitarian/ utilitarian who advance the rehabilitative theory.[51]

The proponents of the retributive theory argue that in other to achieve a completely just and consistent policy and an increased respect for human life, they have called for increased penalties for all serious crimes. They insist that the essence of an adequate policy for dealing with crime necessarily involves the well-deserved punishment.[52]To these theorists, the first view involves a process of "looking back" at the circumstances of the crime committed, and deciding what punishment the accused deserves for his conduct, having regard to his responsibility for the crime.[53]

On the other hand are the liberalist / humanitarian theorist who argue that it is primitive and barbarian to speak of punishing criminal. They cite the well known facts that, statistically speaking, roughly 60percent of all crimes are committed by socially, economically and

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50. Ibid.
51. Ibid.
52. Ibid
53. Okonkwo C.O and Naish (2009) op cit. p. 28.

educationally disenfranchised members of minority group and that these people are the society's victims before they victimize society. They maintain that they are to be helped through rehabilitation and not hurt them.[54]The essence of the rehabilitation principle is individualization of treatment. Thus, while the proponents of the retributive theory justify punishment as what the offender deserve because he is wholly responsible for the offence, the rehabilitative theorist view punishment as a means that should correct and help the offender, after all the society's imbalance is responsible for the offender's state.

This research however chose to look at non-custodial alternative punishment because it was observed that offenders in cases of examination malpractice usually involve young persons who are still pursuing their educational pursuit in institutions of learning. Thus, the research examined the provisions of the Administration of Criminal Justice Act, 2015 which prescribes probation and non-custodialalternative punishment under its part 44:

Section 454(1) of the Act provides for probation and non-custodial alternative punishment in special cases and the court having regard to the character, antecedent, age, health or mental condition of the offender and the extenuating circumstances under which the offence took place.A consideration of the provision of the section indicates that, the crime of examination malpractice which usually involves young persons in circumstances which may involve another person's influence should make the courts willing to apply the provisions of this Act in handing down punishment to these offenders. Section 454 of the Act provides: " where a defendant is

54. Shrader – Frechette, Penology and Ideology: Ethics and Criminal Responsibility. Op cit. pp. 1-5

charged before a court with an offence punishable by law and the court thinks that the charge is proved but it's of the opinion that having regard to

(a) The character, antecedent, age, health or mental condition of the defendant charged;

(b) The trivial nature of the offence, or

(c) The extenuating circumstances under which the offence was committed,

It is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection (2) of this section".

Subsection (2) states that: "the court may make an order under subsection (1) of this section:

(a) dismissing the charge;

(b) discharging the defendant conditionally on his entering into a cognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order."

The above quoted section allows the court to either dismiss the charge or discharge the defendant conditionally on his entering a cognizance. Entering a cognizance order also means a probation order. Thus, section 455(1) of the Act provides that: "a cognizance ordered to be entered into under this part shall where the court so orders contain a condition that the defendant be under the supervision of such person or persons of the same sex, called a probation officer, be named in the order during the period specified in the order."

The Administration of Criminal Justice Act also made provisions for suspended sentence and community service. Section 460 provides as follows: (1) notwithstanding the provision of any other law creating an offence, where the court sees reason, the court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case , the convict shall not be required to serve the sentence in accordance with the conditions of the suspension.

(2) The court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct."

(3) A convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years.

(4) The court, in exercising its power under subsection (1) and (2) of this section shall have regard to the need to: (a) reduce congestion in prisons;

(b) rehabilitate prisoners by making them undertake productive work;and

(c) prevent convicts who commit simple offences from mixing with hardened criminals.

A careful consideration of the provisions of sections 454 and 460 of the Act for the application of probation, suspended sentence and community service shows its relevance to offenders of examination malpractice. Most of the time, these offenders are young persons and youths who are still undergoing their educational pursuit. Age, antecedent, rehabilitation, prevention of convicts who commit simple offences from mixing with hardened criminal which were

mentioned under the Act as factors for consideration in the application of these non- custodial alternatives applies to offenders of examination malpractice. These factors fit very well the conditions of most offenders of examination malpractice being that they are mostly young persons who need rehabilitation due to their educational pursuit and age rather than imprisonment so as to still be useful to the society. In addition, the crime of examination malpractice can be categorized as a simple one as held by the supreme court in the case of university of Ilorin v. Oluwadare[55] and this covers one of the conditions for the application of the non- custodial alternatives under section 460 (4)(c) of the Act.

This research therefore notes that the application of the provisions on probation, suspended sentence and community service as contained under the Administration of Criminal Justice Act would better serve the purpose of the control of the menace of examination malpractice. The provisions of the Administration of Criminal Justice Act is applicable to offences created under the Examination Malpractice Act by virtue of the provisions of section 2 of the Administration of Criminal Justice Act which provides: "(1) without prejudice to section 86 of this Act, the provisions of this Act shall apply to criminal trials for offences established by Act of the Examination Malpractice Act being an Act of the National Assembly is applicable in this case.

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55. (2009) All FWLR (Pt 452)

CHAPTER THREE

THE ROLE OF LAW IN COMBATING EXAMINATION MALPRACTICE: A CASE STUDY OF AHMADU BELLO UNIVERSITY, ZARIA

3.1 Introduction

Laws/Rules have been created by the Government as part of measures to fight examination malpractice. The examination malpractice Act[1]; some provisions in the penal/Criminal code laws of the various States;and Rules /Regulations of the various examination bodies & institutions of higher learning concerned with conduct of examination, have all been created proscribing certain acts as examination malpractice and prescribing punishment in that direction. Punishments are created under these Laws/Rules as direct measures to combat the menace. Despite these laws and their potent provisions in their bid to control malpractice, it is noted that there are problems which have forestalled the effective use of these Laws/Rules. Under chapter one, we stated in our statement of problem for this research that, there are problems which have hindered the use of these laws. We noted the problem of lack of application and enforcement of the relevant laws; lack of awareness about the criminal nature of examination malpractice; and student's challenge of institutions' disciplinary powers in the use of their Rules /Regulations in cases of examination malpractice on grounds of lack of fair hearing. Thus, this chapter sets out as an assessment of the situation using A.B.U *Zaria* as a practical example in determining the exact extent of the efficacy of the laws/Rules. We therefore, intend to take a practical approach in chapter three, so that those

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1. Cap E15, Laws of the Federation of Nigeria, 2004

problems identified in our statement of problem may be narrowed down to A.B.U. *Zaria* and due attention given to an analysis of the problem.

This chapter discusses the following: the provisions of the laws/Rules applicable to *Ahmadu Bello* University, *Zaria* in cases of examination malpractice; the problems associated with the application and enforcement of these laws/Rules by carrying out an assessment of these legal instruments. Likewise, we shall look at the issues of prosecution and judicial interpretation of some of the problems noted in the research.

3.2 The Legal Framework for Combatting Examination Malpractices in Ahmadu Bello University, Zaria.

There are three legal instruments applicable to *Ahmadu Bello* University, *Zaria* with respect to examination malpractice. They are: the Examination Malpractice Act[2], part of the Penal Code[3] which provides for fraud, impersonation, assault and forgery; and the *Ahmadu Bello* University (A.B.U) *Zaria* institutional Examination Management/Regulations.

a) **Examination Malpractice Act:** this law was promulgated initially as the Examination Malpractice Decree No 33 of 1999. After the country's return to democracy, the Decree was adopted as an Act of the National Assembly and became part of the Laws of the Federation of Nigeria with Cap. No E15. The Act is the only general law governing

2. Ibid.
3. Penal Code, Cap P19, LFN, 2004.

malpractice in all examinations conducted by government established bodies concerned with examination [4] this is why the Act is described as the omnibus statute[5].

In the interpretation section of the Act[6],it is stated that, "examination means an examination conducted by an examination body" and "examination body" mean"----- and any other body established by the government to conduct an examination". The definition of examination body contains the omnibus clause which makes the provisions of the Act applicable to any organization/institution established by government to conduct examination. Thus, we can infer that institutions of higher learning being bodies established by government with one of its core mandate as the conduct of examination is considered as one of such bodies referred to under the Act. A.B.U *Zaria* can therefore be said to be one of the bodies whose examinations are covered by the Act.

The effect of the provisions of the Act as regards*Ahmadu Bello* University,*Zaria* is that all cases of students, staff and other persons involved in examination malpractice in the institution should be treated as matters covered by the Act. This is so that these cases can be handed over to the police whohave the responsibility to ensure all due processes are followed in bringing about the prosecution of such persons.

b) Parts of the Penal Code Law of Kaduna State: there are certain offences contained in the penal code applicable to *kaduna* which are deemed acts of examination malpractice

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4. Ndifon C.O and Ndifon R.A, Public Examinations in Nigeria and Punishing Malpractice: Human Rights Perspective; http://www.bjournal.co.uk.On 6th November, 2014 at 1:05pm.
5. Ibid
6. Section 19 of the Examination Malpractice Act, CapE15, LFN, 2004

when they occur during or in relation to examinations. This is the import of the decision of the court in the case of *Nnamdi Azikiwe* University vs*Nwafor*[7] which is to the effect that, the accusation of copying and exchanging answer scripts during examination constitute anoffence under the Criminal Code Law Cap 36, laws of *Anambra* State and that a charge could have been properly laid under the Criminal Code. This judgment illustrates the fact that where any act of malpractice during examination amounts to a crime under the criminal law of that state, then such act should be prosecuted in the court as an offence under such law. The case shows that it would not matter that the offence took place in relation to examination; a charge should be brought under such law prohibiting the act. In view of this, some acts of malpractice which constituteoffences perpetrated in relation to examination such as cheating, forgery of result slip, impersonation, assault or theft can be prosecuted under the provisions of the Penal Code/Criminal Code. Thus, in the case of A.B.U, *Zaria*, the Penal Code[8]could be used to bring a charge before the court for an offence committed during examination if such act involves an offence prohibited by the Penal Code.

It is noted that the Penal Code law does not cover all cases of malpractice because, where the act of malpractice are not offences under the penal code, such malpractice cannot be charged and prosecuted under the Code.

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7. (1999) 1 NWLR (pt 585) 116 CA.
8. Cap P19, LFN, 2004.

Some of the relevant provisions of thePenal Code applicable to examination malpractice are as follows:

- Section 179 which provides for false personating could be useful in case of students who impersonate during examination.
- Section 264 prohibits assault and whenever the act of assault occurs during examination, a charge could be brought under this section.
- Section 286 makes provision for the offence of theft. Thus, where students are caught in unlawful possession of examination materials, this section would be applicable.
- Section 320 provides for cheating. Where there is any form of cheating during examination, the person involved could be charged under the section.
- Section 362 prohibits forgery of document. This section could be used to bring a charge in cases of examination malpractice involving forgery of result slip, certificate or even question papers.

c) The Ahmadu Bello University, Zaria Examination/Management Regulations: universities are created by statutes and they work within these statutes. Decisions are made by those in charge of these institutions in many expert fields and the law empowers them to exercise their discretion on matters within their jurisdiction[9]. The *Ahmadu Bello* University, *Zaria* is established under the *Ahmadu Bello* University law[10] and the law

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9. W.A.P.G.M.C. vs Okojie (2004)2 NWLR (Pt. 857) 232 CA.
10. Cap A14, Laws of the Federation of Nigeria (LFN), 2004.

grants the institution powers of discipline. The university acts through its Authorities and section 8 of the University Law[11] makes provision for the institution's Authorities who are as follows: its officers, the Council, Senate, Faculty Board and Academic Departments. These authorities are responsible for students control at the various levels prescribed by law. And under the A.B.U Act, students and all other persons attending the university for the purpose of instruction shall be subject to the disciplinary control of the university[12]. It is pursuant to this power granted under its establishing statute that the *Ahmadu Bello* University, *Zaria* Senate acting as the institution's authority created the Examination Management/Regulations[13]. And the purpose for which the Regulations were created was stated as: "to address and eliminate problems relating to conduct of examination malpractice".[14]

11. Ibid.
12. Statute 9, Section 4, Ahmadu Bello University Law, Cap A14, LFN, 2004
13. The Examination Management Regulations was created by the University's Senate and signed into use on 28th may, 2011 under the hand of the Registrar.
14. Preamble to the Ahmadu Bello University,Zaria Examination Management Regulations.

3.3 Application of the Laws/Rules on Examination Malpractice in Ahmadu Bello University, Zaria

We noted earlier that there are three different laws applicable to cases of examination malpractice in *Ahmadu Bello* University, *Zaria*. The applicable laws/Rules are: the Examination Malpractice Act[15], Some part of the Penal Code law of Northern Nigeria dealing with crimes related to examination malpractice and the A.B.U *Zaria* Examination Management/Regulations. Despite that all the three legal regimes are applicable to cases emanating from A.B.U. *Zaria,* it is noted that only the institutions Regulations are being applied to cases of malpractice. All malpractice cases are handled internally by the Examination Irregularities and Malpractice Committee (ERIC) created under the Regulations[16]. The Committee is created under each faculty of the institution to investigate examination malpractice cases in the faculty and make appropriate recommendations to the Senate of the institution[17].

In the application of the regulations to cases of malpractice, the following method is adopted: the ERIC Committee is created under each faculty from time to time to investigate malpractice cases concerning students of the institutions[18]. The Committee is guided by the provisions of the Regulations and where they find that a case of malpractice has been established before the Committee, appropriate recommendations are made from the provisions of the Regulations. The report of each faculty's ERIC is presented to the institution's Senate Standing Committee for consideration[19]. The Senate Standing Committee examines the ERIC

15. Cap E 15, LFN, 2004.
16. Regulation G.A (ii) of the A.B.U. Zaria Examination Management/Regulations, op cit.
17. Interview with the A.B.U. Zaria Academic Officer at the Institution's Senate building on 26th January, 2015 at 4:30pm.
18. Ibid
19. Ibid

report and reports its own findings to the institution's Senate. The Senate acting as the alter ego of the institution and empowered under statute 9, section 4 of the institution's Act, takes the final decision and met out a disciplinary sanction to the student(s) involved[20]. The sanctions are handed down to the involved student(s) by the Senate on the grounds of violation of the matriculation oath which the student signed upon admission into the institution [21].

Where the examination malpractice involves staff of the institution, Regulation G.B provides that such a member of staff shall be referred to the staff disciplinary committee for appropriate punishment. Where the case involves a person who is not a member of the institution, the regulations have not catered for such situation. Thus, in the event of a non-member of the institution who perpetrates examination malpractice within the jurisdiction of the institution, it is doubtful whether this regulation would be applicable to such a person. The Regulations'provisions show that it is concerned with its student and staff [22].

There are sample cases of the ERIC investigation of some malpractice cases presented as follows –

(i) The Examination Irregularities and Malpractice Committee (ERIC) 2012 of the Faculty of Law, A.B.U. *Zaria:* the case of *Yusuf Suleiman Armayau* with registration no: U09SH2008, a 400-level student of the Faculty of Law was investigated by the ERIC between 26th September, 2012 and 3rd October, 2012[23]. The case concerned an allegation against Mr. *Armayau* that on 18th September, 2012 during law of trust examination the invigilator of the examination found the student with a cheat note from which he was

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21. Ibid
22. Ibid
23. Regulation G. A provides for persons who breach the matriculation oath (i.e students) and G.B makes provision to staff
24. Records of proceedings of the A.B.U Zaria, Faulty of Law, Examination Malpractice and Irregularities Committee, 2012

copying. The Committee invited the student*Y.S Armayau*; the invigilator of the examination; and Examination Officer. Their testimonies were taken in the presence of all three of them. The invigilator gave evidence of how he saw Mr. *Armayau* using the cheat note during the examination. The Examination Officer presented the relevant exhibit for the case to the Committee while stating that he did not witness the actual act of malpractice. On the part of Mr. *Armayau,* he admitted being in possession of the cheat note but stated that it was his jottings used for studies before the commencement of the examination which heavy breeze during the examination blew to his side. Members of the Committee considered all the testimonies and exhibit before them and concluded that the student admitted being in possession of the cheat note but could not give a satisfactory explanation which can controvert the evidence against him. The Committee stated that the act of Mr. *Armayau* contravenes the *Ahmadu Bello* University, *Zaria* Regulations as contained in Regulation G.A (i) B & (f) and accordingly the student is recommended for expulsion for breach of matriculation oath.

(ii) Another sample case where the ERIC has applied the Regulations is that of the Faculty of Administration: the Committee investigated examination malpractice cases emanating from the faculty for the 2011/2012 academic season[24]. The committee applied the provisions of regulation G.A (ii) (d) to withdraw three of the faculty's students for their refusal to appear before the committee even after they were initially rusticated for non-appearances. The students are*:* *Banjo O. Adetutu* with registration no PGDPA/ADMIN/11057/2010-2011; John*Nwaeze* U. registration no

24. Report of the faculty of Administration, A.B.U. Zaria Examination Regulations and Irregularities Committee for second Semester 2011/2012 Academic Session.

G10MBAP8228/MBA/ADMIN/1431/10-11; and *Muhammad Mustapha* with registration no G10PA/1119[25].

The Committee also considered the case of *Saidu Rukayya* with registration no U11PA1003. The student was alleged to have been caught with cheat notes during Nationalism (GENS 101) continuous assessment on 6th June, 2012. The Committee took the testimony of the student, that of *Mal. Tahir Muhammad* who was the invigilator at the test and Dr. Andew *Suku* who was the lecturer for the course in question. *Saidu Rukayya* was shown a prepared Nationalism note which she admitted as her own and that it was in her possession in the hall during the said Nationalism continuous assessment. She however stated that she was not in possession of the note so as to use it for cheating but that it was her jottings. The invigilator on his part gave evidence of how he caught the student with the cheat note during the test. He also stated that when he caught the student he drew the attention of the Lecturer of the course to the situation. The course lecturer, Mr. Andrew *Suku* gave testimony that he was invited to the hall during the test and was shown the cheat note which he confirmed to be relevant to the test. After a consideration of all the evidence before them, members of the Committee concluded that Miss *Saidu Rukayyah* was guilty of being in possession of cheat note during the test and as such, they recommended the sanction of expulsion asprovided under Regulation A(b) and (f).

In view of the sample cases above, it is obvious that the provisions of the A.B.U. *Zaria* Examination Management/Regulations are being applied to cases of malpractice in the institution. Below is presented the breakdown of examination malpractice cases in the institution

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25. Ibid

where the Regulations have been applied and the cases determined by the University's Senate between 2009 and 2014[26]:

Academic Session	No. of Cases For Expulsion	No. of Cases For Rustication	No. of Cases For Warning
2009/2010	25	30	9
2010/2011	18	28	3
2011/2012	27	32	2
2012/2013	16	21	2
2013/2014	19	22	1

Source: Examination malpractice records at the A.B.U Zaria Academic Office obtained on 27th February, 2015.

A total number of 105 students have been expelled from the institution while 133 students have been rusticated and only 17 have been issued warning within 2009 to 2014.

3.4 Assessment of the Legal Framework for Examination Malpractice in Ahmadu Bello University, Zaria

Under this part of the chapter we are concerned with a measurement of the effectiveness of the laws/Rules on examination malpractice. Our focus is with respect to the problems which have hindered the effective use of the laws/Rules on examination malpractice in bringing about control of the menace. In our attempt to ascertain the level of effectiveness of these laws/Rules, we shallexamine the laws/Rules from the perspective of the problems we identified in our statement of problem as bedevilling the laws/Rules. Our aim is to find out the extent to which

26. Examination malpractice records at the A.B.U. Zaria Academic Office Obtained on 27th February, 2015.

these problems have actually affected the effectiveness of these laws. Thus, we shall examine issues such as: the extent of application and enforcement of thelaws/regulations; student's challenge of institutions' disciplinary powers and how it has affected the effectiveness of the laws/Regulations; the problem of lack of harmonious use of both laws and regulations; and adequacy of provisions in addressing the problem.

(i) **The extent of application and enforcement of the laws/Regulations on examination malpractice:** the extent to which law enforcement agents enforce any particular criminal law largely determine the level of efficacy of that law. One way in which the criminal law is kept in step with public opinion is in the administration of the law by the law enforcement agencies. It is one thing for parliament to forbid conduct, but it is quite another to enforce that prohibition.[27] Thus, the implication is that when the law enforcement agents do not prevent the commission of a particular crime or arrest suspected detractors, that crime has the tendency to go on unchecked and then with time, the law which prohibits such act becomes obsolete due to lack of enforcement. In view of the central role of the enforcement and application of law in ensuring the effective use of that law, we have to enquire about the level ofenforcement and application of the laws on examination malpractice in order to ascertainthe extent of their effectiveness.

In A.B.U, *Zaria*, the only enforceable and applicable legal instrument is the institution's Examination Management/Regulations used for the internal discipline of students involvedin

27. .Okonkwo C.O and Naish (2009) Criminal Law in Nigeria, Spectrum Books Limited Ibadan, Second Edition. p. 25

cases of examination malpractice[28]. The Examination Malpractice Act[29] and the relevant part of the Penal Code are not enforced or applied to cases emanating from the institution, because no case of malpractice is been reported to the police.[30]In A.B.U *Zaria,* the police are not able to enforce these laws because examination halls in the institution where these cases occur are not ordinarily accessible to the police and no such case is reported by the institution. Thus, the implication of this situation is that as malpractice cases are not reported to the police and the cases do not get to the court, these laws do not get to be enforced and applied. The institution does not consider malpractice cases as crimes but as a violation of the student's matriculation oath[31].

We can therefore submit that there is no enforcement and application of the laws on examination malpractice as regards cases emanating from *Ahmadu Bello* University, *Zaria*. This situation has undermined the effectiveness of the laws on examination malpractice. The laws are docile and ineffective, with no case for which the provisions of the laws havebeen applied. The essence of creating the law to criminalize and punish actsof malpractice has been defeated in view of this situation. A docile law which is not applied to the cases it was created to control can never be useful in the control/combat of the problem.

(ii) **Student's challenge of the institution's disciplinary powers** and the effectiveness of the Laws/ Regulations on examination malpractice: there are many cases where students of higher institutions have gone to court to challenge the disciplinary powersof institutions in cases of malpractice. These challenges brought about uncertainty as to the exact extent of the powers of institutions of higher learning to

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28. Interview with the Academic Officer, A.B.U, Zaria at the institution's Senate building on 26th January, 2015 at 4.30pm
29. Cap E15, LFN, 2004.
30. Interview with A.B.U, Zaria Legal Officer at the Institution's Senate buildingon 26th January, 2015 at 4:00pm
31. Ibid

discipline their students for examination malpractice. The challenges have been premised on the violation of students' right to fair hearing in criminal matters as provided under section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It is based on this that students claim that only a court of law and not a disciplinary committee / panel can determine/investigate an examination malpractice case being criminal in nature. These challenges brought about uncertainty as to the exact extent of the powers of institutions of learning to discipline their student for examination malpractice.

There have been divergent judgments of the courts with respect to the powers of theseinstitutions to discipline their student for examination malpractice.

In some of the cases like *Nnamdi Azikiwe University vs Nwafor*[32], *Egwuvs University of PortHarcourt*[33] and *University of Ilorin vs Oluwadare*[34], the courts held that because examination malpractice is a criminal offence and not just a misconduct, a person accused of examination malpractice can only be tried by a competent court or a tribunal set up under the constitution and notby the institution. The implication of this interpretation of the court is thatexamination malpractice cases emanating from institutions should not be a matter of internal discipline but should be left for the courts. However, in other cases held by the Supreme court as the cases *of Esiaga vs university of Calabar*[35], *Magit vs University of Agric, Makurdi,*[36]and *university of Ilorin vs Oluwadare*[37], the court held that matters of award of degree andmatters incidental thereto like examination malpractice should be a matter of internal discipline first and it is only after the person has exhausted all internal redress that he can seek redress in the court.

32. (1999) NWLR (pt. 585) 116 CA
33. (1995) 8 NWLR (pt. 414) 419
34. (2003) 3 NWLR (pt. 505) 577 CA
35. (2004) 6 MJSC
36 (1996) 3 MJSC
37. (2009) ALL FWLR (pt. 452)

The court also held that if the act amounts to a crime, the normal report should be lodged with the police but this will not preclude the university from exercising its powers under its statute to punish misconduct by any student.

The decision of the supreme court in the cases above seem to have resolved the problem of student's challenge of the University's powers on matters of malpractice. The court settled the matter by declaring that with respect to examination malpractice cases, the university can treat it as an internal matter, even though the university is expected to report the matter to the police. This position of the court can bring about a more effective use of the laws/ regulations by reducing the rate of student's challenge of the use of institutional regulations. The challenge by students in court has created uncertainty as to the exact extent of the disciplinary power of institution of Higher Learning in examination malpractice cases. Thus, settling this uncertainty could enhance the effective use of the laws and Rules on examination malpractice

(iii) **The problem of lack of harmonious use of laws and regulations**:we noted earlier under this research that the situation in ABU, *Zaria* is such that the institution applies only its internal Regulations on examination malpractice without going further to ensure the arrest of the affected student which can guarantee prosecution of malpractice cases. Thus, the implication of this is that there is no harmony in the use of these laws and regulations as can foster effectiveness. In fact, this loophole led to the problem of student's challenge of their institution's disciplinary powers, who noting that they are not prosecuted for their crimes run to court to claim that

malpractice is a criminal matter. The laws on examination malpractice like the Examination Malpractices Act and PenalCode Laware created to be applied to cases in court. The existence of these laws do not preclude the internal application of the university's regulations on malpractice but rather, it is expected as held by the Supreme court in the case of *Esiaga vs University of Calabar*[38], that the university can discipline the erring student as provided under its statute but the normal thing to do as in any criminal case is to report the matter to the police. The court is thus advocating for the harmonious use of both the criminal law by ensuring report is made to the police and the use of internal Regulations of the university.

Before the court's decision in *Esiaga's* case, universities were only interested in treating malpractice cases as internal misconduct without a consideration of the criminal nature of the matter. The students on the other hand preferred to look at malpractice strictly as a criminal matter which the university should be precluded from handling becauseit is the exclusive preserve of the court. The decision *in Esiaga's* case shows that both the laws and university Regulations are meant to be applied to malpractice cases. If the regulations are been utilized internally to discipline students and still the matter is being reported to the police the laws and Regulations can be harmoniously used. This would enhance the effective use of both to bring about the desired control of the problem.

(iv) Adequacy of the law: an effective law which can be used to control a deviant behaviour should be such that makes adequate provisions in terms of offences and punishment. A good law should make adequate provisions which covers the prevalent

38. (2004)6 MJSC

practices and makes them without ambiguity. In terms of adequacy of provisions, the Examination Malpractice Act[39]makes ample provisions which cover a wide range of common forms of malpractices during examination. The Act covers a wide range of acts and this is the reason that has necessitated writers to refer to the Act as the Omnibus Act[40.] Thus, inadequacy of provision is not one of the problems which have hindered the effective use of the Act. As for the *Ahmadu Bello* University*, Zaria* Examination Management/Regulatons[41], the provisions of the Regulations even though covering many grounds, there is still need to make more provisions to enhance the efficacy of the Regulations. The loopholes observed deserve some attention under this research as follows:

(a) The provisions of the Regulations as regards its Examination Irregularities and Malpractices Committee (ERIC) are not detailed. There are no provisions establishing the Committee and spelling out its composition and powers. The Regulations only made a mention of the Committee under regulation (11) (c): "the following offences shall carry the punishment of rustication for one session: (c) non-appearance at the Examination Irregularities and Malpractice Committee(ERIC) until the accused appears before it". However, due to the nature of investigation carried on by the Committee especially in view of the challenge by

Students, it is pertinent that provisions should have been made showing the composition of the Committee, its procedures and powers. This is to ensure that the process of investigation is thorough and such as would ensure the observance

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39. Cap E15, LFN, 2004.
40. Ndifon C.O and Ndifon R. A, Public Examination in Nigeria and Punishing Malpractice: Human Rights Perspective. http://www.bjournal.co.uk. 6th November, 2014 at 11:16am.
41. A.B.U Zaria Examination Management/ Regulations, created by the Senate of the Institution and signed into use on 28th May 2011.

of rules of fair hearing. The inadequacy of this provision is central to one of the problems that have affected the effective use of the Regulations. We noted that one of our problems under this research is that of student's challenge of the exercise of university disciplinary powers through itsCommittees on examination malpractice. It follows thata more effective use of these Committees can be ensured when adequate provisions as to fair hearing during the Committee's investigation are made under the Regulationsand adhered to.

(b) Another shortcoming of the Regulations is that there are no adequate definitions of some offences. The offences of introduction of relevant foreign materials and cheat notes, destruction of examination material and life threatening assault are not well defined. The Regulations merely made references to these offences without going further to explain what they entail. There is need for more detailed definition and clarity in these cases.

(c) In the case of offences involving staff, the regulations'provision is not comprehensive. The list of offences in the case of staff as provided under regulation G. (B) as follows: "any act of commission or omission amounting to examination malpractice e.g.loss of scripts, continuous assessment, projects, alteration of mark etc. by a member of staff shall be referred to the staffDisciplinary Committee for appropriate punishment", is not exhaustive. The use of 'e.g.' and 'etc.'connotes that there are other situations not captured under the provision. There should have been a list of all those acts which can be deemed

as malpractice and their various definitions just as it was provided in the case of students.

(d) The provisions on offences are not exhaustive of all acts which can amount to malpractice during examination. There are acts which can amount to malpractice and they were not captured under the Regulations. Acts like possession of weapon during examination, inciting persons during examination to act in a disorderly manner, refusing to obey lawful authorities charged with the conduct of the examination and forgery of result slip. This inclusion would lead to more effective use of the Regulations especially because these acts have been captured by other legal instruments such as the Examination malpractice Act[42].

In our bid to assess the legal framework for examination malpractice in A.B.U, *Zaria* above, we analysed some problems which have affected the effective use of these laws/Rules. The lack of application and enforcement of the laws remains the major factor that has affected the effective use of the laws on malpractice. The assessment shows that A.B.U, *Zaria* relies solely on its internal Examination Management/Regulations to handle malpractice cases without ensuring that they report such matter to the police. This inability of the institution to report these cases to police has undermined the prosecution of these cases and hence there is no application of the law. This fact also created the problem of non-harmonious use of the Laws/Rules and also the problem of student's challenge of the universities disciplinary powers. All these problems have combined to hinder the use of the laws on examination malpractice. As a result of the aforementioned, the laws have become docile and unpopular. It is only the A.B.U,

42. Cap E15, LFN, 2004.

*Zaria*Regulations that are effective and records at the institution show that the Regulations have been used effectively in the determination of about 255 malpractice cases between 2009 and 2014 as presented before the Senate of the institution.

CHAPTER FOUR

FAIRHEARING AND THE EXERCISE OF ADMINISTRATIVE DISCIPLINARY POWERS BY INSTITUTIONS OF HIGHER LEARNING

4.1 Introduction

Under this research, we have tried to examine the problem of examination malpractice and the legal solution in the form of laws and institutional regulations created by authorities to combat the problem. In addition, we examined the level of effectiveness of these laws and regulations. In our analysis, we noted that there are some legal issues which are central to the effective use of these legal frameworks. One of the central legal issues noted is the challengeby students on grounds of fairhearingof higher institutions' exercise of disciplinary powers to discipline them for the violation of the institution's internal regulations on examination malpractice. The second is the issue of the safeguard of the student's right to fair hearing in the consideration of malpractice cases before the institution's Committee. We earlier examined the example of *Ahmadu Bello* University, *Zaria* in the use of law to control malpractice and we noted that the procedure for handling these cases in the institution is an internal one. The procedure is such that a Committee is set up to investigate the matter and it makes recommendation to the Senate of the institution. The Senate considers the case and takes decision which can involve the expulsion, suspension or warning of the student concerned.[1] It is this type of procedure which is common to

1. Interview with the A.B.U Zaria Academic Officer at the Institution's Senate Building on 26th January, 2015 at 4.30pm.

other higher institutions and have been challenged by students in many cases before the courts.[2] The Students in these cases challenged the university authorities' power to discipline them for malpractice cases on the ground that examination malpractice is criminal in nature and therefore a violation of their right to fairhearing.[3] The students have relied on section 36[4] of the 1999 Constitution of the Federal Republic of Nigeria as amended which provides that: "Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal".

These students argue that the fair hearing envisaged cannot be guaranteed by a university committee or panel sitting to deliberate on examination malpractice being of a criminal nature but that it is only in a court of law that such matters can be determined. The two issues central to the students' challenge have been analysed in so many cases and scholarly write-ups. These two issues are key to this research because, the aim of the research is seeking a more effective use of laws and regulations on examination malpractice.

Chapter four is therefore dedicated to a critique of the two key legal issues aboveand their exact legal implication. The chapter discourses two major sub-headings: "The Exercise of Disciplinary Powers of Institutions of Higher Learning in Examination Malpractice Cases in Nigeria" and "The Safeguard of Fair Hearing in the Determination of Examination Malpractice Cases in Institutions of Higher Learning".

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2. For instance, in the following cases the students have challenged their institutions for determining examination malpractice cases which involved them, in NAU vs Nwafor (1999) NWLR (pt. 585) 116 CA, University of Ilorin vs Oluwadare (2003) 3 NWLR (pt. 505) 577 CA and Egwu vs University of Port-Harcourt (1995) 8 NWLR (pt. 414) 419.
3. Ibid.

4.2 The Exercise of Disciplinary Powers by Institutions of Higher Learningin Examination Malpractice Cases in Nigeria

In order to curb the menace of examination malpractice in our higherinstitutions, the authorities of these institutions have put in place various disciplinary mechanisms. The various laws establishing the institutions provides for the disciplinary control of their students. In *Ahmadu Bello* University [ABU*], Zaria* statute 9, section 4 of the ABU law[4] subjects its students to the disciplinary control of the University. It is sequel to this provision that the Examination Management Regulations is created by the Senate of the University. Under the Regulations, the Examination Regulations Irregularities Committee (ERIC) is created for the investigation of suspected cases of malpractice. It is under this type of provision that institutions of higher learning create Committees which they charge with investigation of malpractice cases and their recommendation is considered by the institution's Senate. The Senate can decide to expel, suspend or warn the student as the case may be. It is this internal process of students' discipline for malpractice cases that have formed the object of student's challenge. These students challenge the universities in courts on the ground that such exercise of power infringes on their right guaranteed under section 36 of the 1999 constitution of the Federal Republic of Nigeria as amended. *Okonkwo C.O* captured this problem aptly when he stated that:

> *Until the mid-seventies, universities felt confidently in control of matters of internal discipline. But the increasing wave of misconduct in the university evoked stern disciplinary actions by authorities and these were challenged in the court by affected person, mostly on procedural unfairness or non-compliance with laid down rules. And so judicial intervention was thus invited into matters of discipline,*

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4. Cap A14, Laws of the Federation of Nigeria (LFN) 2004.

> *Hitherto believed to be a preserve of the universities. The outcome of judicial intervention has left the universities uncertain about the scope and extent of their disciplinary powers.*[5]

Thus, the problem created by student's many challenges is the uncertainty of universities' scope of disciplinary powers in cases of examination malpractice. It is therefore, the exact scope and extent of institutions' disciplinary powers as interpreted by the courts that is our focus under this research. Since the Supreme Court's decision in *Garba* vs University of *Maiduguri*[6] Where it was held that for matters involving crime, the university disciplinary committee has no jurisdiction, there have been many cases of students' challenge of university's exercise of disciplinary powers in matters of university discipline in cases which are criminal in nature including cases of examination malpractice. Thus, *Garba*was a landmark case on the subject of the conjecture of fair hearing and student discipline.[7] Some of the *rationesdecidendi* of the supreme court in the case which have formed the basis of student's challenge of university's disciplinary power in criminal matters included the following:

i. Since the appellants' alleged misconduct amounted to crimes, only a court of law could try them. Neither the vice chancellor nor any body set up by him was competent to try the appellants. Their jurisdiction is limited to domestic, internal matters of academic and student discipline.[8] Wherever the general laws of the land are involved like criminal law, [they have] no jurisdiction whatsoever.[9]

ii. The appellants' fundamental right to fair hearing within a reasonable time by a court were violated by their being penalized for crimes without a previous trial and conviction by a competent court.[10]

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5. Okonkwo C.O, Discipline, Nigerian University and the Law. NIALS Annual Lecture, Series 13, p.2.
6. (1986) 1 NWLR (Pt. 18) 550
7. Chinua Asuzu (2010). Fair Hearing in Nigeria, Malt House Press Limited, Surelere, 2nd edition, p.136.
8. (1986) 1 NWLR (Pt. 18) 550, 575G-576C, 584E-585D, 586F-H per Obaseki JSC; 597F-598A per Eso JSC; 603G-604B per Namani JSC; 614H-615F, 618G-H per Oputa JSC
9. Ibid 594H per Eso JSC.
10. Ibid 582D – 585C per Obaseki JSC

iii. The principles of natural justice are applicable to the present case, but were not observed. Merely interviewing the appellants or hearing them as witness will not suffice for the purpose of fair hearing .[11]

Garba's case therefore clearly laid down the principle that in matters of criminal nature, where the laws of the land have been so made, the universities would have no power. This was the ratio relied on by students who went to court to challenge the university's disciplinary power on the basis that examination malpractice is a criminal matter. As noted by *Okonkwo C.O* in his statement quoted above, the challenge by student led to judicial intervention. However, the judicial intervention as noted by the writer even brought some uncertainty asregards the exact extent of universities' disciplinary powers. In many cases of universities' exercise of disciplinary powers in matters criminal in nature, the courts have held differently at different times. This chapter shall examine the judicial interpretation of such exercise of power as follows:

A. Judicial Interpretation of the Disciplinary Powers of Higher Institution

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 the respective institutionsand bodies. Students could be rusticated, expelled or otherwise punished, thus the university administration was the alpha and omega in matters of discipline of whatever kind.[12] Towards the end of the seventies, there was a change and a radical departure when those affected by the decision of the school authorities began to challenge the outcome in Supreme Court.[13] It was the Supreme Court decision in the case of *Garba* vs University of

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11. Ibid 610 A – D per Coker JSC; 619 A – D per Oputa JSC
12. Ndifon C.O and Ndifon R.A, Public Examination in Nigeria and Punishing Malpractice: Human Rights Perspective. www. Bjournal.Com. 6th November, 2014 at 11.16am.
13. Ibid.

Maiduguri[14] that really changed everything in the judicial interpretation of university's disciplinary powers. In *Garba*'s case, as a result of violent student disturbances resulting in damage to and loss of property, the respondent set up a disciplinary investigation panel to probe the riots. The enquiry concluded with the expulsion of many studentsincluding the appellants. Their fundamental right suit succeeded at the *Maiduguri* High Court but the court of appeal reversed the judgment. At the Supreme Court, the High Court decision was restored and the appellants' fundamental right upheld. The Supreme Court held pre *Obaseki JSC* in the lead judgment that: "the trial of erring students for criminal offences or breaches of the criminal code and penal code laws are not within the jurisdiction conferred. Accordingly the purported investigation panel and Disciplinary Board and the punishment meted out to the appellantscannot stand and are hereby declared a nullity".[15]Thus, following this decision cases of disciplinary committees/panel from universities and other administrative bodies were challenged in courts of law. Students of institutions of higher learning saw the decision above as a means to escape the university's exercise of disciplinary powers over them in cases like examination malpractice which are criminal in nature. They seek reliance on the court's ratio that when the matter for which the student is made to face a disciplinary panel is criminal in nature, then such a panel does not have powers to look into the matter because it is not a court of law or tribunal as provided under the 1999 Constitution of the Federal Republic of Nigeria.

14 (1986) 1 NWLR (pt 18) 550.
15 Ibid at 584H- 585D.

Before *Garba*'s case, the Supreme Court had earlier held in the two cases of *Sofekun vs Akinyemi*[16] *and Denloye vs*Medical and Dental Practitioners Disciplinary Tribunal[17] as regards the exercise of disciplinary powers by quasi-judicial or administrative tribunal or committee, that for cases involving crimes, it is a matter for the courts and not any administrative body. In *Sofekun's case(supra)*, the supreme court held: "Because of the mandatory provisions of the subsection, it seems to me that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accuser can be ventilated in public and where he would be sure of getting a fair hearing as set out in the constitution. No other tribunal investigating Panel or committee will do." Likewise in *Denloye's case (supra)* the court held that in view of all these, we have come to the conclusion that the tribunal was wrong to have proceeded to try offences punishable under the criminal code and the proceeding in this respect is null and void". The Supreme Court relied on these two decisions in *Garba*'s case and stated that "….. An offence must be prosecuted in the court before any pronouncement of guilt as has been definitely laid down by the court in *Denloye*'s case.

Since *Garba*vs University of *Maiduguri (supra)* was held, there have been cases of challenge of university's disciplinary powers including cases involving examination malpractice and award of degrees. Some of these cases have followed the ratio of *Garba*'s case to say that,

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16. (1980) 5-7 SC 1.
17. (1968) 1 ALL NLR 306.

because examination malpractice is a crime, the jurisdiction of the university is ousted. In University of *Ilorin* vs *Oluwadare*.[18] court of appeal affirmed that "the committee set up by appellant lacked the power and jurisdiction to try the respondent and since any incompetent trial is a nullity, the said trial by the committee is a nullity, void and of no effect. This follows that the respondent's complaint is basically against an infringement of his fundamental right to fair hearing which is a constitutionally guaranteed right that cannot be taken away by any domestic arrangement between the parties.[19]

In *Oluwadare's case(supra)*, in an examination conducted by the appellant, the respondent was reported to have been caught trying to cheat and based on this, after facing a disciplinary committee which concluded that he was guilty, the respondent was expelled by the appellant. The respondent filed a suit claiming 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 constitutes an abuse of his right to fair hearing. The trial court granted the relief sought by the respondent and hence the appellant appealed. The court of appeal held that what amounts to a misconduct may not necessarily amount to a criminal offence. It is therefore necessary, in determining whether an act of misconduct amounts to a crime, to look at the allegation made against a person. In the instant case, the allegation made against the respondent is that of examination malpractice and if the respondent had been found guilty of the said allegation by a competent court of law, he would be liable to punishment under the Act that regulates examination malpractice. In that case, what was alleged against the respondent amounted to a criminal offence. The court further held that once a person is accused of a criminal

18. (2003)3 NWLR (pt 414)419.
19. Ibid.

offence, he must be tried in a court of law where the complaint of his accusers can be ventilated in public and he would be sure of getting a fair hearing. Thus, if an act of misconduct involves crime against the state it is no longer a matter of internal discipline but a matter for the court or tribunal vested with judicial power to try such an offence. It is only after conviction by a proper court for these offences that appropriate disciplinary measures can be meted out against the culprit. In the instant case the disciplinary committee set up by the appellants erred in purporting to exercise judicial power vested only in the court or tribunal by law as it amounts to a denial of the right of fair hearing to the respondent. The purported trial is a nullity.

Likewise, in *Nnamdi AzikiweUniversityvsNwafor*(supra) where the respondent was alleged of cheating during examination and consequently the university set up an examination malpractice committee to investigate the accusation. The Committee found him guilty of the act. The respondent there upon went to court and judgment was given in his favour. The appellant therefore appealed. The court of appeal held that the accusation of cheating during examination constitutes an offence under section 392 of the Criminal Code and a charge could have been properly laid under the code, as such, examination malpractice is an offence. That the appropriate forum for trial of offences is a court. By virtue of section 33(4) of the constitution of the Federal Republic of Nigeria 1979 (now section 36(4) of the 1999 constitution as amended), 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. That, because of the mandatory provision of the subsection, once a person is accused of a criminal offence; he must be tried in a court of law where the complaints of his accuser can be ventilated in public and

where he could be sure of getting a fair hearing. No other tribunal, investigatory panel or committee will do.

The case above shows the Court of Appeal's readiness to follow the ratio in *Garba*'s case in holding that, because examination malpractice is a crime; the jurisdiction of the university authority is ousted. The court also decided along the same line in the cases of *Egwuvs University ofPort-Harcourt*[20], *OnwumechivsAkintemi*[21], University of *Uyo* and *OrsvsEssel*[22], in *AbiaState University vs Anyaibe*[23], *Ugwumedu vs University of Nigeria*[24]. In the case of University of *Uyo* and *OrsvsEssel(supra),* 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 allegation recommended her expulsion from the university, which was carried out. The respondent than filed a motion on notice at the high court seeking an order of certiorari to quash the decision of both panels and for her reinstatement. The trial court held that the proceeding was in breach of fair hearing and granted the relief sought by the respondent except that of damages. Dissatisfied, the appellant 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

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20. (1995) NWLR (Pt. 414) 419
21. (1985) 3 NWLR (Pt. 13), 504
22. (1996) All FWLR 81 at Pp. 105 – 106
23. (1996) 3 NWLR (Pt. 439) 646
24. (2000) 7 NCLR 130

consequently, not within the domestic jurisdiction of the two panel 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 panel set up by the 1st appellant …… by virtue of section 36[1] and [a] of the 1999 constitution, onlya 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.*[25]

And in *Abia* State University v. *Anyaibe*[26] the court also followed the *Garba*'s ratio when it held that:

> *Where the conduct of a particular student amounts to a crime, it is a matter for the court to deal with. It is not a matter of internal discipline ……. In such a situation, the power of the 2nd appellant to act is suspended until the regular courts have determined the matter.*[27]

Thus, the ratio of *Garba'*s case(supra) that by virtue of section 33[1], [4] and [13] of the constitution of the Federal Republic of Nigeria, 1979 (now section 36 of the 1999 constitution of the Federal Republic of Nigeria as amended), only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against students of a University and neither the Vice-chancellor nor any internal investigation panel set up by him had any competence in law to so do, became a law unto itself which as we have seen, was applied in many cases of university's disciplinary power in cases tainted with criminality. This stand of the court is based on the premise of the seriousness of a criminal allegation and the need to ensure fair hearing in an open regular court.In addition, partiality and sentiment in these criminal matters are reduced

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25. Ibid at pp 105 – 106 (Per Adamu JCA who delivered the lead judgment).
26. (1996)3 NWLR (pt 439).
27. Ibid p. 666 para E – F.

by making the courts of law the only place for their determination. This is why some legal writers appreciated this stand of the Courts and *Akume* A. A stated that:

> *What the above decision means is that if an act by a student has element of crime, the university must hand the student over to the police for prosecution. They cannot impose final discipline for the said act unless the student has confessed and owned up to committing the act*[28]

Likewise, *Chinua Asuzu* stated in support of this ratio that:

> *A long line of authorities including the great case of Garbav. University of Maiduguri, (supra) had clearly established that once an employee's misconduct amount to a crime, such an employee ought first to be tried in a court before disciplinary action is contemplated against him.*[29]

However, as logical and just as the position in *Garba*'s case appears to be, it has been criticized by other legal scholars / writers. Professor *Ben Nwebueze* stated in this regards that:

> *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 plains and serve entirely different purpose.*[30]

In the same line, Professor C.O *Okonkwo* on his part stated that:

> *Where a body has power to take decision which can affect the right and obligation of others and that power is specifically conferred by statute, that body is a tribunal established by law within the contemplation of section 33[1] 1979 (now section 36[1]1999) Constitution. Such a body should be able to determine any case civil or criminal within the limit permitted by the law creating it.*[31]

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28. Akume A.A., "University Authority and its Studentsunder the Rule of Law:A Case Study of A.B.U. Zaria". In: A.B.U. Zaria Journal of Private and Comparative Law, p.26. Vol. 1 No. 1 2006.
29. Chinua Asuzu(2010), Fair Hearing in Nigeria, Malthouse Press Limited, Lagos p. 146.
30. Nwabueze Ben (1992), Military Rule and Constitution.Spectrum Law Publishing.Ibadan.p 146.
31. Okonkwo C.O. Discipline,Nigeria University and the Law. Op cit. p 38-39.

B. Recent Development inthe Interpretation of Disciplinary Powers of Higher Institutions

The removal of domestic jurisdiction of the university to entertain any case of misconduct tainted with criminality against a student held until the case of *Esiagavs University of Calabar*.[32] In *Esiaga'*s case, the Supreme Court 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. The Court held that:

> *The university has authority within its premises to discipline any erring 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 power under its statute to punish misconduct by any student. The case of Garba v. University of Maiduguri has not precluded the university taking action against misconducting student within its campus.*[33]

The court further held as regards the issue of university and its examination that:

> *In so far as the 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 (gets) into the arenaof university function should remind itself that it has encroached into the bowels of university authority. Such a court should congratulate itself of being party to the destruction of the university and that will be bad not only for the universities but also for the entire nation.*[34]

In addition, the court held that: "Relief by a student for the university authority to release his result is not of a nature that should come within the contemplation of section 33, chapter IV of the constitution of the Federal Republic of Nigeria 1979".[35]

Going by the decision in *Esiaga*'s case(supra) shown above, the Supreme Court approved the use of universities' disciplinary powers especially where it involves examination and award of

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32. (2004) 6 MJSC.
33. Ibid at p 72 (per Belgore, JSC p. 89 paras B- D).
34. Ibid at p 74(per Pat- Acholonu, JSC).
35. Ibid at p. 73.

degree even if the conduct amounts to crime. The court however held that: "if the act of a student amounts to crime, the normal report should be lodged with the police".[36]

Still in *Esiaga*'s case(supra), the supreme court cleared the court's position with respect to disciplinary cases of universities and the ratio in *Garba*'s case(supra) which had formed the basis of most students' challenge of university's disciplinary powers and held thus:

> *The celebrated case of Garba vs University of Maiduguri (Supra) is not intended to be a court given license and judicial umbrella to provide students of unbridled, recalcitrant and impetuous behaviour in the university system,….. It is equally not intended to tie the hands of the college authority and debar it from making an effort temporarily to arrest a perceiving evil that is seen rearing its head…… To my mind, what the University of Calabar and others nay, the respondent did was not assumption of judicial power ordinarily exercisable by the court. A wide and horizontal construction of the decision of Garba's case may have the unflattering and unexpected effects of sending discipline in our tertiary institution to the doldrums.*[37]

The case of *Esiaga* became another turning point in the judicial interpretation of university's disciplinary power just as was the case *of Garba v*s*University of Maiduguri*(supra).The Supreme Court followed its decision in *Esiaga'*s case in the two later cases of *Magitvs University of AgricMakurdi,*[38]and University of *Ilorin* v. *Oluwadare*.[39] In *Magit's* case, the appellant went to court to seek the leave of Court to apply for Judicial review by way of certiorari, mandamus and prohibition against the Respondent for having rejected the appellants corrected thesis and withdrawing him from the University for what was called "employing un-academic means" and "academic dishonesty". The trial judge dismissed the application and on appeal, the court of appeal dismissed the appeal. Hence, the appellant then appealed to the Supreme Court. The

36. Ibid at p. 73.
37. Ibid pp. 73 – 74
38. (2006) 3 MJSC
39. (2009) All FWLR (Pt. 452)

Supreme Court held that:

> *Section 7 of the university Act of 1992 vests in the senate to the exclusion of any other body or organ of the university the responsibility of the award of degrees and qualifications as may be prescribed in connection with examination held. Therefore, university senate has the duty and responsibility to award or refuse to award a degree to any student as it considers fit. Pronouncement on fair hearing in the decided cases have no relevance to the university system and procedure……. In so far as the examination are conducted according to the University rules and regulation and duly approved and ratified by the university senate the courts have no jurisdiction in the matter.* [40]

The court further held as regard the power of the court over the university and the application of *Garba*'s case that:

> *Too often nowadays ever since the case of Garba vs University of Maiduguri (Supra) many litigants have tended to inundate the court with frivolous and have tried to invest the court with powers to run a university usually described as Ivory Tower with their strange claims. I would review 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 will indeed be alarming for any court worth its salt to enter into the arena of questioning why a university has refused to award a degree to any student.*[41]

The decision of the court is to the effect that it would not be ready to interfere with the award of degree powers of a university. Thus, issues such as examination, projects and those matters incidental to the award of a university degree have been declared under this case to be the exclusive preserve of the university which the court should stay clear from.

In the case of University of *Ilorin* vs *Oluwadare*(supra) the Supreme Court specifically stated its position with respect to the disciplinary powers of universities in matters of examination malpractice and relied on its decision in *Esiaga* and *Magit* above. The facts of *Oluwadare'*s case were that the respondent applied to the Federal High Court for enforcement of his fundamental

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40. (2006) 3 MJSC at p.115
41. Ibid at p 117.

rights when the appellant expelled him pursuant to an allegation of the criminal offence of examination malpractice after he had faced a disciplinary committee which found him to have committed the offence. Meanwhile by virtue of the law establishing the university, the respondent was to appeal to the university governing council against the decision of the committee. The respondent did not wait for the outcome of his appeal to the Governing Council before rushing to court to institute an action. At the Federal High Court and Court of Appeal, the respondent succeeded. Hence, the appellant appealed to the Supreme Court. The supreme court held in allowing the appeal and setting aside the decision of the court below that:

> *In Esiaga vs university of Calabar, this court tried to point out the real principle in Garba vs University of Maiduguri. And in Magit vs University of Agric, the court again 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.*[42]

The court further held that:

> *It is clear from the above review of the cases decided by this court that in matter which involve serious criminal allegation against the state such as arson, stealing, indecent assault etc. the suspect should for obvious reasons be tried in a court or tribunal properly so called under the constitution. But where the matter involve the award of degrees, diplomas and certificate and matter incidental there to like examination malpractices, aggrieved party, be he a student or a lecturer should first exhaust all the internal machineries for redress before recourse to court.*[43]

The Supreme Court in *Oluwadare*'s case explains that for serious offences recourse should be to the court but for examination malpractice, even though it is an offence but because it is related to issuing of award of university degree, such matter should first be treated internally before recourse is had to the court. Thus, the decision in this case is not barring redress in court but that the university should be allowed to treat the malpractice case internally first. This decision

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42. Ibid.
43. Ibid.

departs from those decision that have followed the ratio of *Garba*'s case to say that because examination malpractice is a criminal offence it ousts the jurisdiction of the university's committee and senate from considering the matter for any type of disciplinary measure without first allowing the court to determine the matter. The Supreme Court by the decision in *Oluwadare* above states that, it is the university that should be the first to considermalpractice issue being related to the award of its degree. This is why the court reasoned is this case that:

> ……. *rather than awaiting the outcome of his appeal to the university council, the respondent herein jumped the gun by resorting to court action thus drawing a domestic issue to the arena of court litigation a practice which is not only embarrassing but frowned upon by the supreme court.*[44]

The court went ahead to also hold that "….it can only mean that until the remedies available in the domestic forum are exhausted, any resort to court action would be premature."

In addition to the three recent cases discussed above, there are other cases like *Akintemi* vs*Onwunmechile*&ors[45] and *Tawakalitu* vs Federal Republic of Nigeria[46] where the court still stated that student discipline and award of certificate are the internal affairs of the universities which it should resolve without interference from the court.

We can submit at this point, after a consideration of these recent cases above that, the judicial interpretation of the disciplinary powers of universities with respect to examination malpractice is that, even though malpractice is a criminal offence, the universities are not precluded from considering the matter through their internal mechanism as empowered by law because examination malpractice forms such matter which is incidental to the award of the university

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44. Ibid
45. (1985) ANLR 94
46. (2011) ALL FWLR (pt. 561)

degree. And because such matters related to the award of the university degree has been held to be the exclusive preserve of the university, the court which is not so equipped to look into the matter would not dabble into such matter. However, from the reading of the court's holdings in *Oluwadare*'s case, the court will expect that all the internal mechanism of the university in handling malpractice issue should have all been employed before any recourse is had to the court by any dissatisfied party.

4.3 The Safeguard of Fair Hearing in the Determination of Examination Malpractice Cases in Institutions of Higher Learning

The other arm of the twin grounds for students' challenge of their institution's exercise of disciplinary powers in examination malpractice cases is theclamour for fair hearing when these cases are being considered before administrative panels set up by the universities. Thus, *Chinua Asuzu* stated that:" the celebrated case of *Garba* vs University of *Maiduguri* (supra) was

a landmark case on the subject of the conjecture of fair hearing and student discipline"[47]. The Supreme Court in *Garba'*s case stated the need for fair hearing when it held that: "The appellants' fundamental right to fair hearing within a reasonable time by a court were violated by their being penalized for crimes without a pervious trial and conviction by a competent court"[48]The court also held that: "The principles of natural justice are applicable to the present case, but were not observed. Merely interviewing the appellants or hearing them as witness will

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47. *Chinua Asuzu* (2010)Fair Hearing in Nigeria. Malthouse Press Ltd. Lagos. p. 136
48. *Garba* v. University of *Maiduguri* (1986) 1 NWLR at p 582D - 585C, Per Obaseki JSC.

not suffice for purposes of fair hearing"[49] Thus, the purport of these holdings is that in disciplinary cases before the university'sCommittee, the principle of fair hearing is applicable bothas regards ensuring that crimes are tried in courts of law within a reasonable time and as regards ensuring the application of the principle of natural justice during the proceedings before the university committee. We have dealt with the issue of fair hearing as meaning that a criminal matter must be tried before a court of law according to section 36[4] of the 1999 constitution of the Federal Republic of Nigeria in the preceding part [4.2] of this chapter. Under this heading, we are therefore concerned with fair hearing as a principle of natural justice to be observed during administrative proceedings such as the disciplinary panels/committees of universities investigating cases, especially cases of examination malpractice.

The Right to Fair Hearing: Fair hearing is a principle of law created to ensure justice and fairness. The foundation of fair hearing would best be located in those twin principle of natural justice usually expressed in the latin maxims; *nemojudex in causasua* (no man shall be judge in his own cause) and *audialterempartem* (hear the other side)[50]. The right to fair hearing is so important that the rules appear to and indeed do regulate procedures, they also go beyond that to touch the root of the relevant proceeding. Fair hearing is not merely of forensic value or procedural importance but it has the capacity of affecting the very competence of the proceedings. The proceedings have to safeguard the two twin maxims above as held in Garba's case. The Supreme Court in *Garba*'s case(supra) held that the appellant had not been given a fair hearing by the university before they were rusticated. The court reasoned that the breach of the principle of fair hearing related to the fact that the disciplinary panel which investigated the

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49. Ibid p. 5.
50. *Chinua Asuzu(* 2010) Fair Hearing in Nigeria. Op cit. p 2.

matter had as its chairman the deputy vice-chancellor who had himself been a victim of the student's rampage. Again, the students had not been given the opportunity of knowing what the allegation against them were nor were they allowed to give evidence in contradiction thereof.

In other similar cases as *Garba*'s above, the decision of the university and the examination bodies were quashed on the ground that the applicants were denied the right to fair hearing. In *Onwumechili* vs*Akintemi*(supra) the students had merely as others appeared as witness before an investigation panel for allegation of examination leakage and malpractice. Thereafter, the panel submitted their written report to the vice chancellor who relying on it, suspended the students. The students went to court to challenge their suspension on the ground that they were not accorded fair hearing in respect of alleged examination leakages which formed the basis of their suspension. Reliefs sought by the application / appellant were granted by the court.

Likewise in *West African Examination Council vsAkinkunmi*[51]the respondent's result was cancelled for alleged examination malpractice without the respondent being heard and he went to court on grounds that this was in violation of his fundamental right to fair hearing. The court of appeal held per*Galadima* JCA that:

> *……. a candidate against whom an allegation of engaging in examination malpractice is leveled, must be personally confronted with the allegation and given an opportunity to deny the allegation. Also the body set up to consider his defense and determine the matter must be impartial and fair. I must say that when taking disciplinary action against a candidate accused of examination malpractice, the appellant which is acting in a quasi-judicial capacity is bound to observed the rules of natural justice expressed in latin maxims "audial terampartem" and"nemojudexdebetesse in causasua……"*[52]

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51. (2002) 7 NWLR (pt 766) 327.
52. Ibid at p. 340G – 342A.

The case of *Adeyanjuvs West African Examinations Council*[53] was on all fours with *West African Examinations Council vs Akinkunmi*(supra) and a similar judicial result was obtained at the Court of Appeal. Similarly in *Egwuvs University of Port-Harcourt*(supra), where the appellant was expelled by the respondent for allegation of examination malpractice without being invited to any panel to answer any accusation as alleged, the appellant brought a legal action against the respondent, claiming interalia that the manner of his expulsion violated his fair hearing right. The high court dismissed his case and he appealed. The Court of Appeal allowed the appeal. *Muntaka-coomassie* JCA held in the lead judgment that:

> *As it is clear from the above provision of the constitution, section 33[1] thereof, and S.17 [a][d] of the University of Port-Harcourt Act, the plaintiff / appellant was entitled to a fair hearing right from the inception to the end of the investigation. He must know the type and nature of the allegation against him. In fact, he should know beforehand the kind of statement leveled against him. All these must be done and made available to him so that he can be accorded time and opportunity to correct them in his defence.*[54]

The consideration of all the cases above shows the court's readiness to insist on fair hearing in the proceedings of a university's disciplinary committee or panel.

The adherence to fair hearing is so important that the adjudicator himself is free to raise the question of fair hearing wherever warranted, because of its fundamental character and its primacy[55]. Even if a party has failed to plead lack of fair hearing, say in administrative proceedings, before a court of first instance, he may raise it on appeal and the court could even raise it *Suomotu* in view of its essential nature.[56] Likewise, a breach of fair hearing cannot be excused on the ground that the adjudicator was merely following statutory procedure. Even if the hearing was in strict and admirable compliance with the provisions of any enactment, it would be

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53. (2002) 13 NWLR (pt 785) 479.
54. Ibid at p. 440F –G.
55. *Chinua Asuzu* (2010), Fair Hearing in Nigeria. Op.cit p. 4.
56. Ibid.

unfair if it failed to meet the constitutional standards of fair hearing. For such a statute would be inconsistent with the constitution.[57] In addition, parties cannot contract out or negotiate away the fair hearing desideration, nor can a body, association or organization by its internal rules or domestic arrangement exclude fair hearing from its dispute resolution or adjudication regime. Thus, in the case of *University ofIlorin vsOluwadare*(supra), it was said at the court of Appeal, per *Onnoghen* JCA that: "……the respondent's complaint is basically against an infringement of his fundamental right to fair hearing which is a constitutionally guaranteed right that cannot be taken away by any domestic arrangement between parties." And in *Jang vs Independent National Electoral Comission*[58], *Obadina* JCA cited *Nwokoro* vs *Onuma*[59] per Nnamani JSC as follows: "The right to be heard is so fundamental a principle of our adjudicatory process that it cannot be compromised on any ground".

The requirement of fair hearing in disciplinary cases of examination malpractice: in our consideration of judicial interpretation of the disciplinary powers of universities in cases of examination malpractice, we considered cases such as *Esiagavs University of Calabar*(supra) and *University* of *IlorinvsOluwadare*(supra), where the Supreme court held that the matter of award of degree and matters incidental thereto is the exclusive preserve of the university and that the court should not dabble into such matter. The decisions of the court however bring to mind certain questions which were aptly put by Victor *Obanya*[60] in one of his write-ups. He stated thus:

> *Does it mean that the court has no jurisdiction in all circumstances to entertain matters arising from the internal affairs of a university? Is a university student still viewed as an infant whose education is a privilege and whose fundamental*

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57. Ibid p 5.
58 (2004) 12 NWLR (pt 886) 46,66 G- H.
59. (1990) 3 NWLR (pt 136) 22, 35.
60. *Victor Obanya*. Locating the Proper Forum for the Remedies of Aggrieved students in Tertiary Institutions in Nigeria, http://legallinesBlogspot.com 4th November 2014 at 10:30 am.

> *right should be trampled at will by domineering university authorities while courts watch, indifferent, under the guise that they cannot tread the hallowed ground of the University for Want of jurisdiction.*[61]

Obanya answered the poser as follows:"it is trite principle of law that no statute can oust the jurisdiction of the court or derogate from individual right. The court would even hold such law as unconstitutional by virtue of section 4[8] of the 1999 constitution of the Federal Republic of Nigeria."[62]We equally submit in agreement with *Obanya*above that, nothing should ever oust the jurisdiction of the court entirely no matter the seriousness of the need to protect such public interest as award of university degree.

The position above was upheld by the Court of Appeal in the case of University of *IlorinvsAdesina*[63] where the court 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."[64]The reasoning in the case above is that, it cannot be the law that the Council of the university should be the final arbiter in cases of award of degree. This position does not contradict the Supreme Court decision in *Oluwadare*'s case (supra) where the court held that the aggrieved student should not have rushed to court but should first exhaust the internal mechanism of the university, so that the court would not appear to be interfering into the workings of the university. The Supreme Court did not hold that the university should be the final arbiter in questions which involvesstudents' right to fair hearing even where it is related to the award of degree. Thus, *Obanya* opined that the correct principle is that the court is seized with jurisdiction in matter of student discipline and award of degree but will not intrude into the domestic affair of the university unless the civil rights and obligations of the student is breached

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61. Ibid.
62. Ibid.
63. (2009) All FWLR (pt. 487).
64. Ibid p. 114 para A – B.

We agree under this research with the submission of *Obanya* above that the decision of the Supreme Court in the matter of discipline and examination does not mean that the courts would stand by and watch the fundamental right of a student like fair hearing being breached. The court would rather not interfere in the matter until all theavenues in the institution areexhausted as held in the two cases of *Akintemi vs Onwumechile & ors(supra)* and University *of Ilorin vsOluwadare*(supra). In *Akuntemi vs Onwumechile (supra)* the Supreme Court agreed with *Akintemi* JCA of the Court of Appeal when he stated that: "… I regret to say that applications in this case have jumped the gun and cannot therefore be heard to talk of the rule of natural justice in this case until the senate has had a chance to deliberate on their case."

And in *Oluwadare'*s case(supra) the Supreme Court cited *Obaseki* JSC while agreeing with him:

> *The courts cannot and will not usurp the functions of the senate 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. If however in the process of performing their functions under the law, the civil right and obligations of any of the students or candidates is breached, denied or abridged it will grant remedies and relieves for the protection of those right and obligation.*

It follows from a consideration of all the above that, where the disciplinary process violates the student's right, the court would assume jurisdiction in the matter after the university would have been allowed a consideration of the issue. We can submit at this point that the right to fair hearing is a matter for which the court would assume jurisdiction where suchrights of the student have not been observed by any of the university's proceedings.

The Criteria for the Application of the Fair Hearing Principle: the issue of fundamental right such as fair hearing is central to any quasi-judicial determination in Nigeria. Indeed it is an issue of public policy and public good which seeks to uphold the Constitution of the Federal Republic of Nigeria. It is expected that once any panel / committee is established which carries out a duty that involves the determination of a person's right, such a panel / committee even though administratively created must abide by the principle of fair hearing in the course of its proceedings. This was so held per *Edozie* JCA in the case of *Tionshavs Judicial Service Committee, Benue* State[65] that: although an administrative panel is not bound to follow the procedure and practice of the court of law, it is bound to observe and comply with the principles of natural justice that a person who may be adversely affected by its decision is entitled to be given adequate opportunity not only to know the case against him but also to answer it. And in *BabavsNigerian Civil Aviation Training Center*[66], *NnaemekaAgu* JSC held that:

> *Where the body, whether judicial, quasi-judicial administrative or executive in inception, acts judicially in the sense that it is to determine the civil rights and obligation of a person, or to find him guilty or liable of a fault, then he must be given a hearing before the issue can be properly decided. That is the intendment of section 33[1] of the constitution of 1979. That indeed is the essence of fair hearing as a constitutional right. In such case hearing body must be seen to have observed all the implications and attributes of fair hearing…..*

Likewise, in the case of *Legal Practitioners Disciplinary Committee vs Fawehinmi*[67], *Aniogulu* JSC cited the case of *Wood vs wood* (1894) LR 9 Ex 190,196 where Kelly LCB stated that the *audi alteram partem* rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving

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65 (1997) 6 NWLR (pt 508) 307.
66. (1991) 5 NWLR (pt. 192) 388, 415 C – F.
67. (1985) 2 NWLR (pt 7) 300, 333 E – F.

civil consequences to individuals.

We can conclude in view of the preceding cases that, disciplinary committees of universities set up to investigate cases of examination malpractice even though they are not judicial bodies are still bound by the rules of fair hearing being administrative bodies. Having seen that these university committees are bound to follow the principle of fair hearing, we now turn to the question of what are the criteria for this requirement. The criteria for this requirement were clearly stated in *Garba v*s*University ofMaiduguri*(supra) where *Oputa* JSC stated that:

> *It is my humble view that fair hearing implies much more than hearing the appellant testifying before the disciplinary investigation panel. It implies much more than summoning the appellant before the panel. It implies more than other staff or students testifying before the panel behind the backs of the appellant, it implies much more than the appellant being given a chance to explain their own side of the story. To constitute fair hearing whether it be before the regular court or before Tribunal and Boards of inquiry the person accused should know what is 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.*[68]

Going by the case above some of the indices of fair hearing includes:

i. Knowledge of the case must be made known to the accused;

ii. The accused should be present when any evidence against him is tendered; and

iii. The accused should be given an opportunity to correct or contradict evidence given against him through cross-examination.

There are other cases where the criteria for fair hearing before panels were also outlined. In the case of *Unibizvs Credit Lyonnais*[69], the court held per *Ejiwunmi* JSC that: "The adjudicator or panel must hear all sides not only as the main subject of the case but also as to all material issues

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68. (1986) NWLR (pt 18) at p.618
69. (2003) 6 NWLR (pt. 816) 402

in the case before coming to a decision which may be prejudicial to any party in the case".[70] In addition it was held that: "The adjudicator or panel must give equal treatment, opportunity and consideration to all sides".[71] Likewise, it was still held that with respect to every material decision in the case, justice must not only be done, but must be manifestly and undoubtedly be seen to be done.[72]

In the case of *Nijokwuemeni vsOchei*[73]*AminaAugie* JCA highlighted some features of fair hearing as follow:

i. To be present all through the proceedings, to hear all the evidence against him;

ii. To cross-examine or otherwise confront or contradict all the witnesses who testify against him;

iii. To have read before to him all the documents tendered in evidence at the hearing;

iv. To have disclosed to him the nature of all relevant material evidence including documentary evidence prejudicial to him, except in recognized exceptions;

v. To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence; and

vi. To give evidence by himself, call witnesses if he likes and make oral submission either personally or through counsel of his choice.

In addition to all the above criteria, fair hearing would not be deemed to have been observed where there is an Orchestrated hearing. Where it is apparent that the panel had already made up

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70. Ibid.
71. Ibid p.618
72. (2003) 6 NWLR (pt. 816) 402
73. (2004) 15 NWLR (pt. 895) 196, 214 D-H

its mind about the party's guilt, merely setting up a disciplinary committee and observing the forms of hearing will not satisfy the requirement of fair hearing. In *Igwilovs Central Bank of Nigeria,*[74] by a notice of suspension that pronounced him guilty of misconduct, the appellant was suspended, without any investigation, from the respondent employment based on an allegation of financial impropriety contained in an anonymous latter. The respondent later constituted an investigation panel at which the appellant gave oral testimony and to which he submitted written explanation, the respondent queried the appellant and he responded to the query, and then was invited to defend himself before the respondent's central disciplinary committee. Then, his appointment was terminated (in effect, he was dismissed). He took out a writ of summons against the appellant, but the trial court dismissed his claim. His appeal to the Court of Appeal succeeded on the plank of fair hearing. *Akaahs*JCA wrote the lead judgment:

> *The appellant stood condemned the moment the anonymous latter was received by the respondents. The procedure of investigation even if meticulously observed in the sense that the appellant submitted a written explanation and even orally testified before the central disciplinary committee was still not fair because the explanation detailed as they were could not change the stand already taken by the respondentds.*[75]

The purport of this case is that where from the facts of a case, it can be deduced that the authorities had taken a stand with respect to the case ever before setting up the committee / panel, it would be deemed that there have not been fair hearing in the procedure.

Another criteria which the court could insist onis that, merely summoning a person as a witness

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74. (2000) 15 NWLI (pt. 672)
75. Ibid at 336 D.

and hearing him in that capacity will not satisfy the requirement of fair hearing. Thus, in *Adeniranvs National Electric Power Authority*[76] *Amaizu* JCA wrote the lead judgment:

> *It is also my view that fair hearing in this case, does not mean calling the appellant as a witness before the committee. It means more than that. There is a yawning gulf between hearing a man as a witness in an administrative inquiry and hearing him in defense of his good name and his career. In the latter case the man should know what and what were alleged against him and he must be given a fair opportunity to contradict such evidence*

In addition to the above, converting a party invited as a witness to an accused person or suspect and then immediately hearing him no matter how fully, will not remedy the irregularity. His fair hearing rights would still have been violated by his not being fore warned as to what he was appearing to meet. In the case of *University of Nigerian Teaching Hospital Management Board vs Nnoli*.[77] (the Chloroquine Overdose case*)Belgore* JSC said: "An employee must be clearly told he is being tried for disciplinary action and mere presence in the manner of an ordinary witness cannot substitute to (sci. for) intimation of an accusation against him for him to offer his defence"

The university examination malpractice committee/panel utilized by the university authorities for the investigation of these cases are administrative panel akin to other administrative panels of investigation in other organizations. Thus, the requirement and criteria for fair hearing as expounded and analysed above are expected to be adhered to by the university committees. It is the adherence to these criteria for fair hearing that would ensure that any decision taken in reliance on the committee's report is able to stand the test of fair hearing and would be upheld by the court in the event of challenge of such decision on grounds of fair hearing.

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76. (2002) 14 NWLR (pt 786) 30.
77. (1994) 8 NWLR (pt. 363) 376

CHAPTER FIVE
SUMMARY AND CONCLUSION

5.1 Summary

In our bid to analyse the topic of research entitled: "An Appraisal of the Role of law in Combating Examination Malpractice: A case study of *Ahmadu Bello* University, *Zaria*" issues such as the functional meaning of law as a viable tool to combat societal problem and other definitions of law were examined under chapter one. Thus, different definitions of law were looked at with a view to relating the various definitions to the concept of the use of law in controlling the societal problem of examination malpractice. A consideration of the various definitions of law by scholars showed that it can be defined in a functional context as carried out by the Naturalist school of thought. The Naturalist school defined law from a moralistic and value point of view by stating that, recourse must be had to the values, custom and moral of the people in the analysis of what law is. We reached a conclusion that indeed law considers the value and customs of the society because this is the very means through which law is used as a viable tool for thecontrol of deviant behaviours. The analysis of law in this dimension facilitated our basic understanding of the research topic.

Under chapter one of the research, we also examined briefly the menace of examination malpractice and noted that indeed it is a prevalent practice which cuts across the various levels of our education system which includes higher institutions. It was observed that the problem of malpractice has reached an alarming stage of sophistication such that the need for urgent solution

is so glaring. We noted that it was due to the prevalence of the menace that the Examination Malpractice Act and institutional regulations in various institutions of learning were created as a means of control. Thus, laws and regulations were created in a bid to use law to control the menace of examination malpractice.

Having looked at the meaning of law and how it intervenes as a means to control the problem of examination malpractice, the basic foundation of our research was laid. We then proceeded to look at our statement of problem for the research. The problems noted were: lack of enforcement and application of the laws on examination malpractice; students challenge on grounds of fair hearing in courts of law of the institutions exercise of its disciplinary powers in cases of examination malpractice; and the problem of lack of awareness that examination malpractice is a crime. We also looked at the aim and objectives of the research and stated the aim to be the assessment of the laws and regulations on examination malpractice with a view to observing those problems which have hindered the use of these laws/regulations to control the menace of examination malpractice. The research methodology to be adopted was stated as the doctrinal and empirical method.

Six literatures relevant to our research were reviewed under chapter one. Lord Lloyd of Hampstead's "Introduction to Jurisprudence" (Supra) was reviewed to shed more light on the meaning and nature of law. *Okonkwo* C.Oand Naish's literature: *"*Criminal law in Nigeria" (Supra) was reviewed to enhance our understanding of the subject matter of criminal law being that the research involved on assessment of the criminal law on examination malpractice. In the same direction, A.B Dambazau's literatures: "Criminology and Criminal Justice" (Supra) and

"Law and Criminology in Nigeria: An analytical Discourse" (Supra) were both reviewed as viable tools in our analysis of the concept of crime and criminal behaviour. The work "Fair Hearing in Nigeria" by *Chinua Asuzu (*Supra) was also reviewed to shed more light on issues such as the use of administrative disciplinary powers in cases which are criminal in nature and where fair hearing is required in disciplinary proceedings before university panels and its judicial interpretation.

Chapter two of the research titled: "Legal Framework for Combating Examination Malpractice in Nigeria" involved an analysis of the meaning and nature of examination malpractice. Various definitions of the concept were considered and we thereby submitted a definition of examination malpractice as any illegality or wrongdoing related to examination which contravenes laid down laws / regulations created to bring about the control and peaceful conduct of the examination. In addition, we looked at some of the negative consequences of the problem of malpractice such as, economic waste, reduced standard of education, moral decadence and corruption. We also looked at the history of the menace in Nigeria and it was noted that as early as 1916; the country recorded its first publicly reported case of examination malpractice. We further noted that the menace had bedevilled our educational sector through the 1970s up till date and that this led to the promulgation of laws and creation of internal rules in examination bodies and institutions of learning in a bid to curb the problem.

Under chapter two, we also looked at the available legal framework on examination malpractice in Nigeria and in that line, we examined the content of the Examination Malpractice Act (Supra); the relevant portions of the penal code and criminal code; and institutional rules/ regulations on

examination malpractice using the *Ahmadu Bello* University, *Zaria* Examination Management/Regulations as example. We also considered the concept of examination malpractice as a crime by analysing the meaning of crime and its relationship to the criminal act of examination malpractice. We noted that in view of the meaning of crime; there are two key elements in every definition of crime which can help us discern whether examination malpractice is a crime. The two key elements being: the proscription of certain behaviour by law created by the state and secondly, the prescription of punishment for the violation of such act proscribed. We then noted that these two elements were notable in acts labelled as examination malpractice under our laws. We therefore submitted that examination malpractice is indeed a crime under the Nigerian laws in view of all the analysis made thereunder. We further considered the central role played by punishment in the consideration of the issue of crime control through law. Our analysis led us to examine alternatives to the punishment of imprisonment and fine prescribed under the Examination Malpractice Act because we noted that, the offenders of examination malpractice are usually young persons still pursuing their education.Thus, we examined the provisions of the Administration of Criminal Justice Act,2015 and it was noted that the provision of alternatives such as probation, suspended sentence and community service are more appropriate for offenders of examination malpractice being that it is mostly involving young persons who are still pursuing their education and deserve the opportunity to make amends and continue with their education so as to be productive members of the society.

Under chapter three of the research titled: "The Role of Law in Combating Examination Malpractice: A Case Study of *Ahmadu Bello* University, *Zaria* we carried out a practical

assessment of the efficacy of our laws/rules on examination malpractice so that we can analyse and examine those problems stated in our statement of problem for the research. We assessed the actual use of these laws/ regulation in A.B.U *Zaria.* We therefore examined the applicable laws/rules to A.B.U*Zaria* and discovered that all the cases of examination malpractice encountered by the institutions are dealt with internally through the use of the institution's Examination Management/Regulations created by the Senate of the institution to investigate these cases. These cases are investigated through a Committee created under the regulations and the Senate finally considers the case based on the report and recommendation of the Committee. The institution therefore handles malpractice cases through its internal mechanism. It was also noted that the institution does not go further to hand over these cases which are criminal in nature to the police whose duty it is to enforce criminal law and ensure the prosecution of such cases. This situation brought us to the realization that the Examination Malpractice Act and the relevant parts of the penal code laws are not being applied to these cases. In addition, we assessed the A.B.U *Zaria* Examination Management/Regulations with a view to observe any loop hole which can hinder its effective use in the institution to control malpractice cases.

Chapter four of the research titled: "Fair hearing and the Exercise of Administrative Disciplinary Powers by Nigerian Universities" analysed issues of student's challenge of institutions' exercise of its disciplinary powers based on two major grounds. These two grounds were the burning legal issues relevant to our understanding of the use of law to control examination malpractice in our institutions. The two grounds were: examination malpractice being a criminal matter has led to students challenging the university's disciplinary powers on the ground that the jurisdiction of

the university is ousted by the provisions of the Nigerian Constitution which vests jurisdiction in criminal matters only on the court of law. The second ground noted was that of violation of the student's right to fair hearing in the disciplinary processes utilized by the universities. It was noted under the research that since the case of *Garbavs University ofMaiduguri* (Supra) was decided by the Supreme Court, students have relied on the ratio *decidendi* of the case which is to the effect that in criminal matters contained under the code of law, they are not within the jurisdiction of the university. *Garba's* case (Supra) became a *locus classicus* on the issue of barring administrative discipline in cases tainted with criminality. Following this, so many cases on examination malpractice from universities were challenged in courts and some of these cases were decided in line with *Garba's* case (Supra). It was however noted that after sometime starting from the case of *Esiagavs University ofCalabar*, the Supreme Court distinguished criminal matters from matters which are connected to the university's authority especially that of award of its degree and therefore held that in such cases even when they are criminal in nature, the university is vested with power and in fact the court should not interfere. Other cases came up before the Supreme Court and they were decided in the same line. We analysed the two recent cases of *Magitvs University of Agric* (Supra) and *University of Ilorin vsOluwadare* (Supra) where we noted that in both cases, the Supreme Court upheld its position as held in *Esiaga*'s case (Supra) and reiterated its stand that it is the Senate of the University that has the duty and responsibility of award of degree and all such matters like examination malpractice incidental to the award of degree are within its jurisdiction and not that of the court. However, the court stated in *Oluwadare*'s case (supra) that until an aggrieved student has exhausted all the university's avenues of redress, he should not come to court because coming to court without exhausting the

internal mechanism of the university in cases of examination malpractice is an action premature and amounts to jumping the gun.

We also noted that the position of the court in *Oluwadare'*s case (supra) and other cases held similarly, showed that even though the court would not interfere in the university's process of award of degree , the court would hear matters (like that of examination malpractice even though related to the award of the university degree) where the fundamental right of the student has been breached and the student has exhausted all the redress avenues in the school and allowed the university the full consideration of the matter. It was further noted that the court would expect such university administrative Committee/ panel to adhere to certain criteria of fair hearing in the use of its disciplinary mechanisms.

5.2 Findings

With respect to our topic of research: "An Appraisal of the Role of Law in Combating Examination Malpractice: A Case Study of *Ahmadu Bello* University, *Zaria*", the following findings were made under the research:

(i) There are basically three legal instruments governing the issue of examination malpractice in Nigeria and they are: the Examination Malpractice Act (supra): the Penal Code Law/ Criminal Code Laws of the various states; and Institutional Regulations on examination malpractice in various higher institutions of learning and examination bodies. It is however, only the institutional regulations that are functional being in use in our various institutions of learning while unfortunately, the

other two laws which form the substantive laws on examination malpractice are not functional being rarely applied to these cases in Nigeria. Institutions of higher learning consider these matters only as internal ones which are within their powers of award of degree without averting their minds to the equally criminal nature of the matter. These institutions do not report these matters to the police even though they are expected to do so as held in the case of *University of Ilorin* vs*Oluwadare* (supra). Thus, due to the fact that examination malpractice cases are not reported to the police whose duty it is to ensure prosecution, most of such cases do not get to the courts where the substantive laws on the matter could have been made applicable.

(ii) There were series of cases analysing the correct legal interpretation of the extent of the university's disciplinary powers with respect to cases of examination malpractice being of a criminal nature and the fair hearing perspective. The Supreme Court settled the matter in the more recent cases of *Esiaga vs University ofCalabar*(supra); University of *Ilorin vs Oluwadare* (supra); and *Magit vs University of* Agric *Makurdi* (supra). The Supreme Court decisions in these cases enunciated the following principle: that the university can engage the use of its disciplinary measures in the discipline of their students for examination malpractice even though it is a matter criminal in nature. This is because such matter as examination malpractice is related to the award of degree process of the university and for issues of award of degree and matters incidental thereto, it is the jurisdiction of the university conferred on its Senate to the exclusion of all others. Thus, the courts would not allow itself to dabble into this exclusive preserve of the university and as such no student would be allowed

to challenge such powers of the institution unless he has exhausted all the internal mechanism process of redress available to him in the university.

(iii) Even though the courts would allow the university to exercise its disciplinary powers in cases of examination malpractice through the use of its internal mechanism, it is expected that such processes should be in strict adherence to the principle of natural justice so as to safeguard students' fundamental right to fair hearing as guaranteed under the Constitution of the Federal Republic of Nigeria. The adherence to this condition is fundamental in cases before the university's disciplinary panel set up for the purposes of such disciplinary measures because the consequences of non-adherence is so grave as to nullify the entire proceedings carried out by the panel. It is in view of the aforementioned that the research noted that*Ahmadu Bello* University, *Zaria* Examination/ Management Regulations do not make adequate provisions for constituting the Committee charged under the Regulations to investigate cases of examination malpractice in such a way as to reflect and ensure fair hearing.

(iv) The system adopted in A.B.U for the internal discipline of students investigated for examination malpractice is such that they are not expelled for the crime of examination malpractice but they are withdrawn on grounds of breach of matriculation oath.

5.3 Recommendations

In view of the findings made under this research and the objective of the research, which is, to seek for a more efficient way to use the available laws / regulations on

examination malpractice so as to bring about the desired control of this menace, the following recommendations are made:

i. Institutions of higher learning and even examination bodies should ensure adherence to the principle of fair hearing in the exercise of their disciplinary powers todiscipline students for examination malpractice. They can do this by ensuring that the disciplinary panel is properly constituted to exclude persons with interest in the case. In addition, the proceedings should be such that the student concerned is given ample notice of the allegation against him with every opportunity to defend himself and he should also know all the evidence against him while given the opportunity to cross examine the witnesses called duringthe proceedings. In order to ensure all the above, relevant provisions covering all these requirements should be made under the institutions' rules/ regulations governing examination malpractice. In A.B.U *Zaria* for instance, we have the Examination Management/ Regulations which provides for malpractice issues and creates the Examination Irregularities Committee for the investigation of these cases. Thus, the A.B.U *Zaria* regulations should be redrafted to make provisions for the composition of the panel; procedures to be followed by the panel and the rights of the student during the proceedings.

ii. There is the need for institutions of higher learning to endeavour to lodge complaint of examination malpractice cases with the police. Reporting the matter to the police does not preclude the institution's Senate from dealing with the matter internally by way of taking disciplinary measures such as

expulsion, suspension, rustication or warning against the student. Making such report is very vital to the functionality of the substantive criminal law on examination malpractice because it is only when suchcases are reported that students so accused are prosecuted under these laws and it is only the prosecution of these cases that can ensure the application of the laws.

iii. Creating awareness and educating both the institutions' authorities and students on the fact that examination malpractice is a criminal matter which is however within the disciplinary powers of the institution is a step in the right direction. Such awareness would enable the institutions understand that there is need to ensure fair hearing during investigation of these cases and reporting the matter to the police. Such awareness can even bring about the control of the criminal behaviour and reduce students' challenge of universities' use of internal disciplinary measures to control examination malpractice.

iv. Institutions of learning should ensure the harmonious use of the substantive criminal law on examination malpractice and their internal Rules/Regulations. This is by ensuring the internal discipline of such students through the use of the institution's internal disciplinary mechanism and then handing them over to the police for prosecution of the case. It is important for institutions of learning to note that the substantive laws and their internal Regulations exist side by side to complement each other in the fight against the menace. The substantive laws are created by the State to address the issue at such level while the Regulations are the subsidiary legislations meant to deal with the

problem at the level of the institutions and examination bodies. The subsidiary legislations are important in the control of the problem at the level of the institution so that the problem can be nipped in the bud. The existence of the subsidiary legislation should not however over-shadowthe functionality of the main legislation as it is the case with institutional regulations on examination malpractice. In our institutions of learning, regulations on examination malpractice are being utilized exclusively to handle these cases without considering the fact that malpractice cases are criminal in nature and so they must be reported to the police so that such suspected cases can be prosecuted.

Ensuring the harmonious use of these regulations and laws would go a long way in reducing the problem of student's challenge of the institutions' useof their internal disciplinary mechanism and still the problem of the non- application of our substantive law on examination malpractice.

It is also recommended that the method adopted by *Ahmadu Bello* University, *Zaria* whereby, students are withdrawn for breach of matriculation oath and not expelled for examination malpractice should be adopted by other higher institutions. This would reduce student's challenge in courts of their institutions' use of disciplinary measures as the reason for their withdrawal is not criminal in nature.

BIBLIOGRAPHY

Aboki Y. (2009) Introduction to Legal Research Methodology, Tamaza Publishing Company Limited, Zaria. Second Edition.

Chinua Asuzu (2010) *Fair Hearing in Nigeria*. Malthause Press Limited, Ibadan.

Dambazau A. B. (2011) *Criminology and Criminal Justice*. Spectrum Books Limited, Ibadan.

Dambazau A.B. (1994) *Law and Criminality in Nigeria: An Analytical Discourse*. University Press Plc, Ibadan.

Karibi White A. G, (2005) *History and Sources of Nigerian Criminal Law*. Spectrum Books Limited, Ibadan.

Lord Iloyd & Hamstead (1976) *Introduction to Jurisprudence*.Steven &Sons, London. Fourth Edition.

Nwabueze Ben (1992) *Military Rule and Constitution*, Spectrum Law Publishing Company Limited, Second Edition.

Okonkwo C. O. and Naish (2009) *Criminal Law in Nigeria*, Spectrum Books Limited, Ibadan. Second edition.

Olu Aina (2009) *Assessment and Contemporary Issue in Education*, O.A.U. Press, Ile-Ife.

Sirohi J.P.S. (2007) *Criminology and Penology*, Farlbabad, Sixth Edition.