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Disciplinary Powers of Nigerian Universities on Students Misconduct: Guiding Principles*

Introduction

University is a citadel of learning throughout the world. It can be regarded as miniature of government as it deals with several thousands of students, accommodate them and see to all their academic and welfare needs for a certain number of years. The need to inculcate discipline and good morals in the students cannot be over emphasized, as university is not meant only to teach courses for which students are enrolled, rather, inculcation of good character and culture is an integral part of the education. In the course of their academic pursuit, students are bound to adhere to certain rules and regulations as might be laid down by the universities, failure of which amount to misconduct that attract various sanctions as laid down by the universities enabling laws.[1]

The statutes establishing universities usually invest them with certain regulatory powers to conduct their domestic affairs however, universities cannot operate as islands outside the larger society, they are therefore bound to act within the legal framework of the country where they operate.

Universities being administrative bodies possessing power to manage its own affairs in an autonomous manner do conduct investigation, and impose appropriate sanctions on erring students. This may be in form of expulsion, suspension, or rustication.[2] In the course of administering discipline, Universities administration

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* **Adeleke F.A**, Lecturer, Faculty of Law, Lagos State University, Ojo.

* **Oyeneye O.O**, Lecturer, Faculty of Law, Lagos State University, Ojo.

1. In the case of *Garba v University of Maiduguri* (1988) 1 NSCC, Section 17 of the University of Maiduguri Act which sets to punish students for misconduct did not define the type of misconduct that can be dealt with under that section. According to Uwais JSC, "It is a notorious fact that in any university community, students are apt to commit and often do commit offences. Such offences though criminal in nature can also pass as misconduct in the context of section 17. The difference between; acts of misconduct which can, on one hand, be regarded as purely within the domestic affair of a University and therefore not calling for prosecution in a court of Law and, on the other hand, crime against the public, which should be prosecuted, is indeed very difficult to discern." (pp. 175 – 176, paras. H–J.

2. See for example, University of Benin Law Section 17 (1) of Edict No 3 of 1975 which provides that "Subject to the provisions of this section, where it appears to the vice chancellor that any student of the university has been guilty of misconduct, the vice chancellor may, without prejudice to any other disciplinary powers conferred on him by statutes, or regulations, direct, that the student shall not, during such period as may be specified in the direction, participate in such activities of the University, or make use of such facilities of the university, as may be so specified, or that the activities of the student shall during such period as may be specified in the direction, be restricted in such manner as may be so specified

sometimes go beyond the limit of their power and often infringe on rights of students as protected by laws of the land. This paper in the light of the above sets out to look at the scope, extent and limitation of the disciplinary powers of the university with respect to students' misconduct. The paper seeks to consider the need to strike a balance between the necessity to inculcate discipline in the students on one hand and the protection of the fundamental rights of the students as guaranteed in the constitution and other international instrument.

Meaning of the word misconduct

As contained in all statutes establishing universities, the Vice Chancellor being the chief executive of the university is legally invested with the disciplinary power over any student who is guilty of misconduct. Unfortunately, these laws do not define misconduct for which students can be punished. According to the Black Law Dictionary[3] the word "misconduct" means:

> *"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are impropriety, mismanagement, offence ..."*

Apart from the dictionary meaning, it is also noted that various universities laws classify misconduct by academic staff that could lead to removal as:

(a) Conviction for any offence which the council considers to be such as to render the person concerned unfit for the discharge of the functions of his office, and

(b) any conduct of a scandalous or disgraceful nature, which the council considers to be such as to render the person concerned unfit to continue to hold his office[4]

The Supreme court in *Garba v. University of Maiduguri* had held the meaning of the word misconduct to necessarily include the above two classes. The apex court also held meaning of misconduct to cover serious allegations like arson, assault, looting, and destruction of property which were alleged in the said case. It is therefore submitted that any act whether relating to civil or criminal that are not dignified but disgraceful which could render a person unfit in the academic environment would automatically qualify as misconduct. It therefore follows that in the course of studentship, university candidates are expected to conduct themselves in a responsible manner in accordance with the laid down university rules and regulations. They should be morally upright and socially fit. Any departure from the established norms and values would be tantamount to misconduct for which penalties are prescribed in the university laws.

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a. that the student be rusticated for such period as may be specified in the direction or

b. that the student be expelled from the university.

3. Black Law Dictionary, 6th Edition, 1990 at page 999.
4. See for instance section 15 (1) (2) and (3) of the University of Maiduguri Act 1979.

University and the Principle of Natural Justice

It is trite law that universities being administrative bodies established by law have the power to conduct inquiries and adjudicate over matters regarding discipline, using their own laid down rules and procedure[5], however, it is a general mandatory requirement of law that they must observe and comply with the principles of natural justice in the exercise of their adjudicatory or disciplinary powers.[6] This principle though of common law origin has been constitutionalized in section 36(1) of the 1999 constitution therefore, has become a constitutional right which must be respected and observed. This fact was confirmed by the Supreme Court in the case of *Garba v. University of Maiduguri.*[7]

Accordingly, Section 36 (1) of the 1999 Constitution provides:

> *"In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality".*[8]

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5. See the case of *Olley v W.A.E.C.* Suit No M/280/99, High Court of Lagos State, Lagos Division, 1999. Although section 6 (1) and (2) of the 1999 Nigerian Constitution provides for the establishment of regular courts at the Federal and State Levels, however, Section 36(1) of the same constitution makes it clear that other bodies may adjudicate on matters and this is where administrative body derives its adjudicatory powers.
6. The rules of natural justice has been defined as "principles of justice and fairness which imposes obligations on persons who have power to make decisions affecting other people to act fairly, in good faith and without bias and to afford a person likely to be affected by their decision the opportunity to be heard and adequately state that his case before a decision is made.
7. The Supreme Court unanimously held that the emphasis on fair hearing in the provisions of sub-section (1) and (4) of S. 33 of the 1979 constitution entrenches the necessity for compliance with the rules of Natural Justice – *audi alteram partem* and *nemo judex in causa sua* i.e. the twin pillars of Natural Justice. This, they said, has been adequately indicated, emphasized and expressly stated.
8. Similar provisions are contained in Article 7 of the African charter on Human and People's right which provides as follows:
   Every individual shall have right to have his cause heard. This comprises:
   (a) The right to an appeal to competent national organs against act of violating its fundamental rights as recognized by and guaranteed by conventions, laws, regulations and custom in force;
   (b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
   (c) The right to defence, including the right to be defended by a counsel of his choice;
   (d) The right to be tried within a reasonable time by an impartial court or tribunal.
   See generally African charter on Human and Peoples Rights, (Ratification and Enforcement Act) Cap 10 Laws of the Federation of Nigeria 1990.

Generally, natural justice consists of two basic principles which are expressed in latin maxims — ***audi alteram partem*** and ***nemo judex in causa sua***. Both are literally expressed in English language as ***Hear the other side*** and ***You can not be a judge in your own cause.*** The two constitute the inviolable doctrine of justice and they are universal in nature. The first one demands that a party must be heard before the case against him is determined which extends to the fact that an accused person must know the case against him. He must know what evidence has been given and what statements have been made affecting him and he must be given opportunity to contradict or correct them. These include his right to be represented by a counsel and right to adjournment where applicable.

The second principle implies that persons constituting the tribunal or panel must be constituted in a manner that will ensure impartiality and independence. A person is automatically disqualified to partake in the tribunal or panel where it can be established that he has an interest whether by way of affinity, proprietary, pecuniary or otherwise.

Under the common law, two main classes of persons are disqualified from hearing a case. First, is where an adjudicator is associated with a body that institutes or defend the proceedings. And/Or where he has personally taken an active part in instituting the proceedings.[9] Generally, the ingredients of the principle of natural justice or fair hearing include but not limited to the following:

1. Information About The Offence/Notice of allegation

It is a legal requirement that before any student can be punished for any misconduct in the university, he must be informed of his misdeed or wrong. Where a panel is set up, he must be informed of the reasons why he needs to appear before the panel. This will enable him to prepare for his defense and to know beforehand what is going to confront him at the panel or committee as the case may be. *In Amolegbe v. Lagos State University*[10] the affected student was a student union leader and a Faculty of Law student. He was alleged to have been involved in examination malpractice consequent upon which a panel was set up to investigate and found him guilty. Part of the contention in the court was that the applicant was not given a prior notice of the panel that investigated him. The learned judge while granting prayer of the applicant against Lagos State University made the following remark:

> *"The Plaintiff in this case was never given a prior notice of the panel being set up. Exhibit "1" only states that the student was being invited to the Faculty Seminar room for an important discussion. There is evidence that the Plaintiff is a President of the student union. Nothing prevented him not to think that exhibit "1" is for a discussion on Union matters ... in effect, the Plaintiff was not prepared for the panel he met to inquire into his activities...."(P 856 -857) paras E–H.*

Also in *Tolulope Olley v. West African Examination Council*[11]

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9. See De Smith in Judicial Review of Administrative Action, 4th edition by J.M. Evans.
10. Suit No ID/2114/90 reported in Nigerian courts and students rights, 2 NIFLR p. 832.
11. Suit No M/280/99 . Lagos State High Court.

the applicant was never told of her offence neither was she given an opportunity to present her defence. Her results were cancelled five years after she sat for the examination and had been given her statement of result. She was already in her second year at the university when she was notified that her "O" level result had been withdrawn and cancelled by the respondent (WAEC).

Hon. Justice Bode-Rhodes-Vivour of the Lagos State High Court made the following remarks:

> *"The West African Examination Council may well be regarded as a domestic or administrative tribunal when taking disciplinary steps against a candidate accused of examination malpractice. It is a body established by Law which may have the power to decide its own procedure and lay-down rules for the conduct of inquiries regarding discipline. The only requirement is that such inquiry must be conducted in accordance with the rules of Natural Justice".*

2. The requirement of audi alteral partem/hear the other side

It must be emphasized that these rules of natural justice with respect to hearing the accused person cannot be by-passed by an administrative tribunal like university or other bodies on grounds or reason of possible inconvenience and impracticability otherwise the court will set aside such an action or decision reached by such bodies as being un-constitutional, null and void and of no effect. In *Adeyanju v. West African Examination Council*[12] The Respondent (W.A.E.C) had argued in its defence that it was impractical and inconvenient to accord each and every candidate accused of examination malpractice a hearing because of the large number of candidates involved in the practice annually. The Court of Appeal rejected that defence and held that the rules of Natural Justice cannot be circumvented by an administrative body such as W.A.E.C on the ground that it is not convenient to observe the tenets of the rule of law[13]

3. Impartiality of the adjudicatory body

As stated earlier, the second pillar of the principle of natural justice is expressed in the latin maxim *nemo judex in causa sua* which means one can not be a judge in his

12. CA/L/483/2000 also reported in 2 NPILR p. 1171.
13. Per Galadima J.C.A in *Adeyanju v WAEC* supra. Similarly, in *West African Examination Council v Akinkunmi*, CA/L/259/2001. The Court of Appeal was of the opinion that though WAEC has the right to cancel results, it does not have the right to do so without informing the candidates of the wrongs he is alleged to have committed. Furthermore, The Appellant should have published the cancellation in the daily national newspaper for everybody to see that some results of the centres were cancelled; and that:

    > *"this notice to the whole world, so to speak would have to come the notice of this applicant and he would have retraced his steps promptly, that too would have put the Appellant (W.A.E.C) in a better and firmer ground to show that they have applied the principles of fair hearing as contained in S. 36(1) of the 1999 Constitution in view of the impracticability of informing every candidate personally as they claimed."*

own cause. This is to ensure fairness and impartiality of the panel and the members. The standard of impartiality required of full time judges is the same as those required of persons who adjudicate in Administrative Boards like the Disciplinary investigative tribunal[14]

The Court of Appeal in the case of *West African Examination Council v. Akinkunmi*[15] reiterated that before punishment and penalty is meted out for engaging in examination malpractices in violation of the rules and regulation guiding the conduct of examinations, the body must conform with the principles of *audi altera partem* and also the body set up to consider his defence and determine the matter must be impartial and fair. The essence of compliance with the principle of natural justice is to ensure fairness or fair trial.

In *Isiyaku Mohammed v. Kano Native Authority*, Ademola CJN submitted that the true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation justice has been done in the case[16]. The same position was maintained by the court in the case of *Ugwumadu v. University Of Nigeria, Nsukka*,[17]

In the case of *Garba v. University of Maiduguri*, the Chairman and the Vice Chairman of the Disciplinary Investigation Panel were themselves victims of the arson and malicious damage alleged to have been committed by the students. The Supreme Court held this to be an infraction of the rule against bias in that there was likelihood of been bias. Similarly, In Amolegbe v Lagos State University supra, one Mr Genty served as a secretary to the panel that tried the student over an allegation that he colluded with a clerk in the faculty of law to alter his marks in some courses. The discrepancy in the student's marks was said to have been discovered by the same Mr. Genty. The court faulted the composition of the panel in that the inclusion of Mr Genty in the panel even though as a secretary raises the likelihood of bias. Mr Genty cannot be an accuser and participate in the adjudicatory panel at the same time.

4. Promptness in taking decision

The courts have also held in a number of cases that university adjudicatory body is under a duty to arrive at a decision concerning examination malpractices promptly. Cases abound where students are made to face panel over an alleged misconduct and the whole case lingers on for more than a year or two before the panel later decides the fate of the affected student. According to the popular saying that justice delayed is justice denied. Unnecessary and avoidable delay in the proceeding is a contradiction to the principle of fair hearing. Thus, in *Akinkunmi v W.A.E.C*, the

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14. See the case of *Oyelade v. Araoye and A.G. of Western Nigeria* (1968)NMLR 44 at p. 47.
15. Suit No CA/I/259/2001. Being an appeal from suit no M/584/99. High court of Lagos State.
16. See also the judgment of K B Akaahs JCA in *Victor Igwillo v. CBN* (2000) FWLR pt 18 265 at 304.
17. Suit no FHC/ENCP/113/99.

Court of Appeal held that since the result initially sent out to students by West African Examination Council were provisional,

> *"They (Respondent) must ensure that they send out the proper and final results within the reasonable time of the setting of the Examination. This is to enable would-be university Applicants know their fate in time. But Examination conducted in May/June 1992 and notification of cancellation not reaching candidates until February 1993 – eight months after, it is unduly long and improper. But this notice did not reach this Applicant until 1997 – five years after. This is unfair and it stands in contradiction to the well laid down principle of fair hearing."*

It is pertinent to note that our judicial system in Nigeria sometimes can be guilty of the same undue delay in determining the guilt or otherwise of students who might have rushed to the courts to be saved from imminent danger of losing his studentship only for such cases to last for more than the total number of years such students would have spent in school.[18] It is our submission that since student's cases should be handled with dispatch to know their fate so as to take any action he/she thinks appropriate.

5. The rule guiding delegation of disciplinary power

The disciplinary power of the university resides in the vice chancellor who by law is empowered to discipline students for misconduct. Various university laws expressly grant the vice chancellor the power to delegate his disciplinary powers to any board or persons. For instance Section 32 (4) of Obafemi Awolowo University law reads

> *"The Vice Chancellor may delegate his powers under this section to a disciplinary board consisting of such members of the university as he may nominate."*

The court interpreted the said section in the case of *Fanoro v. Professor Abimbola* [19] to mean that the vice chancellor can delegate his disciplinary power to a board or any persons within the university. After delegating the power, he himself cannot at the same time exercise disciplinary power in respect of the subject matter. i.e. the donor of power cannot concurrently exercise same with a delegatee without revocation of that power.

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18. In the case of *Amologbe v Lagos State University*, the student challenged in court his purported rustication or expulsion from the university, the case was commenced in 1990 as at that time the student was in his 400 level in the faculty of law. The case was not determined until nine years after. The learned judge delivering the judgment stated "This court concedes the fact that for a case to last nine years and the plaintiff still pursues it, the Plaintiff's energy need be commended but it is not by way of awarding damages. As a law student and students union leader, it is part of the training to fight a case to the last. [P 862 paras. G-H] .
19. Suit No. HOD/5M/88 Ondo State High Court.

It has also been established that the Vice Chancellor cannot under the law of the University impose on a student any punishment greater than the one imposed or recommended by a Disciplinary Committee set up by him.[20]

6. There must be strict compliance with the enabling law

In the decided case of *Lukmon Amolegbe v Lagos State University*[21], Hon Justice E. F. Longe in granting the reliefs sought by the student, held and stated *inter-alia*:

> *"The duty to discipline a student of the University belongs to the Vice Chancellor under section 18 of Edict No 5 of 1986. Where such discipline is to lead to rustication or expulsion, there must be strict compliance with the law...*

The court made a very long remark on the need to comply with the enabling law of the Lagos State University thus:

> *Another area in which the act of the vice chancellor is questionable is the letters written on this matter. Exhibit 4 and 5 were letters written by the Registrar of the University to the Plaintif; Exhibit 4 suspended him from the university and exhibit 5 expelled him. The writer of these letters was the Registrar. With the greatest respect to the Registrar of the University, these letters have not strictly complied with the provisions of the law under section 18 (a) - (d). Under this section, it is only the vice chancellor who can take all the punitive action against the Plaintiff. It may be said that the letters were written by the Registrar for and on behalf of the vice chancellor. In a matter of this nature, nothing is to be assumed, It must be clearly shown that the Registrar was so directed by the vice chancellor or by the Senate. ....the law enjoins the Registrar under the title "I am hereby directed to etcetera". Failure to put the letters in that form makes Exhibit 4 and 5 voidable and having been challenged they are invalid to create any suspension or dismissal..."*

In *Opeyemi Bamidele v. Alele Williams*, the university acting under section 17 (1) of the university Edict wrote letter to each of the applicant. The conclusive part of the letter read *inter-alia:*

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20. Suit no HOD/5M/88. The fact of the case was that the applicant student was a member of campus journalists. He was alleged along with others to have published an offensive articles at the external campus of the Obafemi Awolowo University i.e. Adeyemi college of education Ondo. Consequently, an investigative panel was set up by the university vice chancellor. The panel at the conclusion of its investigation recommended that the applicant be banned from campus journalism. The Vice chancellor apparently not satisfied by the recommendation of the panel he set up decided to rusticate the student for 1987/88 Rain semester which was not among the recommendation of the panel that tried the student. In order words the vice chancellor substituted and added additional punishment other than the ones recommended.
21. Suit No ID/2114/90, High Court of Lagos State (Ikeja Division) 2000.

"Pending the determination by Senate as to the appropriate punishment to be meted out to you, the Vice Chancellor, in exercise of the power conferred by section 17(1) Edict 3 (University Edict 1975) has directed that you cease forthwith from participating in any university activities and keep away from the campuses until further notice."

The trial court in its considered ruling held that the above paragraph does not conform with strict application of the university law in that the letter was ambiguous and did not specify which activities the students should cease to participate, and the period of time the students should keep away from the university was not specified (contrary to the prescription of the enabling university laws (as p The court therefore quashed the letter and restored all their rights.[22]

7. Exercise of Discretionary Power

Generally, administrative bodies including university exercises a wide range of discretionary powers which often lead to improper use of power, maladministration, arbitrariness, omission, unreasonableness and abuse. Administrative authorities are required to exercise their discretionary powers properly and reasonably otherwise the courts will intervene to declare such exercise of discretion null and void. Various university laws do contain provisions which grant the vice chancellor the discretionary power to act for instance. the provision of section 32 (1) of the Obafemi Awolowo University Law which reads:

"where it appears to the Vice Chancellor that any student of the university has been guilty of misbehaviour."

The court held that "in line with our common law tradition and the spirit of the constitution of the Federal Republic of Nigeria 1979, such a provision in a statute, wherever it exists, will be read by the court to mean "wherever the Chancellor has reasonable grounds to believe that..."[23]

The court further held that the section does not give the Vice Chancellor an uncontrolled discretion. The courts have always frowned at the conferment or alleged conferment of uncontrolled discretion to the prejudice of citizens except in such acts as may be accepted to be "ministerial acts." The court expressed the

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22. The court construed the section 17 (1) of the university edict 1975 which stated as follows: Where it appears to the vice chancellor that any student of the university has been guilty of misconduct, the vice chancellor may, without prejudice to other disciplinary powers conferred on him by statute or regulations, direct, that the student shall not during such period as may be specified in the direction, participate in such activities of the university, or make such use of such facilities of the university, as may be specified; or
    a. that the activities of the student shall, during such period as may be specified in the direction, be restricted in such manner as may be so specified, or
    b. that the student be rusticated for such period as may be specified in the direction; or
    c. that the student be expelled from the university.
23. *Fanoro v. Vice-Chancellor of Obafemi Awolowo University Ife*, suit no HOD/5M/88.

opinion that nobody will be allowed to exercise arbitrarily any statutory power to mete out punishment to others under the Nigerian law.

8. Jurisdiction in criminal cases

It is uncontrovertibly the position of the law that where a crime is committed by any citizen such a person can only be pronounced guilty after he might have been tried by a competent court of law. Crime is an offence against the state and it is only the state that can punish a wrongdoer for the wrong committed by him. The power to punish a criminal is not therefore exercisable by any administrative tribunal or panel except a judicial tribunal established by law[24] The University must steer clear of any involvement in conducting any criminal trial and must refer such criminal acts to the regular courts for adjudication before taking administrative action.[25] In Nigeria, the power of the administrative body to exercise a disciplinary action is greatly limited by Section 36 sub-section 6 of the 1999 constitution which provides:

> *(1) Every person who is charged with a criminal offence shall be entitled to:*
> *(a) be informed promptly in the language that he understands and in detail of the nature of the offence;*
> *(b) be given adequate time and facilities for the preparation of his defence;*
> *(c) defend himself in person or by his legal practitioners of his choice;*
> *(d) examine, in person or by its legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before any court or tribunal on the same condition as those applying to the witnesses called by the prosecution; and*
> *(e) have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.*[26]

24. See section 36 of the 1999 Constitution.
25. See *Denloye v. Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306, See the case of *University of Calabar v. Esiaga* (1997) 4 NWLR pt 502 at 719.
26. The section continues as follows:
    (2) When any person is tried for any criminal offence, the court or tribunal shall keep the record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.
    (3) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.
    (4) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence same upon the order of a superior court.
    (5) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.
    (6) No person who is tried for a criminal offence shall be compelled to give evidence at trial.

All the above constitutional provisions must be complied with before there can be a conviction and such can only be accomplished in the court or a judicial tribunal established by law. Courts have held in plethora of cases that university administrations have no power to try any student or staff for any criminal conduct[27]. It is unfortunate that majority of misconduct for which the university can punish under their enabling laws have been criminalized. For instance, examination malpractice has become a crime by virtue of Examination Malpractice Offences Act[28] In the case of *University of Ilorin v. Oluwadare*[29] the student was alleged to have cheated in the examination and was consequently arraigned before the university disciplinary panel which eventually led to his expulsion. He challenged his expulsion as being an infringement on his right to fair hearing guaranteed in the constitution. The High court gave judgment in his favour. The university appealed to the higher court and the court of appeal dismissed the appeal. The court of appeal re-affirmed the position of the law that it is only the law court that has power to try anybody alleged to have committed an examination malpractice. In the words of Onnoghen J.C.A

> *"The committee set up by the 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 ..." Other notable misconduct for which students are known in the university include demonstration or protest, vandalization and destruction of properties, arson, looting and forgery of result, impersonation etcetera. All these invariably are criminal conducts punishable only by the law court."*

The same position was maintained in *Garba's* case where the investigative panel and disciplinary board were set up to investigate and try students for misconduct

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(7) Subject as otherwise provided by this constitution, a person shall not be Convicted of a criminal offence unless that offences is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State and subsidiary legislation or instrument under the provision of a law.

27. In *Yesufu Amuda Garba v. University of Maiduguri supra,* the Supreme Court held: "Though, disciplinary measures against a university student for misconduct is an internal affair of the university but where the misconduct alleged involves crimes against the state, it is no longer a matter of internal discipline but a matter for a court or tribunal vested with judicial powers to try such offences. It is only after conviction by a proper court for these offences that the vice chancellor can proceed to exercise his disciplinary powers and expel the student if he so wishes". See also *University of Ilorin v. Oluwadare,*(2003) FWLR pt.149. 1195, *Oliyide v. Ogun State Polytechnic,*Suit no M/81/94, reported in 2 NIPLR. 2002. p. 485. *Ogwuche v. University of Agriculture , Markurdi* suit no MHC/394M/99 reported in 2NIPLR 2002 p. 809.

28. Examination Malpractice Offences Act, cap 485, LFN.1990. Section 15 (2) thereof provides that all new proceedings regarding examination malpractice offences as form the date of the promulgation of the law shall be brought to court. It is submitted that since the said date of promulgation no university or any institution has any jurisdiction or power to initiate any proceeding on examination malpractice.

29. *University of Ilorin v. Oluwadare* (2003) FWLR pt.149, 1195.

bothering on arson, looting, stealing, house trespass, etc. The students were consequently found guilty and expelled. The supreme court quashed the decision in its landmark judgment and condemned the act of the university.[30]

One may then be forced to ask the question whether the courts have not usurped the function of the university in matter of discipline? In the view of this writer, the answer is in the negative as the courts themselves have expressed the same opinion in a number of cases. In the popular case of *Akintemi v. Onwumechili*, the Supreme Court per Obaseki JSC remarked as follows:

> *"The court will not usurp the functions of the Senate, the Council and the Visitor of the University in the selection of their fit and proper candidates for passing and for the award of degrees, certificate, and diplomas. If however, in the process of performing their functions under the law, the civil rights and obligations of any of the students or candidates are breached, denied, or abridged it will grant remedies and reliefs for the protection of those rights and obligations."*

In the said case, the Supreme Court held and confirmed the rulings of both the high court and court of appeal by refusing to issue mandamus to compel the university of Ife to release the results of the applicant students as that is purely the domestic affair of the university. In the same vein, the court of appeal in *Okonjo v. Council of Legal Education*[31] where the applicant had taken the council of legal education to court over the council's refusal to grant him admission into the Nigerian law school. The court held that the council has discretion in formulating conditions of admission to the Law school and that the court will only interfere when such discretion is improperly exercised.

In another case of *Adeola Soetan v Obafemi Awolowo University Ife*,[32] the court declined to give judgment in favour of the student who was withdrawn from the university on account of non registration for two consecutive semesters. Oluborode J while dismissing the application of the applicant student remarked:

> *"The senate as the supreme authority in academic matter had exercised its power in accordance with the regulation, which the applicant knew or ought to know at*

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30. Per Obaseki JSC at p. 139, paras. B-C, "The trial of erring students for criminal offences or breaches of the criminal or penal code laws are not within the jurisdiction conferred. Accordingly the purported investigation by the investigating Panel and Disciplinary Board and the punishment meted out to the appellant students cannot stand and are hereby declared a nullity ... Judicial powers are not vested in private persons, administrative tribunals or other authorities."
31. Suit No FCA/L/16/78. The fact of the case was that one Mr Okonjo applied to the Nigerian law school for admission. The School did not offer him the admission but wrote to tell him that further investigation would be made into the circumstances of his compulsory retirement from public service. The applicant being dissatisfied applied to court to issue mandamus directing that he should be given admission. The court dismissed the application on the ground that the council has the power to formulate rules and regulation to be satisfied for the purpose of admission into the school. On further appeal to Federal court of Appeal, the decision of the High court was upheld.
32. Suit no HIF/MISC/29/92 Osun State High Court, Ife Judicial division.

the time of his matriculation. It is this authority that can grant permission due to illness and other unavoidable circumstances. In the exercise of its discretion to allow for such non-re-registration and I do not think that the court can question how and why the permission should be granted. It is all purely a domestic affair of the university."

Conclusion

We have in this paper examined the general power of the university with respect to disciplinary action on the students. The general requirement of the law on the university power or any educational institution in exercising discipline over students may be summed up thus:

a. The need to comply with their enabling law, i.e. the statute that creates such universities.
b. Requirement to follow the principle of natural justice
c. Lack of power to undertake or determine criminal matter.

Generally, the basic principle of administrative law is that whenever any body or person performs any act which is quasi judicial or judicial in nature, justice must be seen to be done otherwise an aggrieved person may have recourse to a court of law to ventilate his anger by way of judicial review[33] Therefore where the university acts *ultra vires* or run foul of the principle of natural justice, the court will interfere to ensure that justice is done to an affected student.

In *Oyalana v. University of Ilorin*, it was held by Hon. Justice J.T. Tsoho that the courts are always disposed to and are quick to grant relief against improper use of power by those in authority. It was held that if the Vice Chancellor does not act in good faith or if he acts on extraneous considerations, which ought not to influence him or if he plainly misdirects himself in fact or in law, the court ought to interfere.[34]

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33. By virtue of section 6 of the Constitution of the Federal Republic of Nigeria 1999, the judicial powers of the Federation have been vested in the courts specifically listed by name in the Constitution an ip so facto are the superior courts of record in Nigeria and exercising all the judicial powers there of. These powers include:
    i. all inherent powers and sanctions of a court of law;
    ii. all matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as the civil rights and obligations of that person. In addition, S.46 of the Constitution affords any one who alleges that any provisions of chapter IV of the Constitution is contravened in any State in relation to him to apply to a High Court in that State for redress.

    The combined effect of the provisions of Section 6 of chapter 1 and sections 36-46 of chapter IV of the Constitution is vesting in our Superior Courts the power of JUDICIAL REVIEW of the acts of the other branches of Government, lower Courts, Public administrative authorities and to uphold or invalidate them as may be found necessary.
34. 2 NIPLR 2002 at p. 955.

It has been found out that most often than not students including staff of the university always smile back from the courts over any act of the university which is being legally challenged in court. The reason is that universities management particularly the vice chancellors as repositories of disciplinary power are always too desperate and reckless in their bid to enforce discipline in deviant of the established principles of law. It is our submission that the university management should always ensure that a balance is struck between the imperativeness to enforce discipline and the respect for the fundamental rights and the rule of law.

Students are future leaders. They constitute the gold and silver with which our future jewelleries are to be moulded therefore they must be well disciplined so as to be able to fit into the larger society. Discipline is part of academic training and where a student is guilty of misconduct, he may be subjected to the punishment within the purview of the university laws but this punishment should only be meted out in compliance with the laid down and well established principles of law.

It is our findings that the meaning of the word misconduct is too wide and is not of precise meaning, as it covers conducts which are purely within the domestic jurisdiction of the university and those that are beyond the scope of the university power. It is therefore our humble suggestion that the universities statutes be amended to define act which amount to misconducts which ultimately should be referred to court for determination and those that are purely within the domestic affairs of the universities.

It is also suggested that any act of examination malpractice occurring within the university should as a matter of public policy be made purely university internal affairs in which the court of law will decline to interfere. This will assist in granting the universities better autonomy in the management and enforcement of academic discipline.