

NATURAL JUSTICE AND THE EXERCISE OF ADMINISTRATIVE POWERS.*

1.1 INTRODUCTION

Until recently, the distinction between administrative law and constitutional law was treated as non-existent. To the Nigerian engaged in practising or studying law, administrative law was considered merely as a topic in constitutional law.¹ This was partly because our legal system is fashioned after the English system and the contents of our syllabuses are carbon copies of English syllabuses. And since in England the development of administrative law as a separate and distinct area of law has just recently begun² it is only natural that “colonial” Nigeria will not be better placed.

Briefly put, “Administrative law is the Law concerning the powers and procedures of administrative agencies including especially the law governing judicial review of administrative action”.³

Admittedly, there are plenty of overlappings between the two. But this is not a peculiarity. Contract overlaps with company law; the principles of agency run through many branches of law. However, this article is not concerned with the attempt at defining and delimiting the province of administrative law vis-a-vis constitutional law.⁴ It was only necessary to mention this in passing so as to justify the treatment of this topic under administrative law and not under constitutional law.

The purpose of this article is to discuss the principles of natural justice in relation to administrative law and to pay some attention to their use in the exercise of disciplinary and related powers by educational institutions.

It should be mentioned here that Nigerian cases dealing directly with this subject are hard to come by for the simple reason that unlike their counterparts in Britain, United States, India, Australia etc, Nigerians have always, taken the powers of the Administration for granted. The typical Nigerian is more interested in fighting for money, not for his right.

This incapacitation notwithstanding we shall try to examine the topic in the light of common law decided case; for it is trite law to say that the common law of England applies to Nigeria. Also, here and there, now and then, we shall make references to cases in other countries where similar problems exist.

2.2 NATURAL JUSTICE

Natural justice has meant different things to different peoples at different times. In its widest sense, it was formerly used as a synonym for natural law. It has been used to mean that reasons must be given for decisions; that a body deciding an issue must only act on evidence of probative value. Some have asserted that the maxim “Actus non facit reum, nisi mens sit rea” is a principle of natural justice.⁵

* M. B. Dalhatu Esq

¹ See e.g. D. O. Aihie & P. A. Otuyeds: *Cases and Materials on Nigerian Constitutional Law* (1971). The authors in the preface comment as if all the cases reported therein are constitutional law cases. Certainly, cases like *Udekwe Okakpu v. Resident Plateau Province* reported at p. 393 (a case dealing with discretionary powers of the Resident to license gold smiths) was not a constitutional law case but a case on administrative law.

² In the United States, administrative law is far more developed.

³ Davis; *Administrative Law and Government* (1960) P. 11.

⁴ For a brief discussion on the difference between the two see J. F. Garner: *Administrative law* (2ⁿ Ed.) pp. 1-2.

⁵ Paul Jackson: *Natural Law* (1973) pp. 1-2.

Whatever the meaning of natural justice may have been, and still is to other people, the common law lawyers have used the term in a technical manner to mean that in certain circumstances decisions affecting the rights of citizens must only be reached after a fair hearing has been given to the individual concerned. And in this context fair hearing requires two things, namely, AUDI ALTERAM PARTEM and NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA.

In Continental countries *audi alteram .pattern* is known as *audiatur et aliera pars*⁶ and we find that even the scriptures⁷ and Nigerian proverbs recognize the principle that the other party must be heard. This is a principle based on common sense. It goes without saying that a decision which is arrived at through the understanding of all the issues involved will be more rational. The *Nemo judex* rule, commonly referred to as the rule against bias, ensures that a “judge” is not partial. He should not be influenced by personal interest; for jurists and laymen alike have insisted that justice should be manifestly seen to have been done. Where the judge has interest in the subject matter, or in the party, or his own financial interest is involved, the objectivity of his decision is bound to be questionable.

3.3 APPLICATION OF THE RULES

3.3.1 UNITED STATES

In the United States the application of the principles of fair hearing is guaranteed by the constitution which provides that no person shall be deprived “of life, liberty or property without the due process of law”. This has been interpreted to mean that the rights of the citizen can not be interfered with unless he is first given a FAIR HEARING⁸. It does not mean, however, that in all circumstances there must be judicial hearing. It only means that in deciding matters affecting peoples' interests the procedure must be in accord with the elementary principles of fair play, to wit, there must be notice and an opportunity to be heard or defend before a competent tribunal.⁹ There, the rules apply only to adjudicative, not to legislative matters. The United States went further to enact the Administrative Procedure Act in 1946¹⁰ which lays down rules for fair administrative proceedings.

The American courts, too, have not always applied these laws mechanically. They have realised that the procedure must be adapted to the circumstances of the case in order to produce administrative efficiency and in recognition of the fact that administrative procedures rest on different principles.

3.3.2 BRITAIN

In England the application has been left largely to the judges. And the rules so far developed are largely judge-made rules.

Plenty of judicial decisions and dicta have tried to explain the precise meaning of the doctrine. But as late as 1964 Ungood Thomas J: lamented that “the law in natural justice is not in a satisfactory state and the authorities disclose some different views, it is somewhat lacking in precision in the occasion in which it should apply...”¹¹

However, from the decided cases, certain points stand out as obvious. For example, *audi alteram partem* does not mean that in all cases the parties must have a right to a legal representation; it does not mean that the representation must necessarily

⁶ See S. A. de Smith. *Judicial Review of Administrative action* (3rd Ed.) p. 134,

⁷ “Doth our law judge any man before it hear him and know what he doeth?” John 7:51.

⁸ Benjafield & Whitmore: *Australian Administrative Law* (3rd Ed.) p. 145.

⁹ Moris D. Forkoseb: *A Treatise on Administrative Law* (1956) p. 297.

¹⁰ The Act, unfortunately, is restricted to agencies of the Federal Government.

¹¹ *Lawlor v. Union of Post Office Workers* [1965] Ch. 712, 7.18.

be oral or that, the affected party must be given the opportunity of cross-examining witnesses.¹² Notice can be dispensed with in some cases.

Furthermore, the rule against bias is sometimes difficult to apply in disciplinary cases for, “those who have to make the decision can hardly insulate themselves from the general ethos of their organisation, they are likely to have firm views about the proper regulation of its affairs and they will often be familiar with issues and conduct of the parties before they assume their roles as adjudicators”¹³

Under these circumstances therefore, the application of the rule against bias should be tempered with realism; there should be a relaxation of the rules. But such relaxation should not be carried to the extent where manifest injustice is done. In this regard, the case of *WARD v. BRADFORD*¹⁴ is illustrative. In that case, some women students in a Teachers' College were found to have men in their rooms in the early hours of the morning. The principal declined to exercise her powers to refer the case to the disciplinary committee of the school. There upon, the governing body of the school amended the rules giving themselves power to refer the case to the committee which incidentally included members of the governing body. The committee recommended the expulsion of one of the students and the governing body confirmed it.

The Court of Appeal held that they had acted fairly and declined to intervene.

This was a clear case of bias. The members of the governing body has shown clear intention of their interest in the matter. It would be unrealistic to expect them not to have made up their minds one way or the other. But it would appear that the decision was influenced by the moral turpitude of the offence.

3.3.3 NIGERIA

In Nigeria, section 22 (1)¹⁵ of the 1963 constitution provides that in the determination of civil rights and obligations of a citizen, “he shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law”. Like all provisions on fundamental human rights this, too, has its limitations. The right has been given with the right hand and a lot taken away with the left hand.

Fair hearing here refers to the rules of natural justice. But, does “tribunal established by law” include bodies like disciplinary committees set up by governmental agencies and the Universities?

The courts have held¹⁶ that rules of natural justice must be observed where the medical disciplinary committee struck out the name of a medical practitioner. The committee's decision was quashed on the grounds that the rule that no one should be a judge in his own cause had been violated because the Registrar who acted as the prosecutor also took part in the committee's deliberations. In this case, however, the Law¹⁷ provided directly for the setting up of the committee. But in the case of Universities¹⁸ the laws establishing them do not set up these committees directly. They rather vest disciplinary powers on the Vice-Chancellor who may in turn constitute a committee or board.

¹² *University of Ceylon v. Fernando* [1960] 1 All E.R. 631.

¹³ de Smith *op. cit.* p. 224.

¹⁴ (1971)70 L.G.R. 27 of *Hannam V. Bradford Corporation* [1970] 1 WLR 937.

¹⁵ Chapter III of the constitution is saved by Decree No. 1, 1966

¹⁶ *Alakija v. Medical Disciplinary Committee* (1959) 4 FSC. 38.

¹⁷ Medical Practitioners and Dentist Ord. Cap 116 of 1959.

¹⁸ See Ahmadu Bello University Statute 12 (d), (f) see also University of Lagos Decree 1967 SS. 4, 19; University of Nigeria Nsukka Statute 9 (d) (1) and University of Ibadan Act 1962 s. 10 (1).

In practice, these committees are merely advisory. They find facts and make recommendations to the Vice-Chancellor who takes the final and binding decisions, subject to appeal to the University Council.

In 1937, the Privy Council had held that “a judicial proceeding is nonetheless a judicial proceeding subject to prohibition and certiorari because it is subject to confirmation or approval by some other authority.”¹⁹ But it would appear that this no longer represents the law. For, in **Jayawardane V. Silva**²⁰ it was held that a preliminary decision which was not final was not a judicial or quasi-judicial decision. This view is supported by some learned writers.²¹ It can therefore be tentatively stated that the committees that are advisory or recommendatory are not subject to the rules of natural justice but the final authority taking the decision definitely is. And where the decision of such a committee requires a mere formal approval, it is submitted that they will be required to observe the rules of natural justice.

4.4 PROBLEMS OF APPLICATION

The judges are unanimously agreed that it is an inherent power of the courts to apply the rules of natural justice except where they are expressly excluded by statute. In other words like the question of mens rea in an offence, the courts start with the presumption that natural justice is required of every person or body of persons exercising powers which affect the rights of individuals. The justification for this approach is that the law maker never intends that power conferred on people should be exercised unfairly and unreasonably. If the law maker so intends, he must expressly say so.

The basic problem facing the courts however has been to decide the type of acts that the rules are applicable to. There are two lines of cases representing two views. Until recently, the rules of natural justice were said to be applicable only to judicial acts.²² Thus in **Nakkuda AH V. Jayaratne**²³ a controller of textiles had power to cancel the licence of a textile dealer where he believed on reasonable grounds that the dealer was unfit to continue in business. The Privy Council held that in withdrawing the licence, the controller was acting administratively and not judicially and he was therefore not required to give the dealer a hearing. In the Nigerian case of **Udekwe Okakpu V. Resident Plateau Province**²⁴, it was held that a resident's power to revoke a goldsmith's licence under section 6(1), of the Goldsmiths ordinance was administrative therefore the Resident was not required to give the plaintiff a hearing.

These decisions were against the decision of the 19th century case of **Capel v Child**²⁵ where the court had held that before a Bishop could make an appointment when he was satisfied either of his own knowledge or by affidavit, he must nonetheless first give the vicar a hearing. Another interesting case during that period was **Cooper V. Wandsworth Board of Works**²⁶. The board had power to demolish any building which was erected without permission first received from the board. Cooper had no permission and his building was demolished. The court held that though the provisions of the statute

¹⁹ *Estate & Trust Agencies v. Singapore Improvement Trust* [1937] A.C. 898.

²⁰ (1970) 1 WLR 1365.

²¹ Benjafield and Whitmore *op. cit.* p. 154.

²² David Foulkes: *Introduction to Administrative Law* (3rd Ed.) 143.

²³ [1951] A.C. 66. See also *Ex. P. Parker* [1953] 2 ALL E.R. *Franklin V. Mi.,: of Town & Country Planning* (1948) AC. 87.

²⁴ (1958) NRNLR5.

²⁵ (1832) 2 Crompt & Jer. 558.

²⁶ (1863) 14 CBNS 180 See also *Queen v. Smith, Ex. P, Harris* 16 QBD 614.

taken literally justified the board's conduct, but such powers were subject to the qualification that no man must be deprived of his property without fair hearing.

It was therefore comforting when in 1963, the House of Lords revived²⁷ these 19th century authorities. Since then, English courts have held that even non-judicial powers may be exercised in accordance with the rules of natural justice.²⁸

And in 1971 Lord Denning²⁹ put the matter in his characteristic blunt manner "it is now well-settled that a statutory body which is entrusted by statute with a discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial... or administrative... it must, in proper cases give a party a chance to be heard." If these latest authorities represent the law, then there would be no need to split hairs trying to categorize³⁰ acts: into judicial and non-judicial for the purpose of determining whether or not natural justice applies.

Lord Denning's statement in Breen's case suggests that in cases that are not proper the rules will not apply. As already noted, they will not apply where they are excluded. In *Furnal v, Whangarei High School*³¹, the New Zealand Education Act provided for discipline of teachers and prescribed the procedure. It was held that the Act was a complete code and there was no need importing into it the rules of natural justice. But exclusionary provisions made by subordinate legislation will be strictly construed.³²

Again, where the function is purely ministerial and the performance of it is possible in one way only, natural justice will normally be excluded; or where disclosing information to the party affected will be prejudicial to the public interest, or giving of notice or hearing will obstruct prompt action, especially actions of preventive nature in all these cases it will not be proper to apply natural justice.

Subject to these exceptions, it is submitted that the duty to observe the rules of natural justice is obligatory on anybody exercising judicial or non-judicial functions the result of which is capable of affecting the rights in property, personal liberty, status, livelihood or reputation, of an individual. But here again we must qualify the proposition by adding that the austerity in the application of the rules ought not to be uniform. The nature of the right to be affected, the severity of the sanction and the interest of the public, need be taken into consideration. Thus, for example, a mere servant enjoying no special status has no common law right to be heard before dismissal. The rules of expulsion from a body ought reasonably to be sterner than rules for mere suspension.

Natural justice is inapplicable to legislative powers, It is irrelevant where it is the question of the extent of powers. In that case, one has to fall back on procedural and substantive ultra vires rules. Natural justice is only relevant when the question is that of EXERCISE of power.

5.5 DISCRETION AND REASONABLENESS

Before we relate this discussion to the powers of the institutions, it would be worthwhile saying a few words about discretionary powers. This is necessary because in most cases the exercise of these powers is usually discretionary.

²⁷ *Ridge v. Baldwin* [1963] 2 All E.R. 66

²⁸ *Re K (H)* [1967] 1 All E.R. 226 K was entitled to enter the United Kingdom if he satisfied [he immigration officer that he was under 16. The officer believing him to be at least 16 refused his entry. K was not given a hearing. It was held that notwithstanding the fact that the officer was acting administratively, he was required to give K a hearing.

²⁹ *Breen v. Amalgamated Engineering Union* [1971] 1 All E.R. 1148.

³⁰ See classification in the Report of the Committee on Ministers Powers p. 73.

³¹ [1973] 2 WLR 92.

³² *de Smith, op. cit.* p. 161 on Cooper's case (p. 5 supra) where it was held that if Legislature omits to provide a procedure, justice of the common law will supply the omission.

The exercise of discretionary power is required also to be reasonable. The essence of discretionary power is that there are two courses of action. If only one course of action can lawfully be adopted, it becomes the performance of a duty. Summarizing the general principle laid down by the courts for the exercise of discretionary powers de Smith says:

“The authority in which discretionary power is vested can be compelled to exercise that discretion but not to exercise it in any particular manner. In general a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations, must not seek to promote purposes alien to the latter or to the spirit of the legislature that gave it power.., and must not act ARBITRARILY AND CAPRICIOUSLY.³³

When it is said that a discretionary power has been exercised arbitrarily or unreasonably it means that the purported action is irrational, foolish, unwise, absurd, silly, preposterous, senseless, stupid, injudicious, nonsensical.³⁴

In *Prescott v. Birmingham Corp.*³⁵ a corporation was given powers to maintain and operate a transport system and to charge such fares as it thought fit. It decided to provide free traveling facilities for women **over** 65 and men over 70 years. The court of appeal held that the action was unreasonable because it was economically stupid.

It is arguable that in this particular case the corporation had totally failed to exercise its discretion. There is a difference between fixing a charge and not fixing any at all. It could have been interesting if the corporation had fixed some token amount; say one penny!

However, the courts are cautious about invalidating an act on grounds of unreasonableness and they are only likely to do so where there is manifest partiality or discrimination or unjustifiable interference with private life.³⁶

6.6 NATURAL JUSTICE IN UNIVERSITY STUDENTS VS. UNIVERSITIES

Having briefly examined some principles governing the exercise of administrative powers, it is now appropriate to juxtapose them with the powers of the institution. For our purposes, we shall pay attention to the Universities. I consider this aspect of the article particularly important for two reasons.

Firstly, “the present generation of student is more prone to question authority and the manner in which it is exercised.”³⁷ It is however a paradox that a good number of students are grossly, ignorant about the rules and regulations that are in force in the Universities. It is suprising that not many students care to read simple regulations contained in handbooks. It is when we get into trouble that we hurriedly comb around for the rules and regulations.

Secondly, it would appear that both the students and the University authorities have always taken these matters for granted. It is not unreasonable to suppose that the idea

³³ de Smith, *op. cit.* pp. 252-253. For a fuller discussion on the topic see p. 246 - 31.

³⁴ *Southern Kansas State Lines Co. V. PCS*, (1932) 135 KANS, 657

³⁵ [1954] 3 All E.R. 698;

³⁶ *Kruse v. Johnson* [18981 2 Q.B. 91.

³⁷ Report of the Committee appointed to look into the Administrative set-up in Ahrnadu Bello University Zaria p. 67. It is interesting that no single student was interviewed by the committee despite the fact that they were looking into matters that primarily concern students.

of the authority considering itself in *loco parentis* over the students still guides it in its actions. But to put it bluntly this relationship has little basis in the University.³⁸ If the current trend of students becoming more and more legally enlightened continues, the Universities had better be alerted to the possibility of litigation with students.³⁹

The first question to be answered is whether Or not the Universities are also subject to administrative law, hence to the observance of the rules of natural justice and reasonableness when exercising powers over students. We have already briefly discussed this matter. The only minor difference we said between the medical disciplinary committee and the case of the Universities is that the former is directly set tip by law.

As early as 1874, the decision in **Wood V. Wood**⁴⁰ had established that the principles of natural justice must govern the conduct of arbitrators, professional bodies and even voluntary associations in the exercise of their disciplinary function and every tribunal or body vested with authority to adjudicate upon matters involving civil consequences to individuals.

All Nigerian Universities are established by law; they are corporate bodies with defined powers and duties. Such powers include disciplinary and examination matters. In the absence of Nigerian cases,⁴¹ we may be forced again to refer to cases decided under the common law on the subject. The authorities disclose two views. In **Thorne v. University of London**⁴² a Law student claimed, that he had been negligently misjudged in his examinations by his examiners. He sought an order of mandamus commanding the University to award him his “deserved” degree. The court held, on appeal, that the question of degrees was purely internal and was within the exclusive jurisdiction of the visitor⁴³ but in **R. V. Aston University Ex. P. Roffey**⁴⁴ where two students alleged that their examiners had taken into consideration extraneous personal matters in determining their academic performance, the court interfered and held that the rules of natural justice had been breached. The court did not consider it an internal matter.

We find that even in cases concerning Examinations there are differences in the court decisions. There is however some uniformity in cases dealing with discipline proper. In **University of Ceylon v. Fernando**⁴⁵ a student was reported to have seen some question papers before the Examination; The Vice-Chancellor exercising powers conferred on him set up a committee to look into the matter. F was given an opportunity for stating his case. The female student who reported the matter gave evidence in the absence of F. F alleged that since he was not allowed to question the female student there was violation of the rules of natural justice. The court agreed that the Vice-Chancellor was duty bound to observe the elementary principles of fairness but that not allowing F question the witness did not amount to a violation of such principles.

³⁸ See D. C. Holland: “The student and the law” 22 Current Legal Problems (1969) 61 at p. 68. Most University students are not minors and the doctrine can therefore not apply

³⁹ Recently, the students of College of Science & Technology Port Harcourt Rivers state threatened to take the college authorities to court for banning Student Unionism.

⁴⁰ (1874) L.R. 9 Ex. 190.

⁴¹ *Datubo v. Prov. Council University of Lagos* [1959] 2 All NLR 164 appears to be the only reported case but that too was on a preliminary issue of law.

⁴² [1966] 2 Q.B. 237 of Bentley’s case {1723} 1 Str. 557 where Bentley was able to get the court declared that he was entitled to a degree of the University of Cambridge:

⁴³ For a discussion on the powers and functions of a VISITOR see J. W. Bridge. “Keeping ‘Peace in (he Universities” (1970)86 LQR 531.

⁴⁴ [1969] 2 All E.R. 964.

⁴⁵ [1960] 1 All ER. 631

In another case, **Glynn v. Keefe University**,⁴⁶ a student was alleged to have appeared naked on the campus. The Vice-chancellor exercising his powers under the University statute fined him ₦20.00 and suspended him from University residence. G alleged that he had not been given opportunity of being heard. The court agreed in principle that the rules of natural justice applied and that the matter was so fundamental to the status of G that it could not be regarded as an internal affair. Unfortunately Glynn lost the case because the court further held that he had suffered no loss as the penalty imposed by the Vice-Chancellor was proper.

It appears that the court was influenced by the moral iniquity, of Glynn's' conduct. And this is the predicament of students. In most of the cases where students have taken the University authorities to court the students have always emerged the losers. Even where the court finds that the rules of natural justice have not been complied with, it goes on to give the students no remedy.⁴⁷

In India, the tendency is to regard decisions as quasi-judicial if such decisions are based upon the determination of certain facts and the outcome is probably to affect an individual adversely⁴⁸. Thus in **Board of High School v, Ghanshyam**⁴⁹ students were accused of cheating in the examination. Their results were cancelled and they were debarred from entering for the following year's examination. The Supreme Court of India held that the procedure was wrong, that the students could have been heard as the decision may blast the career of the students and place a serious stigma on them.⁵⁰

In Nigeria the University of Ibadan Act⁵¹ provides that the Vice-Chancellor can expel or rusticate or restrict any student **from** the use of University facilities or participating in University activities. He can do any of these "where it appears to the Vice-Chancellor that any student at the University has been guilty of misconduct..." The aggrieved student has a right of appeal to the Council.⁵² The section⁵³ goes on to state that lack of diligence..., shall be treated as misconduct

The University of Lagos Decree 1967⁵⁴ vests disciplinary powers in the Vice-Chancellor Who can delegate⁵⁵ his powers to a disciplinary board.

Can the Vice-Chancellor of the University of Ibadan, on the strength of the Act expel a student without giving him a fair hearing? Can he, for example, rusticate a student merely because the student was rude to him at the Ikeja Airport? Or can he discipline a female student who goes shop-lifting in one of the supermarkets in Ibadan city? And if lack of diligence is misconduct, can the Vice-Chancellor penalise a student who is not hardworking?

Though the Act says on the face of it that the Vice-Chancellor can discipline a student where "it appears to (him)" that the student is guilty of misconduct, it is submitted that he cannot exercise the powers without due regard for the elementary principles of fairness and justice. He must not take into consideration extraneous matters and there should be a transparent display of *bonafides* in his disciplinary actions. It is doubtful whether or not

⁴⁶ [1971] 2 All E.R. 89

⁴⁷ In Ex. P. Roffey (supra) .for example, the court refused to give him a remedy because he had not acted promptly.

⁴⁸ M. P. Jam & S. N. Jam; *Principles of Administrative Law* p. 100

⁴⁹ A.I.R. 1962 SC 1110

⁵⁰ Quaere whether in the absence of express exclusionary clause the West African Examination Council ought not to give students hearing before cancelling their results.

⁵¹ No. 37 of 1962S. 10(1).

⁵² S. 10(2).

⁵³ S. 10(3)

⁵⁴ See SS 4 (d) and 19(1).

⁵⁵ S. 19(4).

he can discipline a student whose guilty act as committed during the vacation or outside the University campus if the misconduct has nothing to do with the University.

Lack of diligence should not be regarded as misconduct for the purposes of section 10 of the Act. A student can either be lazy academically or otherwise. Physical labour is not usually a necessary part of University life. Participation in sporting and other non- academic activities are, as a rule, optional. It cannot be seriously argued therefore that lack of diligence refers to any of these. It must necessarily refer to lack of “academic” diligence, if this is so, then the provision is redundant and superfluous. For, where a student is academically lazy or inconsistent, his final assessment and examinations will obviously reveal it. In which case, he can simply be advised to withdraw because he cannot benefit from university education, a power which the University exercises without resorting to the provision under discussion. Happily the more recent University of Lagos Decree omits that provision.

All said, we will enter this caveat that “the concept of natural justice cannot be put into a straitjacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only point that has to be kept in mind in all cases is that the person concerned should have reasonable opportunity of presenting his case and the administrative authority concerned should act fairly and reasonably”.⁵⁶

7.7 BASIS OF APPLICATION OF NATURAL JUSTICE IN THE UNIVERSITIES

Before we are done, we must address our minds to the issue raised by Professor Wade.⁵⁷ He argues forcefully that in most of the cases, the courts have failed to state the grounds on which natural justice is applicable. If the power of the University is public and statutory, then like any public authority it is expected to observe the rules of natural justice. This, he says is administrative law and the prerogative remedies of *certiorari* and *mandamus* are issuable. On the other hand, if the disciplinary powers operate by way of contract, then the remedies available to the student are private remedies of injunction etc.

Bridge⁵⁸ submits that it is undesirable to analyze the relationship in terms of contract for the simple reason that it may exacerbate the strained relationship existing between Universities and students, that it would foster the view that the interests of the students are in conflict with those of the authorities. Furthermore, the parties are not on equal footing which makes it more like a *contrat d'adhesion* rather than a consensual contract.

In practice, the courts⁵⁹ have never clearly shown interest in this distinction. In Nigeria, it would appear that the powers and duties of the Universities are statutory and where they fail to exercise them they can be compelled to do so by the courts.

Even if the, relationship of the University and the student is contractual it is submitted that by reason of the relationship the student has acquired a STATUS.⁶⁰ Marriage is certainly a contractual arrangement but the parties acquire marital status. Thus, a wife who drags her husband to court to ask for a divorce because the marriage has irretrievably broken down does not frame her action in contract but on the statute.

⁵⁶ *Kersava Mill Co. v. Union of India* A.I.R. 1973 Sc 389 393-94

⁵⁷ Wade: “*Judicial Control of Universities*” (1969) 85 LQR 468 see also Wade: *Administrative law* (3rd Ed) PP 348-356.

⁵⁸ J. W. Bridge “*Keeping Peace in the Universities*” (1970) LQR 531.

⁵⁹ See for example *Ceylon University r. Fernando* (*Supra*).

⁶⁰ See Alec Samuels: “*The Student and the Law*”. *Journal of the Society of Public Teachers of Law*. Jan. 1973; at p. 255.

The legislature sets up the Universities as corporate entities, and gives them statutory powers to discipline students. This is usually conferred on, the Vice-Chancellor. If he is, a public functionary and this duty is public, then .the prerogative orders can issue against him. Various laws⁶¹ in Nigeria define a public servant to include persons in the service of any public corporation established by law. Aihe and Oluyede⁶² commenting on the Public Officers Protection Ordinance conclude that public officers include heads of institutions.

In Nigeria therefore it is safe to assume that the University authorities have a statutory power to discipline and that this is a matter for administrative law.

But the full legal paraphernalia of the courts should not be imported wholly into running of a University. Once they comply reasonably with the principles of natural justice adapted to the circumstances of each case, all will be alright.

For this purpose it is strongly suggested that the time has come, and the Universities have the facilities, to codify and publish all rules and regulations together WITH THE SANCTIONS ATTACHED TO THE BREACH OF THE RULES AND REGULATIONS. This done, the quantum of punishment will *no* longer depend on the subjective standard of a person or body of persons, but on a known law. It will, *inter alia*, create certainty. The present position where a disciplinary board or committee determines the guilt of the student and proceeds to determine the quantum of punishment without any established and recognized criteria is most unsatisfactory.

8.8 CONCLUSION

Natural justice, whether applied in governmental or quasi governmental agencies is undoubtedly a civilized standard of determining issues. But its rules are nonsensical to the individual except that the courts are willing to insist on their application. This is more problematic where the judiciary is shy and not traditionally independent. for, by the very nature of the litigation arising under an alleged breach of the rules of natural justice, the courts are bound to choose between individual rights and executive action. And to my mind, it is only a truly independent and bold judiciary, not mere independence on paper that can make the application of the rules of natural, justice a reality.

* LL.B, LL.M, B.L., Lecturer, Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria. Nigeria. Email: mbdalhatuesa@yahoo.com

⁶¹ Penal Code s. 10(g). see also Public officers Protection Ord. cap 186 of 1947. The fact that Universities were included in the terms of reference of the Udoji Public Service Review Commission lends weight to our argument.

⁶² Aihe & Oluyede op. *cit*, p. 538.