# PRINCIPLE OF NATURAL JUSTICE AND UNIVERSITY DISCIPLINE

DAVID ANDREW AGBU, PhD
*daveagbu1@yahoo.com*

Faculty of Law, Taraba State University, Jalingo-Nigeria

**Corresponding Author: BARRISTER (DR.) D. A. AGBU**
**+234 803 391 7406**

Abstract

*This paper examines the doctrine of natural justice and the extent to which the doctrine is applied by universities in student discipline. It is unarguable that Section 36 of the 1999 constitution encompasses the principles of natural justice in the narrow technical sense of the twin pillars of justice, namely: audi alteram partem and nemo judex in causa sua as well as in the broad sense of what is not only right and fair to all concerned but also seems to be so. Consequently, the paper identifies, inter alia, constant university management interference on discipline procedure, non adherence to the doctrine of natural justice, equity and good conscience etc. as some of the major obstacles affecting natural justice and university discipline. Furthermore, the paper suggests a number of ways through which there could be an effective natural justice in the disciplinary procedures in universities. In conclusion, the paper makes certain recommendation for university discipline, such as the need for universities to adhere strictly to the rules of natural justice, equity and good conscience in dispensing disciplinary cases amongst students and staff of university.*

**Keywords: Natural Justice, University Discipline, Good Conscience, Students, Staff**

## Introduction

The principles upon which Justice Systems are based around the world with Nigeria inclusive are the indubitable Doctrines of Natural Justice, which fundamentally calls for Natural justice in the dispensation of Justice[1]. The principle of *audi alteram patem*, which means hear the other side, and memo judex in causa sua which means a person should not be adjuge in his own cause is indispensable. This principle as applies to university discipline should be observed strictly in all administrative matters or adjudication. Generally, university operates within the conflict of the laws establishing the university in all university system. There are hierarchical order, where the governing council is the highest policy making area of the university, the senate on the other hand is vested with the powers over remedies, and mission of students, research and disciplines, admission of students, research and discipline of students. The Vice Chancellor is in charge of running the university. The University Senate is the mind in hierarchy to the Governing Council.

---

* Ph.D Lecturer, Faculty of Law, Taraba State University, Jalingo.

[1] The main pillars of the Doctrine of Natural Justice are the nemo judex in causa sua (no one shall be judge in his own cause) and audi alteram patem (hear the other side).

While the Governing Council is vested with the responsibility of general control and superintendence of the policy finances and property of the U so salient is enshrined in the hallowed Chapter IV of our amended Constitution. This principle of natural justice commences at the very inception of every matter whether, it is administrative or criminal in nature.

As a general rule, it is the concern of the doctrine to ensure that any procedure, or condition precedent which is stipulated by law, is fulfilled before action is taken. Thus, in judicial proceedings for instance, it is necessary that the requirements of natural justice be fulfilled before judgment is pronounced on an accused person. Accordingly, statutory powers are not to be exercised arbitrarily, but properly, fairly, judiciously, reasonably and in conformity with the constitution or other relevant statute regulating a given matter.

**Meaning of Natural Justice**

Natural Justice means fairness.[2] Natural justice comprises the principles of Justice and fairness which impose obligations on persons who have power to make decisions affecting other people to act fairly, in good faith, without bias and to afford a person the opportunity to be heard and adequately state his case before a decision is made. Natural justice is the name for divine law and divine justice. It is a set of universal principles or fairness and justice, arrived at by the observation of nature and guidance from theology, rational thinking and deduction. There is no university or generally accepted definition of natural justice. In a nutshell, natural justice means the inherent right of a person to a fair and just treatment in the hand of rulers, their agent and other persons.

Natural justice has the following main rules and principles of Audi alteram pattern (to Nemo judex in Causa sua. In modern times, the rules of natural justice have increased much more audi alteram pattern and Nemo judex in causa sua. The rights of a person in legal proceedings or quasi-judicial proceedings consists of 3 main sets or groups of rights, i.e. pre-trial rights, trial rights and post trial rights. The 3 sets of rights are mainly and collectively protected by the constitution as fundamental right under chapter four.

The 1999 constitution of Nigeria provides for the common law doctrine of "natural justice". This may probably have been prompted by two reasons. The reason is the difficulty in defining "natural justice", whether conjunctively or disjunctively. What may amount to "justice" varies in terms of person, space and place. What the rulers consider as just may be unjust from the viewpoint of the ruled.

The second reason may lie in the wider amplitude and plenitude of the phrase "natural justice " as opposed to the common law "natural justice". Natural justice within the meaning of *section* 36(1) *of the constitution* means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties. For instance, a refusal by Court to adjourn for a party to engage Counsel is a denial of natural justice under *section 36 of the Constitution.*[3]The *Constitution* widens and elevates[4] the common law principle of natural justice and codifies its tenets and thus the application of the ordinary rules of natural justice in a case would not exclude the application of *section 36 of the Constitution*[5], since natural justice as per *section 36 of the Constitution* is of wider and higher status than the common law natural justice. This issue was raised but evaded in *Garba & Ors. V. University of Maiduguri* where the Court asked: "Now, if the ordinary rules of natural justice apply... will that exclude the application of section 33 (now Section 36 of 19

[2] Section 36(1) of the 1999 Constitution of Nigeria
[3] See: Ntukidem & Ors. V. Asuquo Oko & Ors (1986) 5 N.W.L.R. (Pt. 45) 909.
[4] Adigun & Ors. V. The A-G of Oyo State & Ors. (1987) 3 S.C.250 at 451.
[5] Legal Practitioners Disciplinary Council (LPDC) v. Gani Fawehinmi (1985) 7 S.C. 178 at 205, 251, 341, 347-376.

Constitution?)"[6]The Court stated that the answer to the question would depend on the nature of the relief sought. In this case, the relief sought came directly under the natural justice clause of the *1979 Constitution*. It was for: "A declaration that the applicants' expulsion with effect from 30th March, 1983 from the University of Maiduguri constitutes a violation of the fundamental rights to natural justice".[7]

Because the relief undoubtedly hinged on the *Constitution*, the Supreme Court did not bother to consider if application of the constitutional natural justice under *section 33* would have been excluded had the claim been brought under the common law doctrine of natural justice. The question arose because counsel for the respondent had argued that since on matriculation a student becomes bound to the University by contract and acquires his status as member of the University through such contract, then the relationship between the University and the student is governed by common law (contract), not the *Constitution*.

Although the primary purpose of this paper is to examine to what extent natural justice is applied by Universities in student discipline cases, it would be illuminating to mention, at least in passing, the attribute and basic criteria of natural justice. It is unarguable that natural justice in the context of *section 33 of the 1979 Constitution* encompasses the principles of natural justice in the narrow technical sense of the twin pillars of justice, namely, *audi alteram partem*[8]and n*emo judex in causa sua,*[9] as well as in the broad sense of what is not only right and fair to all concerned, but also, seems to be so.[10]

The above criteria were expatiated upon by the Supreme Court when it emphasized that[11] the Court or tribunal shall hear both sides not only in the case, but also, in all material issues in the case before reaching a decision which may be prejudicial to any party in the case. The person liable to be directly affected by the proposed acts, decisions or proceedings should be given adequate notice of what is proposed so as to give him an opportunity to make representations and effectively prepare his own case and to answer the case he has to meet.[12] It may, however be emphasized that natural justice does not require that a party must be heard, but that he must be given an opportunity to be heard. It is left for the party to utilize the hearing opportunity given him.[13] Thus, a person who has been given but has unreasonably failed to utilize a reasonable hearing opportunity, say, by absenting himself without good cause,[14] cannot thereafter complain of lack of natural justice.

## Disciplinary Power of University

It would be illuminating to mention at least, the power of a university to discipline students of state. In hierarchical order, the Governing Council is the highest policy making organ of the university in all public or government universities. The Board of Trustees is the highest policy making body in all private universities. This is evident in the laws establishing both private and public universities. The Council and Board of trustees are charged with the general control and superintendence of the

---

[6] This was posed as a question but not answered in Garba & Ors v. University of Maiduguri (1986) 1 N.W.L.R. (Pt. 18) 550 at 584

[7] Supra.

[8] Sometimes expressed as "Audietur et altera pars".

[9] Sometimes expressed as "Nemo iridex in resua"; "Nemo debet esse judex in propria sua". Coke used the form "Aliquis non debet esse index in propria causa": Co. Litt. 1419.

[10] FSCS v. Laoye (1989) 2 N.W.R. (pt. 106) 652

[11] Kotoye v. Central Bank of Nigeria & Ors. (1989) 1 N.W.L.R. (Pt 98) 491.

[12] Per Nnamani J.S.C. in Garba v. University of Maiduguri.

[13] Kuusu v. Udom (190) 1 N.W.L.R. (Pt. 127 (421 per Karibi Whyte, J.S.C. at 445 and per Nnaemeka-Agu, J.S.C. at 448; The State v. Pba Adebambp Pynuga & Ors (1971) 1 U.I.L.R. 476.

[14] Lim v. Minister of Interior, Lalaya (1964) 1 N.W.L.R. 554, 566; Glynn v. Keele University (1971) 1 W.L.R 487, 495

policy, finances and property of the university including the appointment of Vice Chancellor. The senate of the university is the next in hierarchy to the Governing Council or Board of trustees. The senate is vested with the powers over teaching admission of students, research and discipline admission of students. The Vice Chancellor is the chairman of the Senate and he has the general function of directing the activities of the university. In relations to student discipline, the Vice chancellor shall have the right to discipline students like approved punishment such as rustication, expulsion, suspension etc.

The power of the university as it relates to students discipline was emphasized in the court of appeal in university of Ilorin v. Akinrogunde[15], where the court left that it is in order to maintain sanity in the university that the Vice Chancellor is given the discretion to suspend any student whose character is called to question.

In the case of Garba & Ors v University of Maiduguri:[16]

A students' demonstration took place in the defendant university. The respondent set up various investigation panels to probe an alleged students' rampage, at the end of which several students including the plaintiffs/appellants were expelled. The appellant students brought action for relief, claiming inter alia that they were not afforded the right to natural justice and that they did not know the case or accusations and evidence against them. The Supreme Court held in favour of the appellants and allowed the appeal that the appellants were entitled to the four declarations they sought and which were granted by the trial court. Where a crime is alleged to have been committed, sanction or expulsion without a trial and conviction in a court of competent jurisdiction under the Criminal Code or the Penal Code is a violation of the fundamental rights guaranteed under the 1979 Constitution, and such sanction is null and void. The students were entitled to be allowed to return to school, UWAIS JSC as he explained the law thus: "*... the view of this court that where a person is accused of committing a criminal offence, he must be taken before a court of law for trial and not merely be dealt with by a tribunal*".[17]

Thus, where there has been an accusation of crime, the administrative authority must hands off the matter and turn it over to the appropriate police authority and the court for prosecution and conviction, before the administrative authority can invoke and exercise its disciplinary powers.

Furthermore, in the case of Abia State University v Anyaibe,[18] the Plaintiff/ respondent student was alleged to have assaulted two students on the university campus. The 2nd appellant Vice Chancellor of the University set up a panel to investigate the incident. The respondent was invited to testify and he appeared before the panel and testified. The plaintiff/respondent denied the allegation. At the conclusion of its sitting, the panel submitted its report to the 2nd appellant who acted upon it by expelling the respondent. The plaintiff/respondent instituted action against his expulsion. The learned trial Judge declared the respondent's expulsion from the university null and void and ordered his readmission into the university. The appellant university being dissatisfied appealed against the ruling. KATSINA-ALU JCA as he then was, reading the judgment of the Court of Appeal in a unanimous decision dismissed the university's appeal and held in favour of the plaintiff/respondent affirming the judgment and orders of the High Court which tried the matter.

---

[15] (1986) 12 SC1. See Beyond Shenanigans: Jos book of Readings on Critical Legal Issues. Innovative Communications. Faculty of Law university of Jos publications, 2015. Pp. 47-93.

[16] (1986)1 NWLR Pt. 18. P.550 SC. MDPDT V. Okonkwo (2001) 7 NWLR Pt. 711. P. 206 SC. PHMB v. Edosa (2001) 5 NWLR Pt. 707, p.612 SC. Mil. Admin. Of Benue State v. Ulegede (2001) 17 NWLR Pt. 74 p. 194 SC.

[17] Denloye v. Medical & Dental Practitioners Disciplinary Committee (1968) ALL NLR 298 Sofekun v. Akinyemi (1981)1 NCLR 135 SC. FCSC v. Laoye (1989) 2 NWLR pt. 106, p. 265 SC.

[18] (1996) 3 NWLR pt. 439, p. 646 CA.

Under the Constitution only a court of law or judicial tribunal established by law is competent to hear and determine a criminal charge against a person. It is common knowledge that assault is an offence under Section 252 of the Criminal Code of Eastern Nigeria. The Investigating Panel in this case, not being a court of law or judicial tribunal has no competence in law to try the respondent upon a criminal charge of assault. This was not a matter of internal discipline as assault is a crime against the state.

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 for internal discipline. Once the allegation against a person amounts to a crime, the power of the appellants to act is suspended until a regular court or tribunal has determined the matter one way or the other. The judicial powers in Section 6 of the Nigerian Constitution are notvested in private persons, administrative tribunals or other authorities for exercise. By the purported exercise of judicial powers by the investigating panel in the instant case, the respondent was denied the right to natural justice under the Nigerian Constitution. As a general rule, criminal offences against the laws of the land fall outside the jurisdiction of the Visitor and the Vice Chancellor of a university. In this case, KATSINA-ALU JCA, as he then was, explained the law thus:

> *The complaint of the respondent that he has been tried by an incompetent body for a criminal offence is well founded. In my judgment therefore, the fundamental right of the respondent to natural justice within a reasonable time by a court has been violated by his being punished for a criminal offence without a proceeding trial and conviction by a court. The issue here is not whether the respondent was afforded the opportunity to defend himself before the panel, but whether the panel had the competence to hear and determine a criminal charge accusation against the respondent. From all that I have said it is clear that the panel lacked the competence in law so to do.*[19]

**Natural Justice and University Panels/Committees**

University panel or a disciplinary committee of university is expected to observe the rules of natural justice,[20] and also, should establish an investigation tribunal which does not recommend disciplinary action, but on whose report disciplinary action is based.[21] It was conceded[22] that generally, a body exercising powers which are of merely advisory, deliberative or conciliatory character or which do not have legal effect until confirmed by another body, or involves only the making of preliminary decision, will not normally be held to be acting judiciously. However, where the determination by such statutory body may be either one that purports to create, vary or extinguish legal rights or one that purports to declare existing legal rights by the interpretation of common law rules or of statutory norms and their application to a set of facts, natural justice must apply.[23] In *Adigun & Ors. v. The Attorney-General of Oyo State & Ors,*[24] the Supreme Court held that:

> ... it is a well established common law rule that an implied duty to observe the rules of natural justice can arise even in the discharge of administrative functions where such functions directly encroach on individual interests...

---

[19] Supra.
[20] NNB v. Obevudiri (19860 3 n.w.l.r. (Pt.29) 387
[21] University of Ife v. Akintemi & Ors. Op. Cit.,
[22] Okoye v Lagos State Government (1990) 3 N.W.L.R. (Pt. 136) 115.
[23] Supra.
[24] (1987) 3 S.C. 250.

It was asserted in 1973 that"...when it comes to natural justice students appear to have had a very raw deal".[25] An attempt to explain why this is so was made in 1977 by Griffith[26] when he said:

> The Courts sees students essentially as children and sometimes, very unpleasant children – above all, as much undisciplined children. And universities and colleges are institutions of the State and so to be upheld... The students' cases indeed are excellent examples of the judicial obsession with, as they see it, the necessity to protect and preserve the structures of constitutional authority without undue concern for the rights of those who wish to challenge that authority.

The explanation proffered by Griffith relates only to students' cases which are actually litigated upon in court and adjudicated. But in that case, Griffith's explanation would hold in Nigeria where very many court cases concerning students have ended in favour of such students and against the university.[27]

In this connection, it may be stated that in all educational institutions, a distinction may possibly be made between decisions on academic matters, that is, for example, success in examinations; and non-academic or disciplinary matters. In the former situation, the rules of natural justice do not apply, in an idealistic sense. For example, a student has no right to be heard before he is failed in an academic course – except to the extent that the student's scripts or performance of some other academic task could be regarded as the presentation of his case. Besides, there are in all universities, examination regulations provided for calling into question the correctness of such decisions. This is to enable students have substantial justice even in academic matters as Megarry J., succinctly puts it:

> *To say that the requirements of natural justice do not apply is not, of course, to say that the University is free to trample on the student's rights: for he is entitled to have his application duly considered by whatever bodies have the power of decision. In academic matter, i.e., disputes over examination results, the aggrieved student is more or less saying that the examiner performed his task negligently. In other words, he is challenging the subjective judgment of the examiner and this must be discouraged.*[28]

The need for the university to comply with natural justice is more patent in disciplinary cases involving expulsion or other punishment for alleged misconduct. This need was acknowledged in *Glynn v. Keele University*[29] where a number of students had appeared naked in the area of the Student's Union, causing offence to many members and employees of the university, and residents on the campus. Because there was no time before the end of the term to summon a meeting of university of the disciplinary panel, the Vice Chancellor decided to act summarily. He wrote to Glynn whom he regarded as having been identified as one of the nudists, to inform him that he was being fined £10 and was to be excluded from residence on the campus for the following session. The letter pointed out that an appeal against the decision lay to the University Council. The plaintiff wrote the registrar of the university on July 3, 1970 and, at the end of the month, went abroad. On August 10, a letter was written to him informing him that the Council would hear his appeal on September 2. Unfortunately, Glynn was abroad and did not return home until after the date fixed for the hearing. The Council by then had upheld the decision of the Vice-Chancellor, and held that the disciplinary powers of the University Vice-Chancellor were, under the University statutes, so extensive and far-reaching in their consequences that when exercising them, he must

[25] A. Samuels, "The student and the Law" (1973) 12 J.S.P.T.L. 252, 255; b. Schwart and H.W.R. Wade; Legal Control of Government, 1972 Opp. 245.
[26] J.A.G. Graffith, The Politics of the Judiciary (1977) Fontana pp. 170, 197.
[27] See: e.g, Onwuemchili & University of Ife v. Miss Akintemi & Ors. (1985) 3 N.W.L.R. (Pt 13) 504.
[28] Thorne v. University of London (1966) 2 Q.B. 237
[29] (1971) 1 W.L.R. 487; (1971) 2 All E.R. 89.

observe the rules of natural justice. It would not be right, said the learned judge, "to treat those powers as merely matters of internal discipline".

In situations where there is a group action by students like in *Glynn's case,* the proper procedure appears to be that the student(s) identified as the actor(s) be given a formal charge. This would make the student charged to know beyond doubts that he is accused of or charged with having done a particular act and so is called upon to defend himself and examined and if need be, to be cross examined by witnesses. It would not suffice to merely "summon" the student to come and testify along with other persons.[30]

Another aspect of the problem is the common occurrence in universities where the same individual sits on a number of committees dealing with a case, in various capacities, e.g., as examiner, then as Dean of Faculty and Chairman of Faculty Board and as Senate member. As an examiner, if he catches a student cheating and reports, this makes him a complainant and a potential witness. As a member of the faculty Board, he is a judge. The question therefore is, is natural justice breached in the circumstance?

One way of solving this problem would be to exclude the examiner from the Board during deliberation on the student's case, but if by excluding the examiner, the board cannot form a quorum then the examiner/board member may be allowed to sit and participate on ground of necessity. This is settled by the Supreme Court in *Ex-parte Ajidasile & Ors. v Oba Ogunoye & Ors,*[31] where the court stated that: "it is settled that a person who is *prima facie* disqualified for interest or bias may be held, on grounds of necessity, competent and obliged to adjudicate if no other duly qualified tribunal can be constituted."

Furthermore, it appears the examiner cum Board member may legitimately take part in deciding the student's case even at the Senate (if he is also a university senate member) in view of the very persuasive Canadian Supreme Court decision in *King v. University of Saskatchewan.*[32] In that case, the court refused to quash a university decision merely on the ground of over-lapping membership in the various university bodies which had dealt with *King's case;* the Court held that such duplication is inevitable in light of the organization of universities.

## Conclusion

It is clear that when it comes to observation of natural justice in students cases, the Court pays due regard to the substance rather than the form; it looks at the decision to see how just and fair (or otherwise) it is and not just as the status of the man taking the decision. If a decision is right, it would not seem to matter who took it.[33] The general rule is that, natural justice must be observed in all cases of student discipline. The decisions of the Supreme Court in Garba & Ors v University of Maiduguri; Abia State University vs. Anyaibe[34] are steps in a right direction which universities and other institutions should comply because once natural justice is breached, the whole decision is void, notwithstanding the fact that the same decision would have been arrived at in the absence of the breach, and notwithstanding that the applicant has not suffered any detriment thereby.[35]

---

[30] See Onwumechili & UNIFE v. Akintemi & Ors. (1985) 3 N.W.L.R. (Pt. 13)504

[31] (1985) I N.W.L.R. (Pt 4) 625

[32] (1969) S.C.R. 678; see also Lord Denning M.R. in Ward v. Bradford (1972) 7 O.L.R.G. 27

[33] This is analogous to the principle that if a decision is right it does not matter that wrong reasons where given for the decision. See: Blakall in ukehianya v. Uchendu 13 W.A.C.A. 45 @ 46; Taiwo & Ors. v. Abiodun (1982) 5 S.C. 60 @74

[34] Supra.

[35] Adigun & Ors v. Attorney-General of Oyo State Ors. (1987) 3 S.C. 250 at 309-310; Dawodu v. Ologundudu & Ors. (1986) 4 N.W.L.R. (Pt. 33) 104.

The point here is that the university must comply with the constitutional provision of natural justice irrespective of the circumstances and influence of the university management.