



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF EDUCATION

COURSE CODE: EDA 754

COURSE TITLE: LEGAL ASPECTS OF EDUCATIONAL ADMINISTRATION

COURSE GUIDE

EDA 754

LEGAL ASPECTS OF EDUCATIONAL ADMINISTRATION

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EDA 754: LEGAL ASPECTS OF EDUCATIONAL ADMINISTRATION

1.0 INTRODUCTION

This course, EDA754: Legal Aspects of Educational Administration and Planning is a two-credit course for Graduate Education courses in Educational Administration programme.

The course will consist of fourteen (14) units of three (3) modules. Module 1 consists of four (4) units, Module 2 consists of five (5) units and Module 3 consists of five (5) units. The material has been developed to suite graduate students in Educational Administration at the National Open University of Nigeria (NOUN) by adopting an approach that highlights the key areas of legal framework, issues and education-related case laws as well as educational administration.

A learner who successfully completes the course will surely be in a better position to manage the human and material resources in educational institutions.

This course guide tells you briefly what the course is about, what course materials you will be using and how you can work your way through these materials. It suggests some general guidelines for the amount of time you are likely to spend on each unit of the course in order to complete it successfully. It also gives you some guidance on your tutor-marked assignments. Detailed information on tutor-marked assignment is found in the separate assignment file which will be available in due course.

2.0 WHAT YOU WILL LEARN IN THIS COURSE

This course will introduce you to legal framework and issues as well as administration of human and material resources in the education industry. During this course, you will learn about cited case laws in the field of education.

3.0 COURSE AIMS

The course aims to give you an understanding of issues and conflicts that could lead to punishment and even litigation in the educational sector.

4.0 COURSE OBJECTIVES

To achieve the aims listed above, the course sets overall objectives. In addition, each unit also has specific objectives. The units objectives are also included at the beginning of a unit; you should read them before you start working through the unit. You may want to refer to them during your study of the unit to check on your progress. You should always look at the unit objectives after completing a unit. In this way, you can be sure that you have done what is required of you by the unit. Below are the overall objectives of the course. By meeting these objectives, you should have achieved the aims of the course as a whole. On successful completion of the course, you should be able to:

- (i) Define the concepts education law, say the purposes of education law, enumerate laws in relation to primary, secondary and tertiary levels as well as other educational related matters;
- (ii) Explain reasons for keeping school records and the types of school records that educational institutions should keep;
- (iii) Discuss fundamental rights and education; negligence and student personnel administration and student control and discipline in schools;
- (iv) Explain the concept of torts, classes of torts and cite case laws in education;
- (v) Discuss the fundamental rights of students, their control and discipline and the emergence of the Teachers Registration Council (TRC);
- (vi) Explain the legal basis of Teachers Registration; vision, mission and functions of the Teachers Registration Council of Nigeria (TRCN). Registration of Teachers and benefits of registration;
- (vii) Cite case laws and their facts in the education sector.

5.0 WORKING THROUGH THE COURSE

To complete this course, you are required to read the study units, read set textbooks and read other materials provided by the National Open University of Nigeria (NOUN).

You will also need to visit lawyers chambers or court libraries for law reports where education cases are reported and documented for reference purpose.

Each unit contains self-assessment exercises, and at certain points during the course, you will be expected to submit assignments. At the end of the course is a final examination. The course should take you about a total of 17 weeks to complete. Below are the components of the course, what you have to do, and how you should allocate your time to each unit in order to complete the course successfully on time.

6.0 COURSE MATERIALS

Major components of the course are:

- Course Guide
- Study Units
- Textbooks
- TMA Assignment file and
- Presentation Schedule.

7.0 STUDY UNITS

The study units in this course are as follows:

MODULE 1: EDUCATION LAW AND THE NIGERIAN EDUCATION SYSTEM

- Unit 1: The Nigerian Judicial System
- Unit 2: Concept of Education Law
- Unit 3: Organizational Control of Education in Nigeria
- Unit 4: Nigerian Education Laws

MODULE 2: THE LAW, THE LEARNER AND THE TEACHER

- Unit 1: Fundamental Rights and Education
- Unit 2: Fundamental Rights of Students and Punishments
- Unit 3: Legal Issues in Teachers Contract/Employment
- Unit 4: Student Control and Discipline in Schools
- Unit 5: Control and Discipline of Teachers

MODULE 3: SOME LEGAL ISSUES IN SCHOOL ADMINISTRATION

- Unit 1: Legal Basis for Teachers Registration
- Unit 2: Negligence and Student personnel Administration
- Unit 3: Tort and Educational Administration
- Unit 4: Defamation and School Communication
- Unit 5: School Record keeping

8.0 ASSIGNMENT FILE

In this course, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the assignment file itself and later in the section on assessment in this course guide. There are 15 tutor marked assignments in this course; the student should attempt all the 15.

9.0 PRESENTATION SCHEDULE

The presentation schedule included in your course materials gives you the important dates for this year for the completion of tutor marked assignments (TMAs) and attending tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

10.0 ASSESSMENTS

There are two aspects to the assessment of the course: the first are the tutor-marked assignments; and second is a written examination.

In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor

for formal assessment in accordance with the deadlines stated in the Presentation *Schedule and the Assignment File*. *The work you submit to your tutor will count for 30 percent of your total course mark.*

At the end of the course, you will need to sit for a final written examination of three hours duration. This examination will also count for 70 percent of your total course mark.

11.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

There are fifteen tutor -marked assignments in this course and you are advised to attempt all. Aside from the course material provided, you are advised to read and research widely using other references which will give you a broader viewpoint and may provide a deeper understanding of the subject. Ensure all completed assignments are submitted on schedule before set deadlines. If for any reasons, you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. Unless in exceptional circumstances, extensions may not be granted after the due date.

12.0 FINAL EXAMINATION AND GRADING

The final examination for this course will be of three hours duration and have a value of 50% of the total course grade. All areas of the course will be assessed and the examination will consist of questions, which reflect the type of self-testing, practice exercises and tutor-marked problems you have previously encountered. All areas of the course will be assessed.

Utilize the time between the conclusion of the last study unit and sitting for the examination to revise the entire course. You may find it useful to review your self-tests, tutor-marked assignments and comments on them before the examination.

13.0 COURSE MARKING SCHEME

The work you submit will count for 50% of your total course mark. At the end of the course, you will be required to sit for a final examination, which will also count for 50% of your total mark. The table below shows how the actual course marking is broken down.

Table 1: Course Marking Scheme

ASSESSMENT	MARKS
Assignment (27TMAs)	6 assignments, best 5 will be used for C.A = 10 x 5 = 50%
Final Examination	50% of overall course marks
Total	100% of course marks

14 Study Plan

This table brings together the units and the number of weeks you should take to complete them and the assignment that follow them.

Unit	Title of study Unit	Weeks	Activity	Assessment (end of unit)
	Course Guide		1	Course Guide form
Module 1 Education Law and the Nigerian Education System				
1	The Nigerian Judicial System		1	Assignment
2	Concept of Education Law		2	Assignment
3	Organizational Control of Education in Nigeria	3	Assignment	
4	Nigerian Education Laws		4	TMA1 to be submitted
Module 2 The Law, The Learner and the Teacher				
1	Fundamental Rights and Education		5	Assignment
2	Fundamental Rights of Students and Punishments	6	Assignment	
3	Legal Issues in Teachers Contract/Employment	7	Assignment	
4	Student Control and Discipline in Schools	8	Assignment	
5	Control and Discipline of Teachers		9	TMA 2 to be submitted
Module 3 Some Legal Issues In School Administration				
1	Legal Basis for Teachers Registration	10	Assignment	
2	Negligence and Student Personnel Administration	11	Assignment	
3	Tort and Educational Administration	12	Assignment	
4	Defamation and School Communication	13	Assignment	
5	School Record keeping		14	TMA to be submitted
	Revision		15	
	Examination		16	
	Total		16	

14.0 HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units are specially developed and designed to replace the university lecturer. Hence, you can work through these materials at your own pace, and at a time and place that suits you best. Visualize it as reading the lecture instead listening to a lecturer.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you

know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you must go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading Section. Activities are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the units and prepare you for the assignments and the examinations. You should do each activity as you come to it in the study unit

The following is a practical strategy for working through the course. If you run into any trouble, telephone your facilitator or post the questions on the Web CT OLE's discussion board. Remember that your facilitator's job is to help you. When you need help, don't hesitate to call and ask your tutor to provide it. In summary,

- Read this course guide.
- Organise a study schedule. Refer to the course overview for more details. Note the time you are expected to spend on each unit and how the assignments relate to the unit. Important information e.g. details of your tutorials, and the date of the first day of the semester is available from the Web CT OLE. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.
- Once you have created your own study schedule, do everything you can to stick to it. The major reason that students fail is that they get behind with their coursework. If you get into difficulties with your schedule, please let your facilitator know before it is too late for help.
- Turn to unit 1 and read the introduction and the objectives for the unit.
- Assemble the study materials. Information about what you need for a unit is given in the Overview at the beginning of each unit. You will always need both the study unit you are working on and one of your set books, on your desk at the same time.
- Work through the unit. The content of the unit itself has been arranged to provide a sequence for you to follow. As you work through this unit, you will be instructed to read sections from your set books or other articles. Use the unit to guide your reading.
- Keep an eye on the Web CT OLE. Up-to-date course information will be continuously posted there.

- Well before the relevant due dates (about 4 weeks before the dates) access the Assignment file on the Web CT OLE and download your next required assignment. Keep in mind that you will learn a lot by doing the assignments carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due dates.
- Review the objectives for each study unit confirm that you have achieved them. If you feel unsure about any of the objectives, review the study material or consult your tutor.
- When you are confident that you have achieved a unit's objectives, you can then start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
- When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your facilitator's comments. Consult your tutor as soon as possible if you have any questions or problems.
- After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives and the course objectives.

15.0 TUTORS AND TUTORIALS

There are 13 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the names and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter as they would provide assistance to you during the course. You must mail your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible. Do not hesitate to contact your tutor by telephone, e-mail, or discussion board if you need help. The following might be circumstances in which you would find help necessary: when

- you do not understand any part of the study units or the assigned readings.
- you have difficulty with the self-tests or exercises.
- you have a question or problem with an assignment with your tutor's comment on an assignment or with the grading of an assignment.

You should try your possible best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the

maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participations in discussions.

16.0 SUMMARY

EDA 754: Legal Aspects of Educational Administration exposes the graduate student to the legal issues in educational administration. Upon completing the course, you will be equipped with the knowledge required to produce an efficient and effective educational administrator. You will be able to answer questions such as:

- (i) acts, commission or omission adjudged to be misconduct in the education industry;
- (ii) what are the benefits of being registered as a teacher in Nigeria;
- (iii) what punishments and practices that tend to infringe upon the fundamental rights of students in schools.

17.0 REFERENCES/FURTHER READINGS

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EDA 754

LEGAL ASPECTS OF EDUCATIONAL ADMINISTRATION

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MODULE I EDUCATION LAW AND THE NIGERIAN EDUCATION SYSTEM

- Unit 1: The Nigerian Judicial System
- Unit 2 Concept of Education Law
- Unit 3 Organizational Control of Education in Nigeria
- Unit 4 Nigerian Education Laws

UNIT 1 THE NIGERIAN JUDICIAL SYSTEM

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1.0 INTRODUCTION

The inevitability of conflicts, differences in opinion and the rise of unforeseen circumstances in the functioning of society and other social systems such as the public and private schools have necessitated the obvious need for an agency that will resolve the conflicts when they arise. This is necessary for society and institutions within it to operate with some degree of efficiency. The judiciary is the agency that performs this vital function of the interpretation and adjudication of conflicts. When disputes arise in the school system and school machinery is unable to resolve them, it is the court that may be the final arbiter of the legal issues involved.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- list the types of courts in Nigeria;
- describe the courts;
- state the functions of courts;
- cite some education cases to confirm the functions of the courts;
- explain the legal procedure in a civil action;
- explain the abbreviations used in Nigerian Law Reports;

- discuss the terms (a) Plaintiff, (b) Defendants, (c) Legal Persons, (d) Non-judicial Persons, (e) Writ of Summons, (f) A Plea, (g) Pleadings, and (h) Judicial Review.

3.0 MAIN CONTENT

3.1 Organization of the Judiciary

The judiciary consists of the system of courts and judges. It is the safeguard of civil liberties. In the 1999 Constitution of the Federal Government of Nigeria, the types, organization, jurisdiction, functions and powers of the judiciary are highlighted in Section 6 and covered in detail under Chapter VII. The primary reason for looking at the judiciary and the functions they perform is to gain insight into or some familiarity with the legal process of adjudication and to better understand cases presented to the learner.

The organization of the judiciary is hierarchical or pyramidal in structure, with ordinary courts at the foundation, the intermediate courts ranged above and the Supreme Court at the apex. Generally, courts are classified into (a) Courts of Original Jurisdiction and (b) Courts of Appeal. Magistrates and High Courts are courts of original jurisdiction. Such courts usually sit each with a single Judge on the Bench.

A court of first instance considers facts, takes evidence, applies the law and finally delivers the court decisions in the form of judgment.

Courts of Appeal exist to review the decisions of the lower courts, whenever necessary to correct possible judicial errors and ensure justice. An Appeal Court is a multi-member bench and reaches its decision by majority vote. The Court of Appeal and the Supreme Court of Nigeria are appellate courts. The latter is the highest court in Nigeria (see Figure 2.1).

In Nigeria, the organization of the judiciary also reflects the federal form of government. Consequently, there is a dual system of national and state courts (see Figure 2.2). The courts, as provided for in Section 6(5)(a) to (k) in the Constitution are:

- (a) The Supreme Court of Nigeria;
- (b) The Court of Appeal;
- (c) The Federal High Court,
- (d) the High Court of the Federal Capital Territory, Abuja;
- (e) A High Court of a State;
- (f) A Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- (g) A Sharia Court of Appeal of a State;

- (h) A Customary Court of Appeal of the Federal Capital territory, Abuja
- (i) A Customary Court of Appeal of a State
- (j) Such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws, and
- (k) Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

Figure 2.1: Structure of the Court System in Nigeria

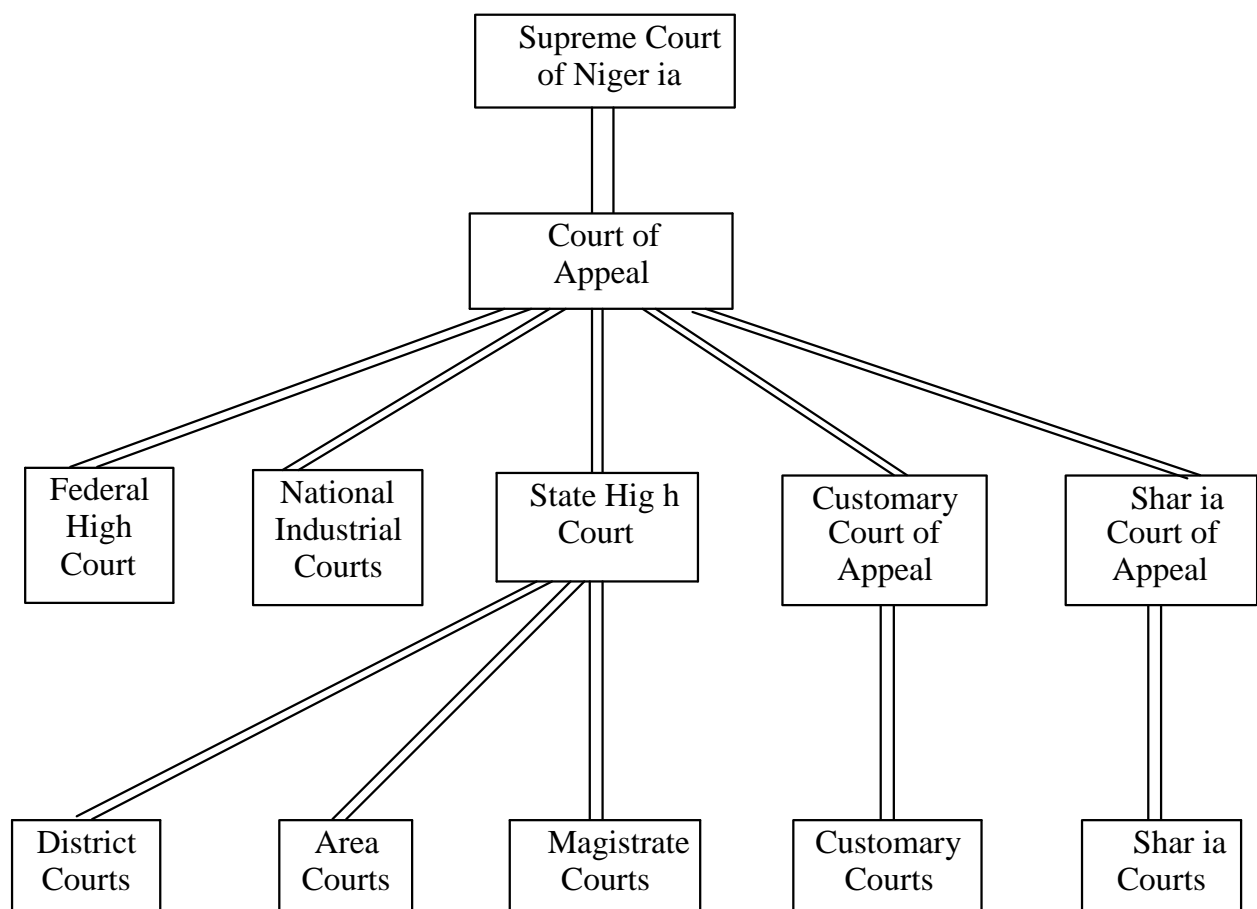
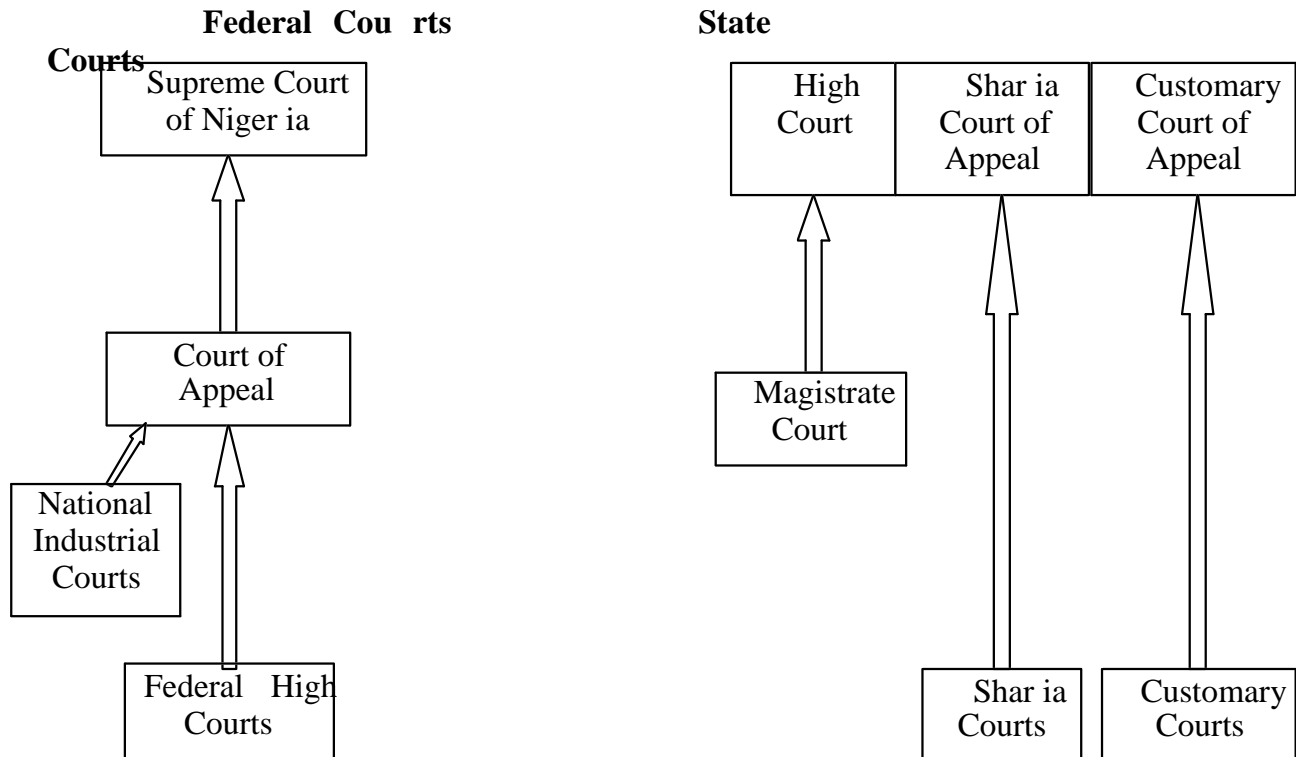


Figure 2.2: The Dual Nature of the Judiciary in Nigeria



It is important to note that in Section 275 and 280 of the 1999 Constitution of the Federal Republic of Nigeria, it is not compulsory that every State of the Federation should establish either a Sharia Court of Appeal or a Customary Court of Appeal. For instance, Section 275 states, "There shall be for any State that requires it a Sharia Court of Appeal for that State" and Section 280 similarly stipulates that, "There shall be for any State that requires it a Customary Court of Appeal for that State."

The courts established by the Constitution for the Federation and for the State (listed above) are considered as the superior Courts of Record in Nigeria (i.e., courts which not only must keep a record of their proceedings but also have the inherent power to punish summarily contempt committed against it, before it).

Section 6(4) (a) of the Constitution provides that nothing precludes the House of Assembly of a State from establishing courts other than those to which Section 6(5) relates (i.e., those listed in the Constitution).

The courts contemplated here are considered inferior courts of record (i.e., courts that have no inherent power to punish summarily contempt committed against it, before it). It would seem that the courts envisaged by the section are Magistrate Courts and Customary Courts in the South and Magistrate Courts, District Courts and Area Courts in the North.

FEDERAL COURTS:

The federal system of courts consists of the Supreme Court of Nigeria, the Court of Appeal, the Federal High Courts and the National Industrial Court including the Federal High Court in the Federal Capital Territory, Abuja.

The Supreme Court of Nigeria

The Supreme Court is treated in Section 230 to 236 in Chapter V11 of the Constitution. It is at the top of the Organizational Structure of the Judicial System, indicating that it is the highest court of the land. Only relatively few primary and school law cases get there because most citizens do not have the resources to fight a case all the way to the highest court.

The Supreme Court consists of the Chief Justice of Nigeria and not more than fifteen (15) Justices. It has both original and appellate jurisdictions. It also has original jurisdiction only in disputes between the Federal Government and State(s) or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Apart from these, the Supreme Court has jurisdiction to hear and determine cases only on appeal from the Court of Appeal where the appeal involves the question of law, civil or criminal proceedings, interpretation or application of the Constitution, violation of provisions of Chapter IV (fundamental rights) and decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has confirmed a sentence of death imposed by any other court.

Furthermore, the Supreme Court also has jurisdiction to hear and determine appeals from decisions on any questions as to whether or not any person has been validly elected to the office of President or Vice-President, and whether or not the term of office of any person as President or Vice-President has ceased under the Constitution. Finally, the Supreme Court has the power of judicial review, the power to declare acts of National Assembly, or any other law which is inconsistent with the provisions of the Constitution, as null and void. The Supreme Court has no original jurisdiction with respect to criminal matters.

The Court of Appeal

This is the next court grade to the Supreme Court. Section 239 of the 1999 Constitution indicates that the Appeal Court has the jurisdiction to hear and determine appeals from the Federal High Court, including the Federal High Court in the Federal Capital Territory, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Customary Court of Appeal of a State, and from decisions of a Court Martial or other tribunals as may be prescribed by an Act of the National Assembly. It also has power to hear and determine appeals from Governorship and Legislative Houses and

Election Tribunals on any question. The decisions of the Court of Appeal in respect of election petitions are final.

The nation is divided geographically into judicial zones; each with a Court of Appeal. A Court of Appeal is made up of a President and not less than three other Justices.

The Federal High Court

Sections 249 to 254 of the Constitution deals with the Federal High Court. The Federal High Courts have jurisdiction in civil cases and matters relating to the revenue of the government of the federation; the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation; customs and excise duties; banking; foreign exchange, currency or other fiscal measures; and any enactments relating to copyright, patents, designs, trade marks and merchandise marks.

It also has jurisdiction and powers in respect of criminal cases and such powers of the High Court of a State.

The National Industrial Court

The National Industrial Court was established in 1976. Section 19(1) of the Trade Dispute Decree No.7 of 1976 creates the court. This legislative direction has been reinforced by more specifically tailored legislation, the National Industrial Court Act. Section 7(1) of the National Industrial Court Act provides that the court shall have and exercise jurisdiction in several cases and matters relating to labour, including trade unions and industrial relations; environment and conditions of work, health, safety and welfare of labour, collective agreement, any circumstances relating to or seeking orders to restrain any personal body from taking part in any strike, lock out or industrial action or any conduct in contemplation or in furtherance of a strike, lockout or any industrial action; any question as to the interpretation of any collective agreement; any award made by an arbitral tribunal in respect of a labour dispute or an organisational dispute; the terms of settlement of any labour dispute, organisational dispute as may be recorded in any memorandum of settlement and any award, or judgement of the court and states that the court has jurisdiction and power to hear cases arising from labour, trade dispute, employment matters and all other matters relating to trade activities. It is also charged with the responsibility of interpreting trade union contributions (Onyearu, A.O., 2009).

Self Assessment Exercise 6.1:

Why is an understanding of a country's judicial system necessary in the study of education law?

STATE COURTS

Sections 270 to 284, of Part II, Chapter VII of the 1999 Constitution, deal with the State Court System which consists of a High Court a Sharia Court of Appeal and a Customary Court of Appeal of a State.

High Court of a State

At the apex of the state judicial set up are (1) the High Court (2) the Sharia Court of Appeal (where it exists) and the Customary Court of Appeal (where it exists). It has the unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is at issue, 'or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any persons. Besides the civil and criminal proceedings which can originate in the High Court, it can also handle those similar proceedings brought before it to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction. A High Court can also hear appeals from decisions of Local Government Council Election Tribunals situated within, its area of jurisdiction.

Sharia Court of Appeal of a State

The court exists in any state of the federation that requires it. Its jurisdiction includes the exercise of such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic law where all the parties are Muslims. A Sharia Court of Appeal of a State is duly constituted if it consists of at least two Kadis (Muslim Judges) of that court. The Head of the Sharia Court of Appeal of a State is called the "Grand Khadi".

Customary Court of Appeal of a State

There is for any State that requires it a Customary Court of Appeal. The head of such a court is called the "President." A Customary Court of Appeal of a State exercises appellate and supervisory jurisdiction in civil proceedings involving the question of customary law.

As earlier on pointed out in this chapter, not mentioned in the Constitution are Magistrate Courts District Courts, Area Courts, Sharia Courts and Customary Courts. However, since all States already have Magistrate Courts and States in the north, in addition, have District, Area and Sharia Courts while most States in the south have Customary Courts before the coming into effect of the 1989 constitution, they are deemed to have been duly established under the 1989 Constitution by virtue of Section 270. It is essential to observe that cases involving public schools in Nigeria may be litigated at either level (Federal or State Courts), but most of the cases are heard and decided by the State Courts, particularly High Courts and Magistrate Courts.

3.2 Functions of the Court with Selected Case Laws

The judiciary in most democratic societies performs a number of very useful functions. First, it is true that most legal controversies involve a dispute regarding facts and it is the responsibility of the court to critically examine evidences contained in documents, articles, public records or the oral testimony of witnesses in order to precisely determine the facts of the case. After the facts have been determined, essential to the judicial process is the function of deciding what rules of law are applicable to a given set of facts and the interpretation of that law within the scope of their respective jurisdiction (Reutter and Hamilton, 1976; Hitchner and Harold, 1975).

The courts also perform law making functions. As Hitchner and Harold have pointed out, to find and interpret the law is to participate in its creation. Besides, the courts, particularly the Supreme Court, have the power of judicial review, that is, the power to determine the constitutionality of a legislative or executive act and to declare it null and void if it found it to be in conflict with the superior provisions of the Constitution. For example, the direct funding of primary education was stopped as a result of a Supreme Court ruling of April, 2002 to the effect that it was unconstitutional for the Federal Government to circumvent the State Governments in funding primary education. This led to the withdrawal of a UBE Bill in the House of Representatives, which had assumed the UBE programmes would benefit from first charge financing.

Furthermore, the courts perform a number of administrative responsibilities. For example, grant divorces, administer oaths/affidavits, etc. It is the responsibility of courts to protect fundamental and civil rights of citizens. If someone is detained without trial, the relations of the detained can go to court to seek reason(s) for the detention. Through certain writs, the courts can compel the executive to perform its duties, which it would otherwise not have performed.

A case at hand now is Suit No. B/272/09 between Mrs. Faith Aghayedo and 58 Others Applicant v. West African Examinations Council, Dr. Ngozi Osarenren and Ministry of Education (Respondents).

Edo State Government had reviewed levies paid by private school owners. Some proprietors rejected the levy, but agreed to pay 100% increase and also went to court. The state government in reacting to this sealed up some of the defaulting schools and threatened not to permit the pupils and students write the forthcoming First School Leaving Certificate and the Senior School Certificate Examinations. The Applicants therefore rushed to court for an interim injunction restraining the Defendants and its agents from preventing their pupils and students from the aforementioned examinations. The court granted their plea. One can imagine a situation where there is no court, such schools would have been frustrated and denied enrolment.

Another typical example is that of five members of staff of the Teaching Service Commission in Ekiti State (Applicants) and the Teaching Service Commission (Respondents). The teachers decided to pull out from Nigerian Union of Teachers (NUT) and rather join the Academic Staff Union of Secondary Schools of Nigeria (ASUSS). The Applicants went to court to restrain the Teaching Service Commission from further deduction from their salary into the NUT and to declare that they are no longer members of NUT. In helping to resolve the issue, the Teaching Service Commission took sides with the Nigerian Union of Teachers (NUT), ignored the two actions in court and came after the applicants with undisguised vengeance; consequent upon which the teachers were issued letters of dismissal. The judge in his ruling quashed the dismissal order because there was breach of the principle of fair hearing and said:

For the avoidance of doubt, the applicants
*shall be restored to all their rights and
 privileges as teachers in the services of the
 Teaching Service Commission as if the said
 letters were never written at all (Odeh, 2008).*

You can see that but for the courts, a scenario as above could result in breakdown of law and order. However, because there is a place one can get redress, people are often ready to exercise some restraint.

Finally, the courts also rule on disputed elections and electoral boundaries, arbitrate between separate institutions in the political process (between federal and state governments or between state governments and between executives and assemblies).

Self Assessment Exercise 6.2:

List and discuss some of the functions of the courts.

3.2 Legal Procedure in a Civil Action

A breach of any law other than a common law is a civil wrong. A civil action is between two categories of persons collectively referred to as the parties in the case. In a civil litigation, the person who brings the action to court is usually called the Plaintiff. In some specified actions such as those relating to divorce, elections and the folding up of a company, he is called the Petitioner, and in all cases, by way of motion, he is called the *Applicant. The person against whom the action is brought is called the 'Defendant and in specified actions such as mentioned above (divorce, elections, the folding up of a company and motions), he is called the Respondent'. The court in which the action takes place is called the Trial Court.*

In law, not every person can sue or be sued. Those who have the capacity to sue and be sued are called Legal Persons. Non-legal persons include infants, lunatics, idiots and those with mental dis-organization due to drunkenness or extreme old age. However, this category of persons can sue or be sued through a third party, referred to as "next friend".

In law, next friend is either a parent or a guardian. For example, a primary or secondary school pupil may sue through his "next friend" his parents or guardian. Limited liability companies, educational institutions such as universities, government departments, public corporations or the government are regarded as legal persons in law. Boards of Governors (of schools); are non-juridic persons and therefore cannot sue or be sued. Where a host of people are interested in a case, the law allows some of the interested persons to sue for themselves and on behalf of all the rest, if they can show evidence in writing that they have been so authorized by the people to be represented.

A civil suit is usually commenced by Writ of Summons, a paper stating the claim(s) against the other party or in specified cases by way of motion, petition or originating summons, and in exceptional cases by a motion ex parte. A summons is, in effect, an order of court directing the defendant to appear in court within a certain time period, usually 30 days.

Before an action can properly commence in a regular court, it has to be proved that the other party has been served with the writ of summons. The regular procedure for serving the writ of summons is by personally handing it to the person in question. Where personal service is impossible because of pranks, application is sought from the court for substituted service. If granted, the summons could be published by any newspaper widely read in the jurisdiction or the summons papers would be posted on the premises of the adverse party. If the defendant fails to take any actions within the time stipulated, the Plaintiff may take a judgement against the defendant by default.

When the parties appear on the date indicated on the summons, the defendant would make his plea. A plea is an answer of the defendant to the allegation(s) made against him by the Plaintiff. After the plea, the Judge would then order the parties to file their *pleadings*. *Pleadings are the legal name for the statement of claim and the statement of defence combined.* The plaintiff would normally start his case by giving evidence in chief. He would be cross-examined and re-examined where necessary. He may call witnesses to give evidence in support of his case. They too would follow the procedure of examination, cross-examination and re-examination.

The Judge, after hearing arguments from both parties, would finally deliver his judgement. The compensation for a successful action is usually damages to compensate the plaintiff for the loss occasioned by the defendant's conduct. Apart from damages, the unsuccessful party in a civil suit would usually be ordered to pay the party's costs compensation to the successful party for the expenses to which he has been put in establishing his claim. In some cases where damages will not be adequate compensation, a decree of specific performance may be ordered.

A person who is dissatisfied with the decision of the court could appeal to the next higher court. This is done by giving a notice of appeal to the court where the judgement was given. After hearing arguments on both sides, the appellate court could decide the case. If the judgement is in favour of the accused (defendant) the appeal would be allowed and the decision of the lower court would be set aside. If the judgement is not favourable to

the accused the appeal would be dismissed and the judgement of the lower court affirmed. Sometimes the accused may get limited victory for his appeal. If this happens where the court, though not allowing the appeal, feels that the sentence is too severe, the sentence in such a case would be rendered to whatever extent the appeal court deems proper and then that would stand as the new sentence.

A party who is dissatisfied with the ruling of the Appeal Court may appeal to a higher court. e.g., the Supreme Court, on questions of mixed laws and facts or questions of facts alone that merit the consideration of the Supreme Court. There is no appeal beyond the Supreme Court, as it is the last Court of Appeal. It should be noted that a person dissatisfied with the judgement of a court should appeal timeously. This is because there is limited time with which to appeal. And when this period has lapsed, the aggrieved party cannot appeal any more, unless he gets leave to appeal out of the time from the appellate court.

Self Assessment Exercise 6.3:

Describe the work of the following federal courts: The Federal Courts:

- (a) The Federal High Courts,
- (b) The Federal Courts of Appeals, and
- (c) The Supreme Court.

3.4 Legal Analysis

Trial court decisions such as those of Magistrate Courts and those of other lower courts are not generally reported or published. One reason for this is the fact that the weight of the precedent set by these lower courts is not sufficient to warrant permanent reporting. Except for the High Courts, Courts of Appeal or the Supreme Court, decisions of other courts (lower) are simply filed in the office of the Clerk of the court where they are available for public inspection.

The reported appellate decisions are published in volumes called "Reports". Most State High Court decisions are found in the state reports of that particular State. Decided cases in respect of education can be found in a number of Nigerian Law Reports. According to Peretomode 1992, they include the following:

Abbreviations Nigerian (Law) Report

All N. L R.	All Nigerian Law Reports
F. N. L R.	Federal Nigeria Law Reports
N. L R.	Nigeria Law Reports
N. M. L R.	Nigerian Monthly Law Reports
N. W. L. R.	Nigerian Weekly Law Reports
N. C. L. R.	The Nigerian Commercial Law Reports
N. C. L R.	Nigerian Constitutional Law Reports

N. W. L. Nigerian Weekly Law
 F. S. C. Selected Judgements of the Supreme Court
 S. C. Judgements of the Supreme Court
 C. C. H. C. J. Selected Judgements of the High Court of Lagos
 L. L. R. Law Reports of the High Court of Lagos
 D. S. C. C. Digest of Supreme Court Cases
 N. C. R. Nigerian Criminal Reports
 W. B. R. N. Weekly Bench Reports of Nigeria
 E. C. S. L. E. Law Reports of East Central State
 E. N. L. R. Eastern Nigeria Law Reports
 N.N. L.R. Northern Nigeria Law Reports

R. S. L. R. Law Reports of Rivers State
 W.N.L.R. Western Nigeria Law Reports
 W. S. C. A. Judgements of the Western State Court of Appeal
 W. S. H. C. Judgments of the High Court of Western State
 M.S. N.L.R. Law Reports of Mid- Western State

After cases are published in the "Reports", these opinions or "cases" are referred to as (cited) by giving the name of the case, the volume and name and page of the official report in which it is published.

In reading the title of the case, such 'Ebi v. Preye, the v means versus or against. In the trial court, Ebi is the plaintiff', the person who filed the suit and Preye is the defendant, the person against whom the action was brought. When the case is appealed, some appellate courts place the name of the Party, who appeals or the appellant first.

Some appellate courts retain the trial court's order of names. The student must therefore read the facts of each case and clearly identify each party in his mind in order to understand the discussion by the appellate court (Smith and others, 1984 pp. 15 - 16).

The study of reported cases requires an understanding and application of legal analysis. Smith and his colleagues have observed that normally, the reported opinion in a case sets forth the following:

- (a) essential facts: nature of the action; the parties; what happened to precipitate the controversy;
- (b) the issues of law;
- (c) the legal principles involved; ,
- (d) the application of these principles; and
- (e) the decision.

The authors point out that a serviceable method of analyzing and briefing cases after a careful reading of the opinion is for the student to write in his own language a brief containing:

1. The parties
2. The facts of the case
3. The legal issue or question involved
4. The decision of the court
5. The reasons for the decision.

Self Assessment Exercise 6.4:

Describe the courts commonly found within a state judicial system.

4.0 CONCLUSION

The legal system has been so structured that if one is not satisfied with the judgement, one can appeal to a higher level.

This therefore makes for a sane society where everyone highly placed or lowly placed, master or servant allows the law to regulate our mutual coexistence. In actual fact, law ties our hands from criminal inclinations and acts.

5.0 SUMMARY

In this unit, we have seen the organisation of the judiciary. At the apex is the Supreme Court followed by the Court of Appeal, and then the High Courts (Federal and State), National Industrial Court, Sharia Court of Appeal and Customary Court of Appeal. At the lower bench, we have the Magistrate Courts, the Sharia Courts and the Customary Courts. The functions of the court have revealed that the courts are no respecter of persons. The fundamental rights of individuals and the Constitution are being upheld as revealed by the two cases cited.

6.0 TUTOR MARKED ASSIGNMENT

1. Write a brief explanation on each of the following:
 - (a) Plaintiff
 - (b) Defendant
 - (c) Legal persons
 - (d) Non-juristic persons
 - (e) Writ of Summons
 - (f) A Plea
 - (g) Pleadings
 - (h) Judicial Review.
2. State the procedure involved from time of filing an action in a civil matter until judgement is given.

7.0 REFERENCES AND FURTHER READINGS

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UNIT 2 CONCEPT OF EDUCATION LAW

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1.0 INTRODUCTION

The schools whether private or public, is a public institution established by law and with certain prescribed functions. In legal consideration, they are public institutions in the sense that they are established to serve the public. The school can, therefore, be considered a corporate body. This means that it can sue or be sued. Accordingly, those who operate and manage the educational systems or institutions must have to discharge their functions and responsibilities within the provisions of the rules and regulations as embodied in the various States and Federal Government Education Laws, Codes, Ordinances, Decrees and Edicts.

In this unit, we shall learn what education law is, its classification, purposes and sources.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define law;
- explain what education law is;
- enumerate the classification of law;
- state and discuss the purposes of education law;
- list and explain the sources of education law.

3.0 MAIN CONTENT

3.1 Definition of Law

Law can simply be defined as a rule or a body of rules to which actions conform. Blackstone, an English jurist, defines law as a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong. To Houghteling (1963), law is a dynamic process, a system of regularized, institutionalized procedures for the orderly decision of social questions, including the settlement of disputes.

One definition of law which has received wide acceptance is that formulated by the American Law Institute. It defines law as the body of principles, standards and rules which the courts of a particular state or country apply in the decision of controversies brought before them.

Implicit in these definitions are the ideas that law provides a framework for group relations and serves as a vastly complex mechanism or system for social control. It permits, regulates and prohibits certain conducts for the purpose of achieving harmony in society. It thus delimits individual liberty for the protection of social interest.

The term law is relative; consequently, there is no universally accepted definition of it. One thing generally accepted, however, is that the law is pervasive, that it is an integral part of our society and that it affects practically almost all known human activities and all persons in the environment, directly or indirectly, in order to ensure order, peace and stability. The idea of law emanates from group conduct; without a group there can be no law. What, then, is law?

The word law, in its generic sense, refers to the body of legal rules which govern behaviour and stem from all sources. The emergence of the Nation State as a complex entity has made law to replace customs, religious and ethical beliefs as the regulator of most practical affairs of a modern state (Hoerber and others, 1982).

Nwagwu (2004) pointed out that the term law has been defined in different ways by scholars (Reutter, 1970; Nwagwu, 1987; Peretomode, 1992 and Taiwo, 1993). Nevertheless, certain central images are evoked no matter how the word is defined or interpreted.

Perceptions of rules, regulations, prescribed code of conduct or social behaviour and prohibited modes of action and behaviour are all part of the general understanding of what a law is.

Within the definition of the term law are implied concepts like: constituted or supreme authority, which has the power and responsibility to make laws; rules and regulations which are binding on organizational members or citizens of that country or state. People are commanded to do or obey what is right while they are also prohibited from doing what is wrong according to the values, beliefs and traditions of that particular society, organization, system or institution. Laws may also be conceptualized as institutionalised procedures and due processes for resolving conflicts and controversies. They provide prescriptions for settling disputes, obtaining justice and remedies.

Laws are also decisions and provisions for the establishment and protection of fundamental human rights. Laws are intended to regulate the relationships and associations between individuals, groups, organizations and institutions. The purpose is to achieve order, justice and peace. Harmonious coexistence and interaction even in the pursuit of divergent interests and aspirations can only occur when there is respect for the rule of law. This implies that behaviour must conform to recognized principles and standards of conduct that have been laid down by competent authorities within the society or organization. There is, of course, the issue of jurisdiction in the formulation and enforcement of laws. The issue concerns not only the source of authority, but also the geopolitical location. Courts are established as official centers and authorities for deciding and resolving claims and controversies. Courts also punish offenders and award damages to people or groups that have been injured or denied their rights by other people or groups.

Self Assessment Exercise 4.1

Define the term law.

3.2 What is Education Law?

The education system, as a social organisation, is administered and managed through laws, rules and regulations. These are intended to provide a framework for controlling the behaviour and activities of members of the organisation. The ultimate purpose is to ensure that law and order prevail and thus a conducive environment is established for the efficient and effective achievement of the goals and objectives of the organisation.

Education laws are very important in the education system because of the multiplicity of objectives and the large numbers of people with different backgrounds involved. These include school administrators, teachers, students and parents. There are also community leaders and members; government officials, agencies and parastatals who are stakeholders assigned specific functions, roles and responsibilities.

It is often amazing that many of the people who are active participants in the education system or who have strong interest in what goes on in the education system do not have adequate knowledge of the laws that govern the administration of the system. Yolo (1993) lamented that most of those in the business of education know very little about the laws under which they operate. He asserted that educationists tended to regard legal matters, in whatever form, as the business of lawyers.

The point, however, is that we do not have to become professional lawyers in order to understand and appreciate the importance of education laws. It will be difficult to operate as planners, administrators, teachers, supervisors, inspectors and even as students if we are ignorant of the laws, rules and regulations that govern operations of the education system.

Education laws are simply those laws that have been enacted specifically for the organisation, administration and control of the education system. Although those who operate in the education enterprise are citizens governed by the laws of the land, criminal or civil as the case may be, they are also expected to comply with laws designed exclusively to regulate what we can do or not do in the process of teaching, learning and management. The education laws are necessary because educational establishment or institution is a social organisation with many individuals and groups as stakeholders. There are many complex aims and objectives to achieve and numerous diverse interests, aspirations and expectations to satisfy. The need to regulate social interaction and behaviour appears obvious or imperative.

Education laws have been promulgated as Ordinances during the colonial era. During military regimes, the education laws were released as Decrees if made by the Federal Government, or as Edicts if made by State Government. In periods of representative or democratic civil rule, parliaments enact laws in the form of Acts. It is important for all concerned with the management of the education system to be conversant with education laws and how these govern our activities and programmes.

Education law is one aspect of the vastly complex system of social control. It may be defined as those areas of jurisprudence which focus on educational activities the operation of public and private elementary, secondary and tertiary institutions.

3.2.1 Characteristics of Education Law

In his work entitled *The Morality of Law*, Fuller (1969, pp. 49–91), identified eight desirable characteristics or qualities which a good legal system should have. They are also applicable to a good system of education law. These are:

1. General rules (standards) of conduct;
2. Publication of the laws sufficient to subject them to public criticism;
3. Minimum reliance on retroactive laws;
4. Clear laws and clear standards of decisions, that is, a minimum of obscurity, incoherence and vagueness;

5. As few contradictory laws as possible;
6. Law within the citizen's capacity for obedience;
7. Law which is relatively consistent through time (i.e., it should not be too static);
8. Conformity of official action with declared rule (Peretomode, 1992).

Self Assessment Exercise 4.2

What is education law? Enumerate and discuss the characteristics of education law.

3.3 Classification of Law

There are a number of ways of classifying law. The following is commonly preferred:

- (1) public and private;
- (2) civil and criminal; and
- (3) substantive and procedural.
- (4) common and statutory law

This will be explained below.

3.3.1 Public and Private Law

Public law is an aspect of law that is primarily and directly concerned with government. It regulates the relationship between the organs of government, between one state and another, and governs the relations of citizens with the state. Public law embodies criminal law, constitutional law and administrative law. Constitutional law refers to the body of fundamental rules and regulations which prescribed the structure and functions of the organs of the federal, state and local governments. Where such rules and regulations are embodied in a single document, as in Nigeria or America, we refer to the document as a written constitution; but where the rules are contained in scattered documents, constitutional conventions and acts of parliaments, as in Great Britain, we refer to it as unwritten constitution. Administrative law is a branch of constitutional law primarily concerned with the reconciliation of efficient administration with individual freedom, rights and interests. It determines the organization, powers and duties of administrative agencies and the limits of delegated legislations. Thus, administrative law involves principles that govern the procedures and activities of government boards and commissions.

Private law is that which deals primarily with the relationships between private persons, organizations or legal entities. It includes the law of property, the law of contract, the law of torts (civil wrongs) and family law, etc.

3.3.2 Civil and Criminal Law

Civil law is that law which spells out the rights and duties that exist between individuals, the violation of which constitutes a wrong against the injured person. For example, if a

person, say, a Schools Board, refuses to live up to the terms of a binding agreement, the other party, say, a teacher under the law of contracts has the right to recover damages. Damages refer to the sum of money equivalent to the loss sustained as a result of the breach of contract (Peretomode, 1992). The vast majority of education/school law cases fall within the civil law category. In contrast to civil law, criminal law is that body of state or federal laws that defines offences against the public and provides punishments for their commission. Civil is part of private law, while criminal law is part of public law (Smith and others, 1984).

Crime is an act of omission prescribed by the state and bears punishment for its occurrence in the interest and protection of the public.

In a civil action, the aggrieved or injured person (the plaintiff) commences the action to recover compensation for the damage and injury that he has sustained as a result of the wrongdoers (defendants) conduct. The plaintiff, as Smith and his colleagues rightly point out, has the burden of proof which he must sustain by a preponderance (greater weight) of evidence. The aim of civil law is to compensate the injured party, and the principal forms of relief afforded are a judgement of money compensation or restitution or a decree ordering the defendant to specifically perform a certain act or to desist from a specified conduct. Most education law cases are civil in nature, a typical one being a suit by an individual against another person or the Schools Board or the Ministry of Education.

Anyone who commits an offence defined as a crime is subject to criminal proceedings legal proceedings of a special kind. The judicial proceeding in a criminal case is prosecuted by the government. In other words, the prosecution of the offence is usually taken up at public expense, although, occasionally, private prosecution may be allowed. According to Smith and his colleagues, to convict a criminal, the government must prove criminal guilt beyond a reasonable doubt which is a significantly higher burden of proof than that required in a civil action. The principal sanctions in criminal cases take the form of capital punishment, imprisonment or fines.

3.3.3 Substantive and Procedural Law

Substantive law means the real law or law in the strict sense. It is concerned with the recognition of the substance rights, duties, privileges and immunities under the various types of law. Procedural law, also referred to as adjectival law (i.e., subsidiary law), is law supporting the substantive law by specifying the formal steps or machinery to be followed in enforcing rights, duties or immunities in the settlement of disputes in such a way as to do justice to both parties. Procedural law is divided into criminal procedure and civil procedure, corresponding to the existence of the two types of wrongs, namely: civil wrongs (torts) and criminal wrongs. It is to procedural law that one turns in order to ascertain the method one should take to obtain a remedy in court.

Redmond and others (1979, p. 3) provide a concise illustration of the difference between substantive law and procedural law in the following example:

If a man kills another, it is a question of substantive law as to whether the appropriate charge is murder (killing with malice afore-thought) or manslaughter (unintentional or mitigated killing). Once he has been charged with either crime the rules of procedure will then govern:

- (1) the method by which his guilt should be proved;
- (2) the evidence which should be admissible at his trial; and
- (3) the manner in which such evidence should be presented in court.

3.3.4 Common and Statutory law

Common law is law developed by judges through decisions of courts and similar tribunals (also called case law), rather than through legislative statutes or executive branch action. The body of precedent is called "common law" and it binds future decisions. In future cases, when parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), Judges have the authority and duty to arrive at a new decision and this new decision becomes a precedent. Such a precedent becomes persuasive to courts of concurrent or coordinate jurisdiction and binding to lower courts.

Interactions between common law, constitutional law, statutory law and regulatory law also give rise to considerable complexity. However, in respect of stare decisis, the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results lies at the heart of all common law systems.

Common law legal systems are in widespread use, particularly in England where it originated in the Middle Ages, and in nations that trace their legal heritage to England as former colonies of the British Empire, including the United States, Singapore, Pakistan, India, Nigeria, Ghana, Cameroon, Canada, Ireland, New Zealand, South Africa, Hong Kong and Australia.

Statutory law or statute law is written law (as opposed to oral or customary law) set down by a legislature (as opposed to regulatory law promulgated by the executive branch or common law of the judiciary).

Statutes may originate with national, state legislatures or local municipalities or local government councils.

The term codified law refers to statutes that have been organized ("codified") by subject matter; in this narrower sense, some but not all statutes are considered "codified." The entire body of codified statute is referred to as a "code," such as the Criminal Code or Penal Code.

Another example of statutes that are not typically codified is a "private law" that may originate as a private bill, a law affecting only one person or a small group of persons.

The common law is more malleable than statutory law. First, common law courts are not absolutely bound by precedent, but can (when extraordinarily good reason is shown) reinterpret and revise the law, without legislative intervention, to adapt to new trends in political, legal and social philosophy. Second, the common law evolves through a series of gradual steps, that gradually works out all the details, so that over a decade or more the law can change substantially but without a sharp break, thereby reducing disruptive effects.

Self Assessment Exercise 4.3

Write short notes on the under listed classification of law:

- (1) Public and private;
- (2) Civil and criminal; and
- (3) Substantive and procedural.
- (4) Common and Statutory

3.4 Purposes or Importance of Education Law

The teaching about legal issues in education has a long history in Europe and America, particularly in graduate and professional schools of education (Sorenson, 1984). For example, Blackmon's findings (1982) revealed that by 1972 about 85% of all schools and Colleges of Education included at least one course on education/school law in the United States, and that by 1982 the number had increased to nearly 95%. Today, the number is nearly 100%.

In Nigeria, the importance of a course in education law for students majoring in education is just being realized. As a result, the study of education and the law is being gradually introduced in professional education programmes of schools and colleges of education. Education law is an important and indispensable tool a course necessary for the on-the-job survival of practical school administrators and teachers today. Issues that relate to both law and education have become increasingly prevalent in recent times.

As Shaffer (1984) points out, law relates significantly to many facets of education and teachers, and other education officials need to be aware of the legal issues facing them, because many such issues that have been decided in an education context have far-reaching effects in the running of schools. A course in education or school law enables these categories of workers to be aware of the issues.

In Nigeria, there is the awareness of the increased attention given to individuals' rights, especially those described as fundamental rights of the citizen. This state of affairs has led to more litigation in schools. Given the climate of times, it appears not only prudent but also necessary for teachers and education administrators to understand their own

rights and limitations, as well as the legal implications of what they do, particularly in dealing with students and parents in educational matters. Usually, a course in education or school of law will provide the student the knowledge of the rights and responsibilities of others and theirs, as well as the legal implications of their actions or inactions in relation to their students and other constituencies that often come in contact with the school.

Also in Nigeria, most teachers are not aware of their rights, let alone those of others. Similarly, many are ignorant of the rules and regulations governing their employment and the school system in which they work. Consequently, most of them are not aware of the legal implications of their actions (or inactions and limitations). This dismal situation was vividly illustrated by Nwagwu (1984) when he wrote:

Most teachers in our school system have never read the Nigerian constitution nor even the laws, rules and regulations governing the administration of the school system. Many are not aware of their rights, duties, obligations and responsibilities under the law and more especially on the probable consequences or implications of their actions in their day-to-day activities within the school system.

Nwagwu went further to point out that:

Most teachers do not have a copy of their state Teachers Service Manual (or Handbook of Service) and the few who have them still remain ignorant of the contents and provisions because they have never read the contents. Consequently, most teachers are not aware of their legal and moral obligations to their employers, their fellow teachers and their students. They do not know and appreciate the general principles and provisions of law and regulations as they apply in handling issues of order and discipline in schools . (p. 115).

In this age of enlightenment, such ignorance may no doubt be costly, if not disastrous, to the individual, the education system and others within the system. While the purpose of a course in education law is not to make the student his own lawyer, it is definitely aimed at helping students, school administrators, teachers and staff to:

- (a) understand the legal aspects of education;
- (b) learn the basic principles of law and to develop some degree of competence in applying them to educational problems;
- (c) recognize situations in which it is not safe to proceed without competent legal advice; and
- (d) recognize that many education decisions with legal implications (e.g., suspensions, expulsions, etc.) may safely be made without advice from a lawyer,

if those decisions are made in conformity with basic, well-defined principles or laid down guidelines (Hoeber and others, 1982, pp. 11–12).

From the above analysis, it can be argued, by way of conclusion, that the growing literary and complexity of the educational environment and society and their effects on educational and school administration necessitates the urgent need for legally literate teachers and school administrators (officials with the knowledge of education law), or anyone who is going to occupy a responsible position in educational institutions in Nigeria (Barr, 1983).

The education laws enable the government to take proper control of education and all related activities.

They promote regulations for the development of the system and curriculum changes, and help to define the powers of functionaries and agencies as well as the implications of teacher registration and professionalism in teaching (Olagboye and Fadipe, 1998:23).

The administration and control of education are vested by law in the Federal and State Governments, with some responsibilities delegated to Local Governments (Taiwo, 1980).

The 1999 constitutional provisions accord concurrent legislative status to education.

If you will remember under Unit 2 (3.2 Management of the Educational System {Local Government level}) we were informed that with the Supreme Court ruling of April 5, 2002, the jurisdiction of the Federal Government with regard to primary education has ceased to cover special financing through first line charge allocation. The latter was found to be inconsistent with the 1999 Constitution. Rather, the State Governments are to receive direct allocations from the Federation Account for funding primary schools in their areas of jurisdiction. The responsibility of the Federal Government in the provision of general national guidelines, evaluation, monitoring and benchmarking for basic education, of which primary education is a part, still stands. While Section 4(4) of the Constitution empowers the Federal Government to establish universities, post-primary institutions, only Section 18 empowers it to provide equal and adequate educational opportunities at all levels.

The Universal Basic Education (UBE) is a response to Section 19 of our 1989 Constitution which reads:

Government shall direct its policy towards
*ensuring that there are equal and adequate
education opportunities at all levels.*

It is pertinent to mention that the said 1989 Constitution suffered a still birth as it was never put to use. However, that section was replicated as Section 18 (1) of the current 1999 Constitution.

As you are aware, the Constitution of the Federal Republic of Nigeria is the basic law of the land from which all other laws draw their inspiration and legitimacy. The provisions in the 1979 and 1999 Constitutions are almost identical. Let us join Nwagwu (2004) to use the provisions of the 1999 Constitution to examine the laws on education therein. Section 18 in Chapter 2 of the Constitution stated the Educational Objectives of the nation. Chapter 4 presented the Fundamental Rights (eleven rights in all) which individuals, organizations and groups must respect as well as enjoy. These rights, of course, apply to all operators and participants in the education system. Part two of the Second Schedule of the Constitution contains the concurrent legislative list on which both the Federal and State Governments can make laws. Provisions are made for the devolution of power and responsibility between the two tiers of government: Federal and State Governments.

Paragraph 27 of item L in Part II of the Second Schedule is titled University, technological and post-primary education (FRN, 1999:137). It conferred on the National Assembly powers to make laws for the federation or any part thereof with respect to these kinds of education including professional education. The National Assembly was also empowered in paragraph 27 to establish institutions for the purposes of university, technological, post-primary and professional education. Paragraphs 29 and 30 gave powers to a State House of Assembly to make laws with respect to the establishment of University, technological or professional education, as well as technical, vocational, post-primary, primary or other forms of education.

The Fourth Schedule of the Constitution is on functions of a Local Government Council. Paragraph 2a gave to a Local Government Council the responsibility for the provision and maintenance of primary, adult and vocational education (FRN 1999:15). We need to observe here that the powers and functions of Local Governments with regard to primary education have been a source of controversy, and even litigation, between federal and state governments on the one hand, and between state and local governments on the other hand.

Self Assessment Exercise 4.4

Of what importance is education law to you as a learner, the teacher, the administrator and government functionaries?

3.5 Sources of Education Law

Education law in Nigeria stems from a number of sources which include the Constitution, legislations, judicial precedents, administrative laws, school rules and regulations, and other bodies. This will be explained.

3.5.1 Constitution

The Constitution is a body of fixed or fundamental rules and regulations which govern the behaviour and processes of government in a country. It is a body of precepts which

provides a framework of law within which orderly governmental processes may operate (Alexander, 1980). The Constitution establishes the basic structure of the national government and a written set of rules to control the conduct of the government and its agencies. The Constitution, in its own words, is the Supreme Law of the Land. For instance, Section 1 (1) of the 1999 Constitution of the Federal Republic of Nigeria states thus, This Constitution is supreme and its provisions shall have binding force on all authorities, and persons throughout the Federal Republic of Nigeria. Section 1 (3) states, If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other laws shall to the extent of the inconsistency be void.

Under the 1999 Constitution, higher education is in the concurrent legislative list list of matters with respect to which both the National Assembly and a House of Assembly may make laws to the extent prescribed respectively. Secondary education is left in the hands of the State Governments and primary education in the hands of the Local Government Areas.

In Section 19, under Chapter II of the 1999 Constitution titled the Fundamental Objectives and Directive Principles of State Policy, are stated the educational objectives of government. These are as follows:

1. Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
2. Government shall promote science and technology.
3. Government shall strive to eradicate illiteracy and to this end shall, as and when practicable, provide:
 - (a) free, compulsory and universal primary education;
 - (b) free secondary education;
 - (c) free university education; and
 - (d) free adult literacy programme.
4. Government shall promote the learning of indigenous languages.

It is important to point out, as Nwagwu (1987) did concerning 1979 constitution, that Section 19 (3)(a) to (d) are directive principles and not a constitutional guarantee of free education at all levels to the citizens of Nigeria, unless the human and physical resources make it feasible and practicable.

As we have mentioned earlier, a major source of the law on education in Nigeria is the 1999 Constitution, which like the 1979 Constitution, provided both the nation's educational objectives and the legal framework for the devolution of power and responsibilities for legislation on education among the three-tiers of government. All

federal and state laws and all executive policies of government on education matters must respect the provisions of the Constitution.

The contemporary education laws and edicts and Acts of Parliament in Nigeria derive their sources from the regional laws, current constitutional provision and decrees, and edicts. They have been enacted on various aspects of education with each having specific objectives and orientation. Some are on primary and secondary education, such as: the NPEC Act, UBE Act and Nomadic Education Act.

Others are targeted at higher education, such as: NUC, NBTE and NCCE Acts. A few have focused on examinations, such as those concerned with JAMB, NECO and examination malpractices. Many of the responsibilities of both Federal and States Ministries of Education are discharged through their parastatals. These parastatals are established in line with enabling laws by federal and state governments respectively, based on powers granted them over education by the Constitution. The National Policy on Education is a source of information on how Nigerian education should be structured, organised and administered; while the Public Service has government rules and regulations for educational administrators and managers.

The Nigerian educational system is dynamic and laws must continue to give backing to education to guarantee a successful implementation of its policies.

3.5.2 Rules and Regulations

Most State Education Laws or Edicts contain rules and regulations for schools. These often cover such matters as various forms of records (admission, progress and withdrawal, time-table, weekly diaries, corporal punishment book), hours of school attendance register, accommodation requirement, punishment, transfer and leaving certificates.

Besides these rules and regulations, in school matters, school authorities must act in accordance with the provisions of the law of the land or the statutes. In cases where there are no specific legal provisions, the Law will apply.

In this regard, it is necessary to mention that rules and regulations need not be confined to the ones contained in the state Education Edict Law. Schools Boards and even individual schools can make their own rules and regulations, provided that they are not in conflict with the National Constitutions or the State Education Law. In short, rules and regulations can be established by the Board of Education, the Local Government Education Authority, the Principal or Headmaster or even the classroom teacher. It is only necessary that all rules and regulations must be designed to achieve proper conduct and education and must be reasonable. Therefore, school authorities have power to establish rules and regulations governing students' behaviour and directed towards the achievement of the objectives of education. Such rules may cover matters relating to the conduct of examinations, talking in classes, absence from classes, lateness, leaving the school without permission, fighting, disobeying in struction, etc.

It is often better that the rules are written. But since it is obvious that every act that can interfere with the orderly conduct of the school cannot be anticipated by the teacher and the administration, it will not be possible to have all the possible rules written down. Some will evolve as conventions and traditions and a generally acceptable conduct of the school culture.

In making rules and regulations, it is necessary that the authorities act in accordance with the principle to prevent conduct that could interfere with orderly operation of the school or with the rights of other students and in keeping with good moral behaviour. In other words, school authorities should not make rules on the basis of their personal likes or dislikes alone. For instance, a principal who ordered the shaving of the hairs of a pupil for violating a regulation on hair weaving was promptly disciplined by a higher authority by having her own hair shaved and thereafter promptly transferred. Here, the issue is the reasonableness of a regulation, among girls schools, prescribing how the girls must weave their hair. This may be justified on the grounds of the provisions of Section 34 subsection 1(d) regarding the right to deprive personal liberty to persons under the age of 18 years and for the purpose of their education. It is, however, arguable whether the weaving of hair affects the education of the child.

The issue of dress and appearance constitute a touchy aspect of school rules and regulations. Even in the United States of America the courts are reported (Reujter, 1970) to have reached different conclusions regarding the power of the Board of Education to regulate such matters as style of hair and length of skirt. The point is that different weights have been given by different judges under different circumstances to such issues as the relational rationale or reasonableness of the rule in question, the clarity of the statement of the rule, the circumstances in which the rule was challenged, the evidence of the need for the rule, and the circumstances surrounding the violation of the rule.

The implications here are that for our situation, the evidence of the need for such rules must be established; the statement of the rules must be clear, indicating clearly what constitutes violation. Clearly, school authorities anywhere could reasonably ban any kinds of dresses detrimental to proper discipline or morals in the school. For instance, school authorities should have the right to ban wearing mini skirts by girls.

Like government policies and rules or delegated legislation, school rules and regulations carry the force of law if they are reasonable and constitutional. Anyone who breaks or flouts them does so at his or her own risk. He or she can be punished as if he or she had broken a common law or a constitutional or statutory provision (Barrell and Partington, 1985). Reasonable school rules have been upheld in Courts of Justice. One of the landmark judgments upholding school rules and regulations as having the force of law dates back to 1929 in Britain. Barrell and Partington reported that in the case, *R. v. Newport (Shropshire) Justices ex parte Wright*, there was a school rule forbidding smoking by pupils at school during the school term and on school premises and in public. A boy broke the rule, for he was found smoking as he strolled through the streets away from the school premises. The Headmaster caned the boy the next day. The boy's father went to court and his application was dismissed. The Lord Chief Justice said the

punishment was a reasonable punishment for the breach of the school rule. He was thus upholding a school rule as having the effect of law.

Another case reported by Barrell and Partington on school rules and regulations is that of *Spiers v. Warrington Corporation*. Eva Spiers was a thirteen (13) year old Secondary School student who turned up at school in clothing (jeans) the Headmistress considered as unsuitable. She was asked to go home and come back properly dressed. This was communicated to her parents. Eva was not allowed to come to school as long as she refused to come properly dressed. The question was whether the Headmistress in communicating her refusal to allow Eva to come to school in this way was acting within her rights? The justices held that for Eva Spiers, the rule relating to dress was part of the law of the land and justifiable before the Courts. They also held that it was not only within the rights of the Headmistress, but also that it was her duty; and the parents, knowing that the child would not be admitted, and insisting on her being dressed in the improper way, committed an offence.

In the United States, in *Flory v. Smith* (1926), the Supreme Court of Appeal of Virginia held that Court is not concerned with the wisdom of school regulation, but whether it is reasonable. The object of this suit was to test the legality of a rule a student regulation which states: Leaving the Campus between the hours of 9.00 a.m. and 3.35 p.m. is strictly prohibited, unless students were accompanied by a teacher. A parent who requested a special privilege to permit his children to eat their mid-day meal, either in the home or to eat same with their father at the hotel in the town was denied by the Principal of the school. The children violated this regulation and they were suspended. The parent went to court and the Court of Appeal dismissed the bill of complaint, stating that from the viewpoint afforded us by the bill of complaint. we are unable to say that the regulation is an unreasonable one.

Further more, in *Jackson v. Dorrrier* (1970), the United States Court of Appeals, Sixth Circuit held that hair-cut regulation was constitutionally permissible. The High School Regulation complained of stated thus:

Pupils shall observe modesty, appropriateness,
and neatness in clothing and personal appearances.
A student is not appropriately dressed if he is a
disturbing influence in class or school because of
mode of dress. The principal may suspend a student
who does not meet this requirement.

Finally, Alexander (1980) reported the case of *Jones v. Cody* (1902) in which the Court upheld a Principal's enforcement of a requirement that pupils go directly home after school as a reasonable rule. In a number of occasions, a local Storekeeper refused to allow the Principal to enter her store to send some of the loitering pupils home. The Principal then required strict adherence to his rule and the Storekeeper sued the principal for loss of profits. The Court upheld the rule and indicated that it was not only the right but also the duty of the school to see that children went directly home from school. The

Court reasoned that if the child did not reach home when scheduled, his parents would be put on notice and would go looking for him or her, thereby affording greater protection for the safety and well-being of the child.

In Nigeria, there are not very many court cases relating to primary and secondary school education, particularly those getting to the Supreme Court level. Nwagwu (1987) has identified reasons for this state of affairs:

- (a) the country's educational system is still relatively young and developing ;
- (b) many parents are either illiterate or ignorant of their constitutional rights and so government officials and school authorities get away with many infringements of the rights of parents and students. It needs to be pointed out here that the Nigeria of the 1990s, particularly of the twenty-first century, may not be the same as that of the 1960s, 70s and 80s. As the literacy rate increases and the awareness of individual fundamental rights increases in the future, Nigerians will become more legalistic in terms of the violation of their children's and wards' rights in the school system.
- (c) legal action in court takes time and money and many think it is most often not worthwhile.

These factors, especially finance, are the major reasons why most parents do not pursue cases on infringement of the rights of students or wards to their logical conclusion the Supreme Court, which is the highest court of the land (Peretomode, 1992). However, we shall rely on cases from other parts of the world United States of America and Britain as the basis of making inferences on the subject matter.

3.5.3 Selected Case Laws

We shall touch on a few selected case laws to back up discussion on this matter.

- (a) School Rules and Regulations that are reasonable have the force of Law
(R. v. Newport (Shropshire) Justices ex PARTE v. WRIGHT

Facts: In 1929, there was a rule in Newport Grammar School in Shropshire (England) that pupils of the school should not smoke within the school precincts or in public during term time. One afternoon, two boys left school and smoked as they strolled through the streets. They were seen by prefects who reported them to the headmaster and the headmaster decided that they should be caned for breach of a school rule. One boy took his punishment like a man, but the other objected. He said that his father had given him permission to smoke, it was no concern of the headmaster whether he did or not, and that the headmaster could not make a rule which flouted the father's authority. Moreover, it had happened away from the school premises, and after school hours. The headmaster got two masters to hold the boy down and administered the beating. The father thereupon summoned the headmaster before the magistrate, and the case was dismissed.

The father of the boy appealed. The higher court at first refused, holding the applicant to be frivolous, but in due course, they had to comply.

The Lord Chief Justice, said at the hearing:

There was at the school a school rule forbidding smoking by pupils at the school during the school term and on the school premises and in public. That was reasonable rule. The boy deliberately broke the rule, being aware of it, such punishment was a reasonable punishment for the breach of the school rule, and the father's application to court must be dismissed.

The court was quite clearly upholding a school rule, whether the members of that court or indeed the boy's father approved of smoking or not.

(b) School Rules and Regulations and Disciplinary Actions that are reasonable
have the Force of Law (Spiers vs. Warrington Corporation)

Facts: A 13-year-old girl name Eva Spiers was a pupil at a Secondary School in Warrington and turned up at school in clothing which the headmistress considered as unsuitable. She came, in fact, in jeans.

There was a school rule relating to the suitability of clothing in the school. The mother's excuse was that the girl had had two bouts of rheumatic fever. She had been advised by a doctor that the girl's kidney should be kept warm, and believed that jeans keep kidneys warmer than skirts. The headmistress thereupon asked the mother to produce a medical certificate to this effect.

No such certificate was forthcoming, and the Headmistress entered her repeatedly for medical examinations in school, but Eva failed to turn up. The headmistress then decided to take a well-charted, but fairly exceptional course. Every time Eva came to school in slacks, the headmistress said to her, in effect, Now run along home dear and come back properly dressed. As soon as you do, you can come into school. But Eva stayed at home for the morning and arrived at school again in the afternoon. The same conversation would take place and Eva would return the next morning. This went on for some months until the county Borough of Warrington decided to prosecute the father for failing to send his child to school as was his duty. The Magistrate found him guilty and fined him.

Mr. Spiers appealed, maintaining that the magistrates were wrong in law, that he had sent his child to school; and that it was the perversity of the headmistress who was preventing Eva from receiving her education, the education to which she was entitled.

The West Derby Quarter Sessions Appeals Committee quashed the conviction believing that the parents were acting reasonably in the interest of their child. The local education

authority thereupon appealed to the Queen's Bench Division which did not agree. Lord Chief Justice Goddard considered the clause in the Articles of Government which said:

The Headmistress shall control the internal organisation, management and discipline of the school. He commented; The headmistress obviously has the right and power to prescribe the discipline for the school. There must be somebody to keep discipline, and of course that person is the headmistress. The question is, was the Headmistress communicating her refusal to allow the girl to come to school in this manner acting within her rights? We hold that she was not only within her rights, but that it was her duty, and the parents, knowing that the child would not be admitted, and insisting on her being dressed in this way committed an offence.

Once again, the court upheld the school rule, and said that for Eva Spiers, the rule relating to dress was part of the law of the land and justifiable before the courts.

(c) Court is not concerned with Wisdom of Regulation but
***whether it was Reasonable: Reasonable School Rules
have the Force of Law (Flory v. Smith) Supreme Court
of Appeals of Virginia, 1926, 145 Va. 164, 134 S. E. 360.***

CAMPBELL, J. The object of this Suit is to test the legality of a rule promulgated by the School Board of Gloucester County. This rule is as follows:

Student Regulation Leaving the Campus between the hours of 9 a.m. and 3.35 p.m. is strictly prohibited, unless students are accompanied by a teacher.

It was the desire of the appellees that their children be relieved of the restriction placed upon them by the rule stated, supra, and that the children be permitted to eat their mid-day meal, either in the home, situated about a mile distant from the school, or to eat same with their father at the hotel in the town. The special privilege was denied by the principal of the school.

The court, on final hearing, overruled the demurrer and entered a decree enjoining and restraining E.D. Flory, Principal of the school, from prohibiting and preventing the children of appellees from eating their mid-day meals either in the home of their parents or with their father in Botecourt Hotel.

In the conduct of the public schools it is essential that power be vested in some legalized agency in order to maintain discipline and promote efficiency. In considering the exercise of this power, the courts are not concerned with the wisdom or unwisdom of the act done. The only concern of the court is the reasonableness of the regulation promulgated. To hold otherwise would be to substitute judicial opinion for the legislative will.

While appellees allege in their bill that it is their right to select and provide the best and most suitable food for the nourishment of their children and to select the mode and manner by which such food shall be received by their children, to the end that their children may be best nourished and their physical development may be best promoted, it is nowhere alleged that the physical condition of the children is such that results detrimental to their physical wellbeing will follow if the right alleged is denied.

While it may be argued with force that a warm meal at mid-day is preferable to a cold lunch, it is not conclusive that the latter is destructive of health. It is a matter of common knowledge that in the towns and rural sections the vast majority of school children partake of a cold lunch at mid-day. In the larger cities, where paternalism is further advanced, children are encouraged to partake of hot food furnished them for a consideration.

Considering the regulation from the viewpoint afforded us by the bill of complaint, demurrer, and answer, we are unable to say that the regulation is an unreasonable one. However, while a rule may be legally reasonable, it should not be without elasticity. In the enforcement of every law, there should be brought into play the element of common sense.

We have no serious trouble in disposing of the contention that appellees have a property right in the public schools of the Commonwealth.

The last contention of appellees is that they have been penalized without notice and deprived of their right to seek redress by appeal.

Immediately upon the suspension of appellees' child, notice of such suspension was given to the father. We are of the opinion that this was sufficient notice; that upon the receipt thereof he had the absolute right to have the matter reviewed by the county school board within a reasonable time from the date of the receipt of such notice. For the reasons stated, the decree of the circuit must be reversed, and this court will enter a decree dismissing the bill of complaint.

Reversed.

(d) Grooming Haircut Regulation is Constitutionally Permissible

The Classroom is not a Beauty Parlour Jackson vs. Dorrier
(United States Court of Appeals, Sixth Circuit, 1970 424 F.2d 213)

PER CURIAM. This case involves the timely subject of long hair worn by teenage male high school students.

The Metropolitan Board of Education of Nashville and Davidson County, Tennessee, adopted the following regulation in 1961:

Pupils shall observe modesty, appropriateness, and neatness in clothing and personal appearance. A student is not appropriately dressed if he is a disturbing influence in class or school because of his mode of dress. The Principal may suspend a student who does not meet this requirement.

Under this regulation, the students at Donelson High School were told, as to hair on male students, that hair in the front may not come below the eyebrows, ears must show clear of hair and hair in the back is to be tapered and not to be long enough to turn up.

Two male students, Michael Jackson and Barry Steven Barnes, who were members of a combo band known as The Purple Haze, permitted their hair to grow longer than prescribed by school officials. After conferences with the students and their parents, the students were suspended by the principal and sent home for violation of the regulation. After additional conferences, a hearing was conducted before the Board of Education. The Board sustained the action of the principal.

The complaint charges that the student plaintiffs have been deprived of certain rights guaranteed by the Constitution of the United States, that the defendant school officials, having the authority and duty to promulgate plans, rules and regulations for the administration and operation of the public school system, wrongfully refused to enroll these two students at Donelson High School for the school year beginning September, 1968 on the ground that their hair was too long, that they wore mustaches, and in the case of Barnes, a beard; and that the two students were informed that their appearance constituted improper grooming which amounted to distracting attire.

The complaint sought a declaration that the above quoted regulation is invalid. It prayed that defendants be compelled to readmit these two students to Donelson High School and that defendants must be enjoined from conditioning attendance at school on the length of hair or the presence of a beard or mustaches.

There is evidence to support the conclusion that the wearing of excessively long hair by male students at Donelson High School disrupted classroom atmosphere and decorum, caused disturbances and distractions among other students interfered with the educational process. Members of faculty of Donelson High School testified that the wearing of long hair by Jackson and Barnes was an obstructing and distracting influence to a wholesome

academic environment. A teacher of history and social studies stated that the boys with long hair were a distracting influence in her class; that they were constantly combing, flipping, looking in mirrors and rearranging their hair, attracting the attention of other students and interfering with classroom teaching; and that the train of thought of both the students and teachers was interrupted. An English teacher testified that she often asked a boy to put away his comb and refrain from combing his hair in class. She described long hair on male students as a disturbing and distracting influence on educational processes in her classes and other school activities at Donelson High School. A teacher of Industrial Arts testified that girls with long hair were required to wear hair nets as a safety precaution and that long hair on boys was a safety hazard in shop work. One teacher said that other students pay more attention to a boy with long hair than to what the teacher is trying to teach. Another teacher testified that when her class was attended by the boy with long hair hardly a day would go by that she would not have to interrupt her teaching and say: Put your combs away. This is not a beauty parlour. This is a school classroom.

The record established that the deliberate flouting by Jackson and Barnes of this well-publicised school regulation created problems of school discipline. It is contended that enforcement of the regulation deprived the two students of freedom of speech and expression in violation of the First Amendment. Neither of the students testified that his hair style was intended as an expression of any idea or point of view.

The record supports the finding of the District Judge and Jackson and Barnes pursued their course of personal grooming for the purpose of enhancing the popularity of the musical group in which they performed. We agree with Judge Gray that the growing of hair for purely commercial purposes is not protected by the First Amendment's guarantee of freedom of speech.

It is further contended that the action of school officials did not violate the due process clause of the Fourteenth Amendment. The evidence shows that the two students were afforded ample opportunity to be heard and that the procedural and substantive requirements of due process were met by conferences conducted by the school principal and by the hearing before the Board of Education.

We also agree with the District Court that the regulation enforced in this case is not void for vagueness and over-breadth, but to the contrary, as applied to these two students, was quite specific. The record shows that the principal of Donelson High School interpreted and administered the regulation in such a way as clearly to inform all students, including the two involved in this case, as to what was required of them with regard to personal grooming. There can be no doubt that Jackson and Barnes had adequate notice of what was expected of them and deliberately chose not to comply with the regulation.

The regulation has a real and reasonable connection with the successful operation of the educational system and with the maintenance of school discipline.

In the absence of infringement of constitutional rights, the responsibility for maintaining proper standards of decorum and discipline and a wholesome academic environment at Donelson High School is not vested in the Federal Courts, but in the principal and faculty of the school and the Metropolitan Board of Education of Nashville and Davidson County, Tennessee.

We follow *Ferrell V. Dallas Independent School District*, *supra*, in holding that the District Court committed no error in dismissing the present case. Affirmed.

3.5.4 Judicial Precedents

A third source of education law lies in judicial opinions. Common law is the law that emerges from those decisions; hence it is also referred to as Case Law or Judicial Law or Judge-made Law. These terms are used to distinguish rules of law which are enunciated by the courts from those which are enacted by legislative bodies (Alexander, 1980). Implicit in the concept of common or case law is the reliance on past court decisions, and there has come into being the doctrine of *stare decisis*. Let the decision stand.

Under this doctrine, precedents set by decisions in previous cases are to be followed, unless there is a compelling reason to depart from them. The rule of *Stare decisis* is rigidly adhered to by lower courts when following decisions by higher courts in the same jurisdiction.

3.5.5 Administrative/Executive Orders

The rules and regulations made and applied by the federal or state regulatory agencies and commissions such as: Ministries of Education, Schools Management Boards, etc. have the force of law (if reasonable and constitutional). However, being a creature of the legislature in most States, the State Schools Boards (Primary, Secondary and Local School Boards) have only powers delegated or implied in the delegated powers. If any of these bodies act outside its delegated powers, the rules and regulations are void.

Schools Board of Education must therefore, in devising rules and regulations for the administration of schools, do so within the limits defined by law. There is, however, presumption of authority, and until challenged in courts, all rules and regulations of the Ministry of Education and Schools Boards are presumed to be valid and are as enforceable as a statute enacted by legislature (Barrell and Partington, 1985; Reuter and Hamilton, 1976).

3.5.6 Legislations

Legislation means enacted law, that is, law made by a body constituted for the purpose, e.g., the National Assembly or State House of Assembly. Enacted laws or acts of legislature are also called statutes. Statute is a word derived from a Latin term *statum*,

meaning It is decided. Statutes are thus bills that are voted on and passed into law by the legislature. Bye Law means enactment of a Local Government Council whose source is a state law. Laws made at the federal level under a Military Government are referred to as decrees and those by the state governments are called edicts. The most abundant source of law affecting public schools in Nigeria are legislative enactments. Public schools in Nigeria are governed by laws enacted by legislatures.

Part II of the Second Schedule of the 1999 Constitution deals with the Concurrent Legislative List. Item I, Paragraph 21 and 22 of this Part/Schedule deals with Scientific and Technological Research. It states that:

The National Assembly may make laws to regulate or coordinate scientific and technological research throughout the Federation (Para. 21). However, this shall not preclude a House of Assembly (of a State) from establishing or making provisions for an institution or other arrangement for the purpose of scientific and technological research (para. 22).

University, technological and post-primary education is treated in Item L (27) to (29) of Part II of the Second Schedule. The paragraphs in question state that:

The National Assembly shall have power to make laws for the Federation or any part thereof with respect to University Education, technological education or such professional education as may from time to time be designated by the National Assembly.

The above power also conferred on the National Assembly the power to establish an institution for the purpose of University, Post-primary, Technological or Professional Education (para. 28). Paragraph 29 stipulates that a House of Assembly shall have power to make laws for the State with respect to the establishment of an institution for purposes of University, Professional or Technological education. Paragraph 30 states that the House of Assembly also has powers to make laws for the other forms of education, including the establishment of institutions for the pursuit of such education.

The Fourth Schedule (Section 7, Para. 1 and 2) of the 1999 Constitution specifies the functions of the Local Government Council. Paragraph 2 states that the functions of a Local Government shall include: (a) the provision and maintenance of primary, adult and vocational education. This implies that the Local Government Councils are constitutionally entrusted with, though through their respective State Governments, managing the responsibility of primary school education in Nigeria. Decree No. 3 of 1991 placed the control of primary education under the local government councils. However the situation has changed now.

In addition, there are a number of decrees that supplement the constitutional stipulations and existing federal and state laws as they pertain to education. For instance, Decree No. 19 of 1984, called the Private Universities Abolition and Prohibition Decree, abolished

and closed down all existing private Universities by any persons, corporate or incorporate. Furthermore, Decree No. 16 of 1985, cited as the Educational National Minimum Standard and Establishment of Institution Decree and modified by Decree No. 49 of 1988, confers on the Minister of Education the power to establish and maintain minimum standards at all levels of education. Section 4(n) of the Amendment Decree specifically empowers the NUC to lay down minimum standard for all universities in the federation and to accredit their degrees and other awards.

3.5.7 Other Bodies

The decisions of other bodies that could serve as source of education law are:

1. The World Education Forum in Dakar set a deadline for 2015 for Education For All (EFA) and agreed on six goals namely: (1) access; (2) gender parity; (3) enhanced adult literacy; (4) expanded early children care; (5) increased learning opportunities for youths and adults, and (6) improved education quality.
2. The General Assembly of the United Nations in November 29, 1959 adopted the following declarations about the Rights of Children, namely:
 - (i) The right to special care if handicapped;
 - (ii) The right to free education;
 - (iii) The right to learn to be a useful member of the society;
 - (iv) The right to develop his abilities;
 - (v) The right to enjoy full opportunity for play and recreation.
3. The Universal Basic Education (UBE) programme is in fact a response to the Universal Declaration of Human Rights (1948) which stipulated the right of every citizen to education. Every member state of the United Nations (and this includes Nigeria) is a signatory to the declaration. In addition, there is a long list of international education covenants on basic education to which Nigeria is committed. According to Obayan (2000), it includes:
 - (i) The Jomtien (1990) Declaration and Framework for Action on Basic Education for All;
 - (ii) The New Delhi (1991) Declaration on the E-9 countries (i.e. the nine countries with the largest concentration of illiterates of which Nigeria is a member) lately reaffirmed in Recife-Brazil (January, 2000) calling for a massive reduction of illiteracy within the shortest possible time span;
 - (iii) The Ouagadougou (1992) Pan-African Declaration on the education of girls and women;
 - (iv) The Amman Re-affirmation (1995) calling for the implementation of the Jomtien recommendations of Education for All;

- (v) The Durban (1998) statement of commitment to the promotion of Education for All;
- (vi) The O.A.U. Decade of Education for Africa (1997–2006) on Inter-African Cooperation on Education, with a strong emphasis on the vigorous pursuit of basic education;
- (vii) The Child Rights Law, 2003;
- (viii) Corrupt Practices and Other Related Offences Act, 2000.

Itoto (1993) pointed out some three key international conventions adopted by the International Labour Organisation which are applicable to teachers. They are:

- (a) The Freedom of Association and Protection of Right to Organise Convention, 1948 (No. 87);
- (b) The Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- (c) Labour Relations (Public Service) Convention, 1978 (No. 151).

4.0 CONCLUSION

It is likely that it will be difficult to operate as planners, administrators, teachers, supervisors, inspectors and even as students, if we are ignorant of the laws, rules and regulations that govern operations of the educational system.

5.0 SUMMARY

In this unit, we have learnt that knowledge of basic law is important for practitioners in the educational industry. Conflicts and litigations may be put at the barest minimum if people know the laws and regulations guiding their activities.

As regards educational law their sources include the constitution, rules and regulations of the organisation, judicial precedents, administrative/executive orders, legislation and other bodies such as international educational conventions.

6.0 TUTOR MARKED ASSIGNMENT

1. What are the purposes of education law?
2. List and discuss the sources of education law.

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UNIT 3 ORGANIZATIONAL CONTROL OF EDUCATION IN NIGERIA

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1.0 INTRODUCTION

Nigerian educational system has evolved over the years through a series of reforms since independence. These reforms were designed to provide a good organizational structure that would enable the nation to achieve her national goals of social, political, economic and technological advancement.

In this Unit 2, you will learn about the structure and management of the educational system.

The Universal Basic Education (UBE) has been singled out to vividly illustrate the role and responsibilities of the various levels of government. Factors that have influenced education over the years will also be discussed.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the structure of education;

- discuss the management of education at the federal, state and local government levels;
- outline the roles and responsibilities of governments in the implementation of the Universal Basic Education (UBE) programme;
- list and explain the factors that have influenced education over the years.

3.0 MAIN CONTENT

3.1 Structure of the Educational System

Education is a service industry that is crucial for the survival of any nation. There are three types of education, namely: informal, non-formal and formal.

The informal education is the type you received and are still receiving at home and in the neighbourhood. Here, you learnt how to greet elders, assume gender roles and other domestic chores. This type of education is not structured. Elders around are the teachers.

Non-formal education programme consists of functional literacy, remedial, continuing, vocational, aesthetic and cultural, political and environmental education for youths and adults outside the formal school system. The non-formal system allows for exit and re-entry at desired points or times in life. There is also provision for movement from the non-formal to the formal parts of the system.

Formal educational system The extant 6-3-3-4 system comprises four distinct stages or components, namely: 6 years of primary, 3 years of junior secondary, 3 years of senior secondary and 4 years of tertiary for most of the science, arts and social sciences programmes.

The current reform of compulsory nine years of schooling started in April, 2004 with the signing into law of the Universal Basic Education Act, 2004 and has introduced three components of basic education:

- Early Childhood Care and Development Education (ECCDE) this component remains a voluntary element in the educational system;
- 6 years of primary education; and
- 3 years of junior secondary education.

Self Assessment Exercise 2.1

Enumerate the structures under which Nigerian educational system is based.

Figure 2.1, 2.2 and 2.3 summarise the structure of formal educational system, the Federal Ministry of Education and the State Ministry of Education.

FIGURE 2. 1: STRUCTURE OF NIGERIAN EDUCATIONAL SYSTEM

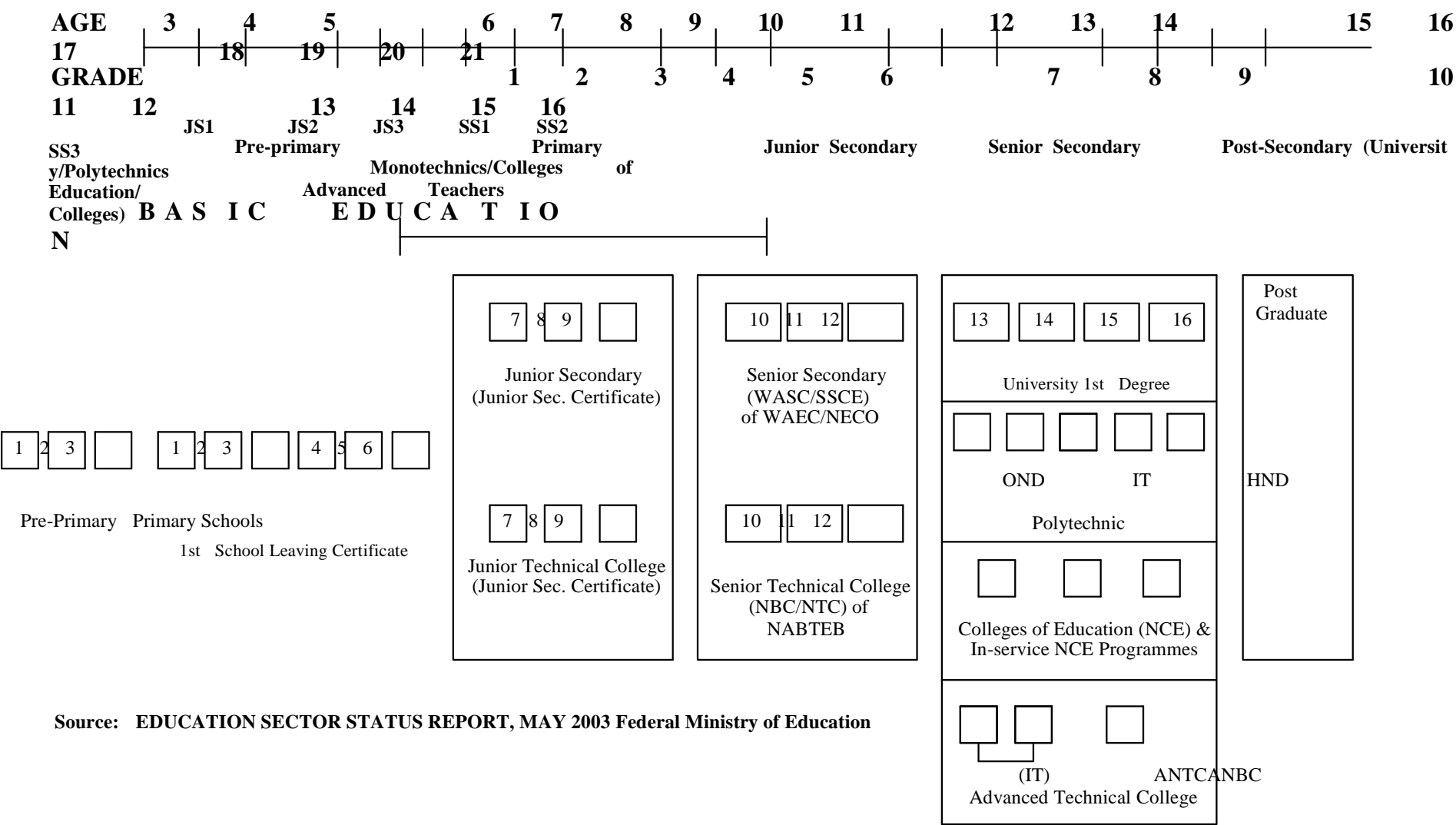


FIGURE 2. 2: ORGANISATIONAL STRUCTURE OF FEDERAL MINISTRY OF EDUCATION

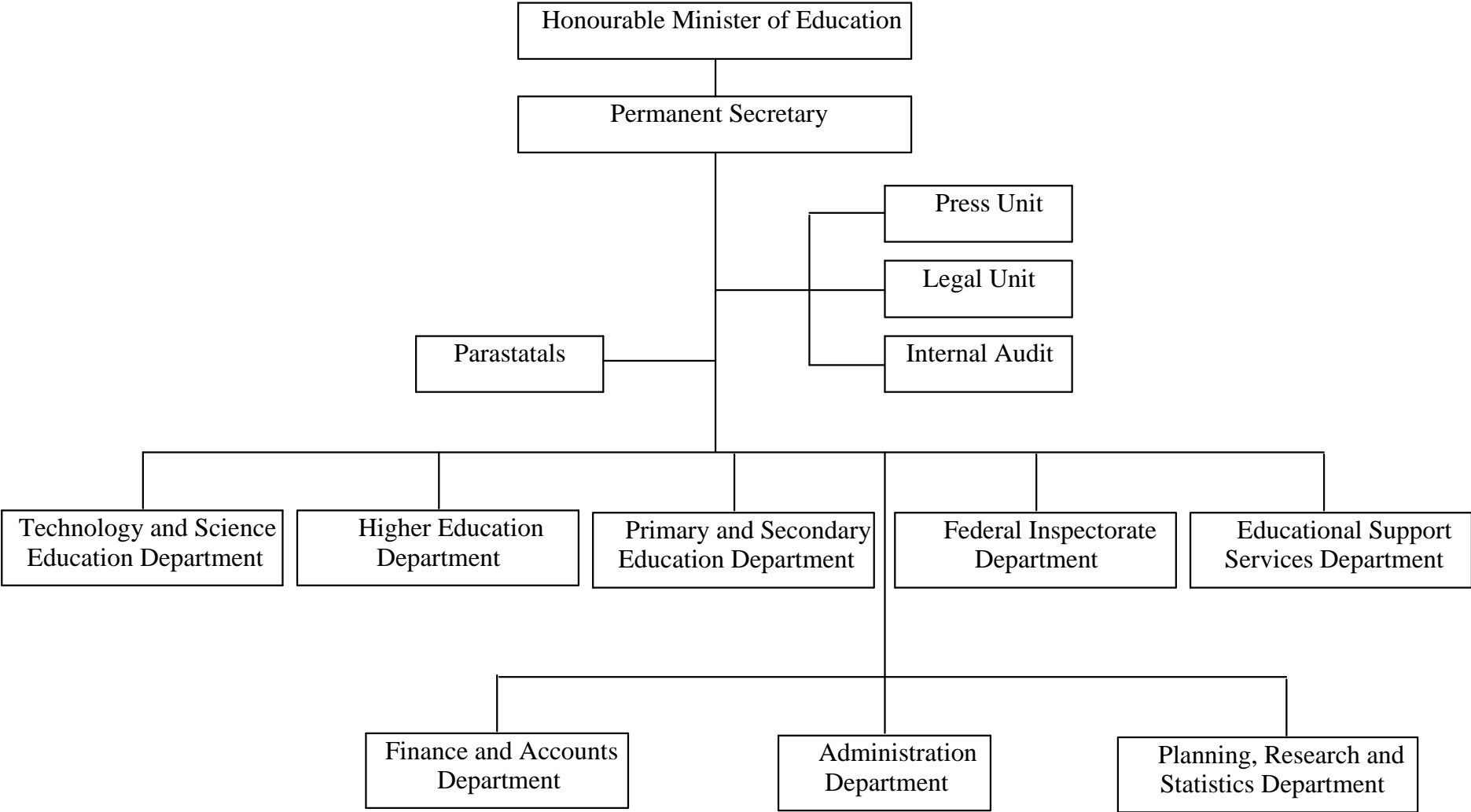
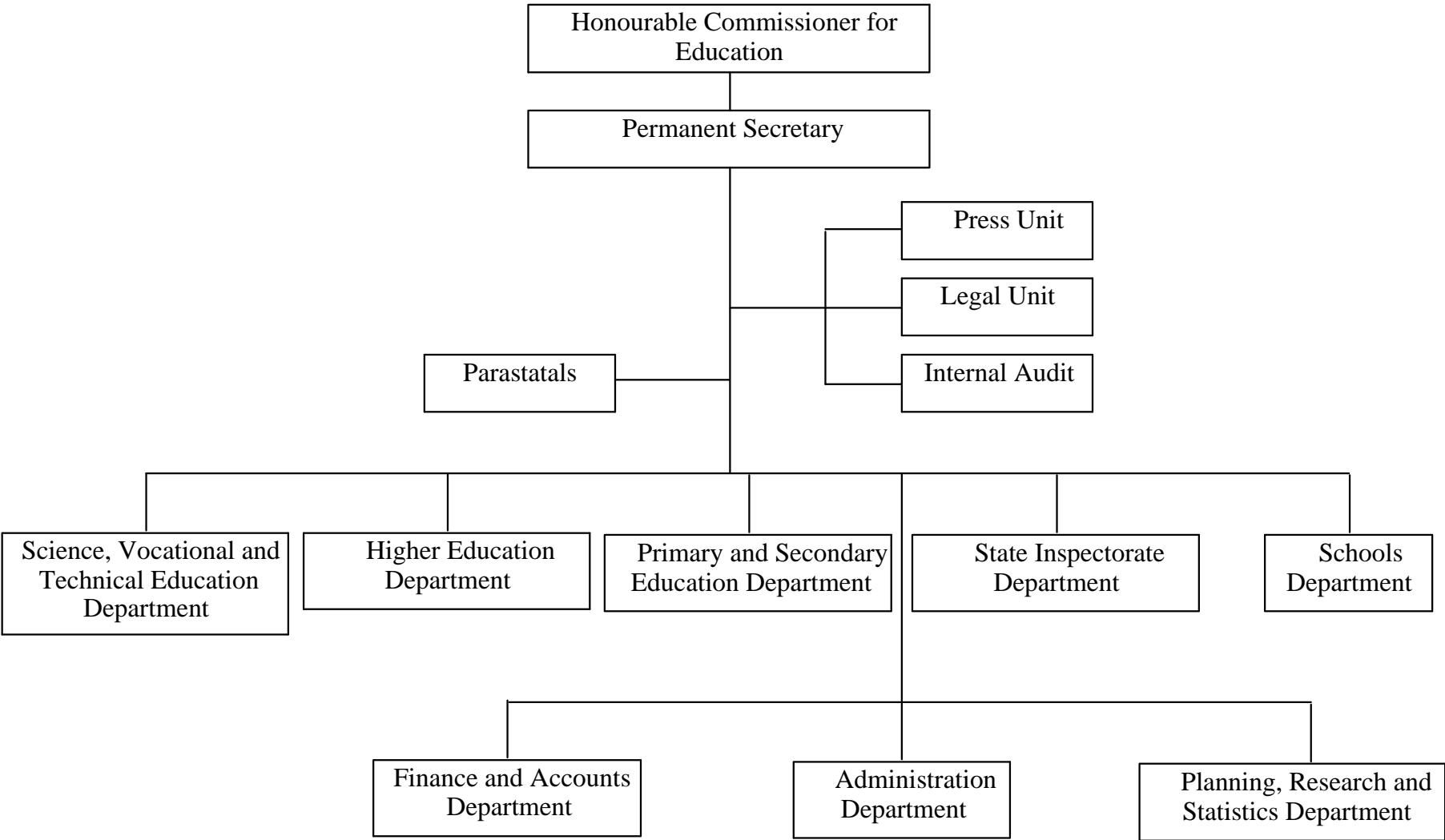


FIGURE2. 3: ORGANISATIONAL STRUCTURE OF THE STATE MINISTRY OF EDUCATION



Two notable developments, the 1969 National Curriculum Conference and Simeon Adebos Report of the Seminar on National Policy on Education in 1973, led to the publication of the National Policy on Education in 1977 and revised in 1981, 1995, 1998 and 2004. Nigeria has a 6-3-3-4 educational system, offering six years of primary, three years of junior secondary, three years of senior secondary and four years of higher education. The system also includes adult and non-formal education programmes, a variety of teacher education programmes and some programmes for children with disabilities (NPC/UNICEF, 2001).

The National Policy is currently undergoing another revision to reflect new issues and programmes such as: the Education Sector Analysis, the Education For All campaign, the repositioning of the Federal Inspectorate Services and the Private Universities (FME, 2003).

To this effect, the federal government has approved nine years comprising six years of primary and three years of junior secondary education as Basic Education. The government is, however, silent about the pre-primary school level.

3.2 Management of the Educational System

Education is placed on the concurrent legislative list in the 1999 Constitution that provides the legal framework for educational management in Nigeria. This implies that both Federal and State Governments have legislative jurisdiction and corresponding functional responsibilities with respect to education. By this arrangement, although a few functions are exclusively assigned to the Federal or State Government, most of the functions and responsibilities are in fact shared by the three-tiers of government.

Both the federal and the state governments finance and manage their own tertiary institutions: Universities, Polytechnics and Colleges of Education. At the secondary level, there are eighty three (83) Federal Government Colleges and nineteen (19) Federal Science and Technical Colleges, spread across the states. All other public secondary schools are managed and financed by State Governments through the State Ministries of Education.

Local governments, on the other hand, have a statutory responsibility to provide and maintain primary education, subject to necessary assistance from the states.

Self Assessment Exercise 2.2

List and discuss briefly the levels or tiers of government that we have in Nigeria in terms of management and financing of educational system.

3.2.1 The Three-tiers of Government

We will now discuss the role of the different levels of government.

(a) Federal Level

Statutorily, the Federal Ministry of Education (FME) is at the apex of the regulation and management of education in the country and to discharge this mandate, the ministry is structured into eight departments and three statutory units. The state ministries of education have similar structures to those of the FME with minor variations determined by the peculiarities of each state. Although the FME has overall responsibility for formulating, harmonizing and coordinating policies and monitoring quality in service delivery in the education sector, the ministry is advised in the discharge of these responsibilities by the National Council on Education (NCE), the highest policy formulation body on educational matters, which is composed of the Federal Minister of Education and the State Commissioners for Education.

The NCE operates through the instrumentality of the Joint Consultative Committee on Education (JCCE), composed of professional officers of the Federal and State Ministries of Education. The consultative reference committees of the JCCE provide a veritable feedback mechanism for federal policies. The NCE provides a forum for consensus-building on policy articulation that are to be implemented at the appropriate levels of government with some leeway for local peculiarities in policy implementation.

Legislative committees (such as the Education Committees of the Senate and the House of Representatives) are constitutionally saddled with oversight functions in the education sector. Similar oversight functions are exercised or performed by the Education Committees of the various state Houses of Assembly and their equivalent at the local government level.

For the purposes of providing university, technological, professional and other post-primary education, the federal and state governments are at liberty to legislate, establish and manage institutions in this category.

The role of the federal government with regard to the primary and secondary sub-sectors, as articulated in the Constitution, is restricted to the determination of national policy, setting of standards (including curriculum) and the monitoring of performance. In practice, however, the federal government has over the years directly influenced the financing and management of primary education through the setting up of special institutions at Federal and State levels.

The federal government has responsibility for policy design, strategy and management of all Federal Government-owned Unity Schools, Colleges of Education, Polytechnics and Universities as well as Education For All (EFA), Literacy, Adult and Non-formal Education and Special Education.

Specifically, the Constitution of the Federal Republic of Nigeria (Chapter 2, Section 2) has vested in the Federal Ministry of Education powers to oversee

policy development, data collection and management for educational and financial planning and quality control in the education sector (FME 2006:20). In terms of strategy, the Federal Ministry of Education ensures cooperation, collaboration and coordination on all educational matters at national and international levels. It has the additional responsibility of ensuring that Nigeria effectively participates in and benefits from the vast knowledge available globally and the ongoing Information and Communication Technology (ICT) revolution (FME 2006:20).

The Federal Ministry of Education is made up of the following operational departments, divisions and units:

- Planning, Research and Statistics (PRS);
- Education Sector Analysis Unit (ESA) of the PRS;
- The Department of Primary and Secondary Education;
- The Higher Education Department;
- The Department of Technology and Science Education;
- The Department of Educational Support Services;
- The National Project Coordinating Unit (NPCU);
- The General Education Support Services Division;
- The HIV/AIDS Unit;
- The Special Education Department;
- The Federal Inspectorate Service Department.

(b) State Level

States can make laws with respect to technical, vocational, post-primary or other forms of education.

Presently, there is dual control of secondary schools (management by government and the private sector) in all the states of the federation. The state government manages education in the state through the Ministry of Education, Post Primary Education Board and the State Primary Education Board.

The Ministry is responsible for the formulation of educational policies for the state. The policy is expected to derive from the National Policy on Education at the federal level.

The departments in the ministry of education implement the state policy on education. There are specialized departments whose functions pertain to specific aspects of the education sector. They are:

- (1) Planning, Research and Statistics Department;
- (2) Science, Vocational and Technical Department;
- (3) Schools Department;
- (4) The Inspectorate Department

- (5) Higher Education;
- (6) Examinations and Standards,

(c) Local Government Level

Local Governments have formal responsibility (dating from the Local Government Decree of 1976) for providing and maintaining primary education, subject to necessary assistance from the states.

The period from 1979 to 1988 had been one of increasing economic difficulties and of much improvisation in the financing and management of primary education (Hinchliffe, 1989). In the southern states, States and Local Governments generally shared responsibility for teachers salaries; while in most of the northern states, Local Governments were responsible, but were subject to much supervision by State Ministries of Local Government.

Decree 31 of 1988 introduced a more reliable and uniform pattern of funding by making the cost of primary teachers salaries a first charge on the Federal Account. It established a National Primary Education Commission (NPEC) at the centre, and Primary Schools Management Boards (PSMBs) at the state level, through which funds for salaries were channelled directly to the Local Government Education Authorities (LGEAs).

LGEA budgets were separated from those of the Local Governments. The PSMBs also took over most of the supervision of LGEAs, and were then monitored by the NPEC. In 1991, this system was abruptly terminated by Decree 3, which gave full responsibility for primary education to the Local Governments.

However, after a period of incessant and prolonged strike actions by primary school teachers over non-payment of salaries, Decree 96 of 1993 restored the system of 1988 (Okoro, 1998, p. 46). With the scope of basic education encompassing the three (3) years junior secondary school, a new commission, the Universal Basic Education Commission (UBEC) replaced NPEC. NPEC had tended to acquire increased managerial functions in the later 1990s.

The direct federal funding of primary education was stopped as a result of a Supreme Court ruling of April, 2002, to the effect that it was unconstitutional for the Federal Government to circumvent the State Governments in funding primary education. This led to the withdrawal of a UBE Bill in the House of Representatives, which had assumed that UBE programmes would benefit from first charge financing.

At present, therefore, Local Government Education Authorities (LCEAs) manage public primary schools, with help from the State Primary Education Boards (SPEBs). Although local communities are supposed to be directly involved in the management of public primary schools through District and Village Education

Committees and Parent-Teacher Associations (PTAs), the reality on the ground is generally different. While the Committees have not functioned as intended, PTAs are cast in a supporting role rather than a managerial one. At the school level, however, effective enrolment, attendance and learning do depend on the cooperative efforts of the school staff, pupils, households and local communities.

3.2.2 Roles and Responsibilities of the various levels of Government in the UBE Programme

The roles and responsibilities of the various levels of government in the UBE programme are as stated below:

1. Federal Government

The roles and responsibilities of the Federal Government are to:

- (i) enact necessary legislation for the UBE scheme;
- (ii) develop and produce the UBE national implementation guidelines;
- (iii) coordinate, supervise and monitor the implementation of the scheme nationwide;
- (iv) sensitise and mobilize all stakeholders for their effective involvement and participation;
- (v) initiate and execute specific programmes for the attainment of the objectives of the scheme;
- (vi) provide the necessary infrastructure and enabling logistics for the effective implementation of the scheme;
- (vii) fulfill its financial obligations and support needed for the effective implementation of the scheme;
- (viii) seek and negotiate international cooperation and collaboration towards the success of the scheme;
- (ix) enhance the capacities of State and Local Government for the successful implementation of the scheme;
- (x) encourage and facilitate research as regular monitoring and evaluation of the scheme;
- (xi) ensure probity, transparency and accountability for all monies allocated to State and Local Governments.

2. State Government

The roles and responsibility of the State Government are to:

- (i) develop and produce a UBE Implementation Blueprint at State level;
- (ii) initiate and execute specific projects for the attainment of objectives of the UBE scheme;
- (iii) sensitise and mobilize the target groups, parents and other stakeholders;
- (iv) fulfill its financial obligations and support needed for effective implementation of the scheme;
- (v) supervise the implementation of the scheme at the State level;
- (vi) coordinate, supervise and monitor the implementation of the scheme at the State level;
- (vii) evaluate and submit bi-annual progress reports on the scheme to the Federal Government;
- (viii) enhance the capacities of Local Government and other implementing agencies at the State level;
- (ix) facilitate research into appropriate areas of the scheme at the State level;
- (x) ensure probity, transparency and accountability for all monies allocated for the scheme.

3. Local Government

The roles and responsibilities of the Local Government are to:

- (i) initiate and execute specific projects for the attainment of the objectives of the scheme;
- (ii) coordinate, supervise and monitor the implementation of the scheme at the Local Government level;
- (iii) assist in providing the infrastructural and other requirements for the scheme;
- (iv) supervise, monitor and evaluate the implementation of the scheme in the Local Government;

- (v) sensitise and mobilize the target groups, parents and other stakeholders for their effective involvement and participation;
- (vi) fulfill its financial obligations and support needed for the effective implementation of the scheme;
- (vii) evaluate and submit periodical progress report on the scheme to the State Government;
- (viii) ensure probity, transparency and accountability for all monies allocated for the scheme.

4. Local Communities

The roles and responsibility of the local communities are to:

- (i) initiate and execute specific projects and activities within the framework of the scheme in their localities;
- (ii) provide logistic support and enabling environment for the execution of the scheme in their localities;
- (iii) provide relevant human and material resources for the successful implementation of the scheme;
- (iv) ensure safety and maintenance of the scheme infrastructure and UBE implementation resources and materials in their localities;
- (v) organise and ensure the support and effective participation of the entire community in the scheme.

5. Voluntary Agencies

The roles and responsibility of voluntary agencies are to:

- (i) initiate, develop and execute specific projects for the success of the scheme;
- (ii) provide relevant infrastructural, human and material resources for the successful implementation of the scheme;
- (iii) encourage and support increased enrolment, retention and completion by the target groups in the programmes of the scheme.

6. Non-Government al Organisations (NGOs)

The roles and responsibilities of the NGOs are to:

- (i) provide relevant infrastructural, human and material resources for the successful implementation of the scheme;
- (ii) initiate, develop and execute specific projects within the fr amework of the scheme;
- (iii) encourage and support increase in enrolment, retention and completion by the target groups in the programmes of the scheme.

7. The Internat ional Com munity and Donor Agencies

The roles and responsibilities of international organizations are to:

- (i) collaborate with the Federal, State and Local Governments in the designing and execution of specific projects for the success of the scheme;
- (ii) assist in capacity building to enhance efficiency and effectiveness in the implementation of the scheme;
- (iii) provide advisory and consultancy ser vices to Federal, State and Local Government to facilitate the attainment of the objectives of the scheme;
- (iv) support and facilitate research, monitoring and evaluation of the UBE scheme.

8. Individuals

The roles and responsibilities of the individuals shall be to:

- (i) provide and or mobilize infrastructural and material resources for the successful implementation of the scheme;
- (ii) initiate, design and execute specific projects for the attainment of the objectives on the UBE scheme;
- (iii) encourage and support increased enrolment, retention and completion by target groups in the programmes of the scheme (Babalola, 2003).

Table 2.1 gives a summary of the responsibilities for education by the three- tiers of government.

Table 2.1: Constitutional Responsibilities for Education

	Federal	State	Local	
Basic (Early Childhood Care and Education, Primary and Junior Secondary)	(i) Policy (ii) Allocation of resources through UBEC (iii) Maintenance of standards (inspection and monitoring FIS)	Implementation through SUBEBs	Management of primary schools	
Senior Secondary (i)	Policy (ii) Curriculum (iii) Inspectorate (iv) Examinations through WAEC and NECO (v) Management of Federal Technical Colleges	(i) Policy (ii) Implementation (iii) Inspectorate (iv) Technical Colleges		
Tertiary Education (i)	Policy (ii) Universities (iii) Polytechnics (iv) Colleges of Education	(i) Universities (ii) Polytechnics (iii) Colleges of Education		
Adult Education Policy	Coordination Monitoring	Implementation	Implementation	
Special Education Policy		Implementation	Implementation	

Source: Federal Ministry of Education 10 Year Strategic Plan (2007)

Self Assessment Exercise 2.3

List and explain the roles and responsibilities of the three tiers of government in the management of Nigeria's educational system.

3.2.3 Partnership with Civil Societies

In keeping with the avowed principle of popular participation in development, the involvement and management of Education in Nigeria has substantial input from civil society. Parents Teachers Associations (PTAs) are known to play very critical roles in augmenting government efforts in the areas of improvement of classrooms, hostels and other physical facilities in educational institutions at all levels.

The National Parent Teachers Association of Nigeria (NPTAN) and the professional associations such as: Academic Staff Union of Universities (ASUU), the Nigeria Union of Teachers (NUT) and other interest groups such as: the National Council for Women Societies (NCWS), NGOs and Community-based Organisations have become more active players in the education enterprise playing more active roles in the areas of provision of educational support services, capacity building, advocacy, legislative lobbying and other such interventions aimed at leading to overall improvements in the education sector.

3.2.4 Quality Assurance

At all levels of education, government (through the instrumentality of the appropriate statutory supervisory agencies) assures the quality of academic provisions. At the tertiary level for instance, NUC, NBTE and NCCE respectively set up Minimum Academic Standards (MAS) for all academic programmes and courses run in the universities, polytechnics and colleges of education in Nigeria.

These MAS documents stipulate minimum floor space for lecture, laboratory/studio/workshop facilities per student; minimum laboratory space, library space and holdings; minimum staff-student ratios for effective teaching and learning in any given discipline. The curricula as well as the minimum entry and graduation requirements for each academic discipline are also enunciated in the minimum academic standards documents. The MAS documents provide the benchmarks against which the academic programmes of these institutions are evaluated for purposes of accreditation.

The inspectorate service of the FME is responsible for quality assurance at the secondary level, where a national agency equivalent to those at the tertiary level does not exist. Administrative audit including an evaluation of the quality and efficiency of institutional governance is carried out periodically, usually, every five years when visitation panels are sent to the various tertiary institutions.

In keeping with global trends, systematic monitoring of learning achievement has now become part of educational practice in Nigeria. The first Monitoring Learning Achievement (MLA) exercise in Nigeria was conducted in 1996, with the aim of monitoring students learning achievement of fourth grade pupils. Results of the MLA showed low achievement in the three key areas of literacy, numeracy and life-skills. A similar study of primary five pupils in Mathematics and English Language in 2001 also showed a low level of achievement in English Language (40%) and Mathematics (34%), indicating very low internal efficiency, a situation reflective of poor quality of the resources (including the teachers and teaching) provided in primary schools. The initial plan to conduct MLA periodically has not materialized.

Private and community schools at all levels have to comply with minimum standards prescribed by state laws. Quality control of all schools, both public and private, is through inspection and supervision by the various levels of government. Networks of non-governmental organizations collaborate with State and Federal Ministries of Education in the management of non-formal education programmes.

At the federal and state levels, there are inspectorates who monitor and evaluate schools below the tertiary level, and LGEAs also inspect primary schools. The Federal Inspectorate Services (FIS) Department, established in 1973, monitors the performance of primary and secondary education throughout the country. In 2002, it had a total of 1,502 staff, consisting of 398 inspectors and 1,104 other staff. These are distributed amongst the national headquarters, 6 zonal offices and 36 state offices and FCT.

There are inspection guidelines in various subjects to aid inspection for improving the content and quality of education. A common criticism is that the stipulated minimum standards are not stated in measurable terms when it comes to the implementation of curriculum content. There is also a problem of uneven distribution of federal inspectors in the various state offices. While some have fewer than 5 inspectors, others have as many as 20 (FME, 2003). A recent report (NPC/UNICEF, 2001) criticized the various inspectorates, both state and federal, for ineffective performance, attributing this to inadequate funding and training (p. 161).

Other monitoring units may be mentioned briefly. Universal Basic Education Commission (UBEC) has a monitoring and evaluation department concerned with all aspects of the primary education programmes, while the Departments of Planning, Research and Statistics of the Federal and State Ministries of Education and State Primary Education Boards (SPEBs) also have monitoring and evaluation branches concerned with specific projects and programmes of their institutions.

It is important to note that quality assurance and national examinations and certification scheme are exclusive responsibilities of the Federal Government by the 1999 Constitutional provision and also by virtue of Act No. 16 of 1985 as amended by Act No. 9 of 1993. The State Ministries of Education have functions similar to those of the Federal Ministry of Education, except that standards maintenance through national minimum guide, curriculum development, national examination and verification and accreditation are exclusive legislative matters of the Federal Government through the Federal Ministry of Education.

Self Assessment Exercise 2.4

What measures are put in place by the government at all levels to ensure that quality and standards are maintained in the Nigerian educational system?

3.2.5 Educational Parastatals, Boards and Commissions

1. Educational Parastatals

The Federal Ministry of Education is linked up to its parastatals through its operations and services departments for purposes of supervision. The structure and organisation of the parastatals resemble those of the parent ministry. There are twenty-one (21) parastatals under the Federal Ministry of Education (FME), classified into four major groups based on their functions. They are:

(1) The supervisory and regulatory parastatals:

- (a) National Universities Commission (NUC)
- (b) National Board for Technical Education (NBTE)
- (c) National Commission for Colleges of Education (NCCE)
- (d) Universal Basic Education Commission (UBEC)

- (e) National Commission for Mass Literacy, Adult and Non-formal Education (NMEC)
 - (f) National Commission for Nomadic Education (NCNE)
- (2) Those for research, development and training:
- (a) Nigerian Educational Research and Development Council (NERDC)
 - (b) National Mathematical Council (NMC)
 - (c) National Library of Nigeria (NLN)
 - (d) National Teachers Institute (NTI)
 - (e) National Institute for Education Planning and Administration (NIEPA)
- (3) Those for measurement, evaluation and examinations:
- (a) West African Examinations Council (WAEC)
 - (b) Joint Admissions and Examinations Board (JAMB)
 - (c) National Examinations Council (NECO)
 - (d) National Business and Technical Education Board (NABTEB)
- (4) Those for Language training and development :
- (a) Nigerian French Language Board (NFLV)
 - (b) National Institute for Nigerian Languages (NINLAN)
 - (c) Nigerian Arabic Language Village

See Table 2. 2 for a summary. Nearly all these parastatals have their governing councils.

State Governments also have educational parastatals. Major examples are Teaching Service Commissions, Science and Technical Education Boards, State Primary Education Boards (SPEBs), State Mass Education Commission (SMECs), Governing Councils of tertiary institutions and Scholarship Boards.

The proposed UBE Commission (UBEC, at present the UBE Programme) would be the main coordinating body for all components of basic education: primary education, junior secondary education, and all forms of non-formal education. There are also special commissions at the federal level for adult literacy (NMEC) and for the education of nomadic children and adult (NCNE). Since these commissions predate the UBE Programme, their relationship with it requires clarification. Arrangements to harmonise management between UBEC and the State Ministries of Education are under consideration too, since facilities and staff are shared by junior and senior secondary schools in most cases.

At the tertiary level, four national commissions monitor both federal and state institutions. These are the NUC, for universities, the NBTE for polytechnics, the NCCE for colleges of education, and NOUN for the National Open University. Other important national commissions are: NERDC, for educational research; NIEPA for the

improvement of educational planning and administration; and NTI charged with the responsibilities for upgrading of teachers through in-service training, and for teachers professional development through workshop, seminars and conferences. External examinations for schools are administered partly by an international body (WAEC), partly by national bodies (NECO, NABTEB and JAMB), and partly by state bodies (for a summary of the functions of all these bodies, see figure 2.2).

2. Parastatals, Boards and Commissions

The Federal Ministry of Education interfaces with its twenty-one parastatals for the purpose of supervision, through its operations and service departments. These parastatals are grouped into four major groups based on their functions, namely: the supervisory and regulatory parastatals NUC, NBTE, NCCE, UBE, NMEC, NCNE; those for research, development and training NERDC, NMC, NLN, NTI, NIEPA; those for measurement, evaluation and examinations WAEC, JAMB, NECO, NABTEB, and those for language training and development NFLV, NINLAN, NALV.

At the tertiary level, four national commissions monitor both federal and state institutions. These are the NUC, for universities, the NBTE for polytechnics, the NCCE for colleges of education, and NOUN for the National Open University. Other important national commissions are: NERDC, for educational research; NIEPA for the improvement of educational planning and administration; and NTI charged with the responsibilities for upgrading of teachers through in-service training, and for teachers professional development through workshop, seminars and conferences.

Local Government Education Authorities (LGEAs) are directly in charge of education at the local government level.

Table 2.2 shows a summary of the major parastatals of the Federal Ministry of Education, their basic functions and enabling instruments establishing them.

Figure 2.2: Major Educational Parastatals, Boards and Commissions, their basic functions and enabling instruments establishing them

Supervisory and Regulatory Parastatals		
Parastatals / Year established	Enabling Instrument	Basic Functions
National Universities Commission (NUC) established in 1962	National Universities Commission Decree No. 1 of 1974, Amendment: Decree No. 49 of 1988; Decree No. 10 of 1993)	(a) Advise the Federal Government on: (i) establishment and location of universities; (ii) creation of new faculties/postgraduate institutions in the universities; (iii) financial requirement of universities; (iv) periodic review of terms and conditions of service of university staff, etc. (b) Executive Functions include:

		<ul style="list-style-type: none"> (i) preparation of periodic master plans for a balanced and coordinated development of universities; (i) receipt and disbursement of federal grants to federal universities; (ii) establishment and maintenance of minimum academic standards in universities; (iii) accreditation of degrees and other academic programmes, etc.
National Board for Technical Education (NBTE) established in 1977	National Board for Technical Education Decree No. 9 of 1977; Amendment: Decree No. 9 of 1993	<ul style="list-style-type: none"> (a) Advise Federal Government on: <ul style="list-style-type: none"> (ii) all aspects of technical and vocational education outside the universities; (iii) national policy necessary for full development of technical and vocational education; (iv) financial requirements of polytechnics and colleges of technology; (v) periodic review of terms and conditions of service in polytechnics and colleges of education. (b) Executive Functions include: <ul style="list-style-type: none"> (i) coordination of all aspects of technical and vocational education; (ii) preparation of periodic master plan for a balanced and coordinated development of polytechnics and colleges of technology; (iii) receipt and disbursement of federal grants to federal polytechnics and colleges of technology; (iv) establishment and maintenance of minimum standards in polytechnics and colleges of technology; (v) accreditation of programmes in these institutions.
National Commission for Colleges of Education (NCCE) established in 1989	National Commission for Colleges of Education Decree No. 3 of 1989; Amendment Decree No. 12 of 1993	<ul style="list-style-type: none"> (a) Advises Federal Government on: <ul style="list-style-type: none"> (i) all aspects of teacher education falling outside the universities and polytechnics; (ii) establishment and location of colleges of education; (iii) financial requirements of federal colleges of education;

		<p>(iv) periodic review of terms and conditions of service of personnel in colleges of education.</p> <p>(b) Executive functions include:</p> <p>(i) preparation of periodic master plan for a balanced and coordinated development of colleges of education;</p> <p>(ii) receipt and disbursement of federal grants to federal colleges of education;</p> <p>(iii) establishment and maintenance of minimum standards for all programmes of Teacher Education and accrediting their certificate and awards.</p>
National Commission for Mass Literacy, Adult and Non-formal Education (NMEC) established in 1990	National Commission for Mass Literacy, Adult and Non-formal Education Decree No. 17 of 1990	<p>(a) Advises Federal Government on all aspects of mass literacy, adult and non-formal education, etc.</p> <p>(b) Executive functions include designing, promoting and implementing strategies and programmes of mass literacy.</p>
National Commission for Nomadic Education (NCNE) established in 1989	National Commission for Nomadic Education Decree No. 41 of 1989	<p>(a) Advises Federal Government on all aspects of nomadic education, etc.</p> <p>(b) Executive functions include:</p> <p>(i) formulating policies and issuing guidelines on all matters relating to nomadic education;</p> <p>(ii) developing programmes for the acquisition of functional literacy and numeracy for nomads etc.</p>

Research and Development/Training Parastatals		
Parastatals / Year established	Enabling Instrument	Basic Functions
Nigerian Educational Research and Development Council (NERDC) first established as a Committee of Experts in 1964	NERDC Decree No. 31 of 1972 Amendment Decree No. 53 of 1988	<p>(i) encouraging, promoting and coordinating educational research;</p> <p>(ii) identifying and prioritizing educational problems needing research;</p> <p>(iii) documenting and publishing or sponsoring the publication of educational research;</p> <p>(iv) sponsoring relevant national and international conferences, etc;</p> <p>(v) conducting educational research;</p>

		(vi) developing curriculum and instructional materials, etc; (vii) language and book development.
National Mathematical Centre (NMC) established in 1989	National Board for Technical Education Decree No. 9 of 1977; Amendment: Decree No. 9 of 1993	(i) encouragement and support of improvement activities for the teaching of mathematical sciences at all levels of the educational system; (ii) implementing national set goals in the development of mathematical sciences, etc.
National Library of Nigeria (NLN) first established as a unit in the Federal Ministry of Information in 1964	Library Act No. 6 of 1964; National Library Decree No. 29 of 1979; Decree No. 5 of 1987	(i) stimulation and coordination of library development efforts; (ii) giving necessary supports for intellectual efforts in all activities directed at progress and development; (iii) serving as the national depository for all publishing outputs; (iv) serving as the National Bibliographic Centre etc.
National Teachers Institute (NTI) established in 1976	National Teachers Institute Decree No. 7 of 1978	Provision of instruction leading to the development, upgrading and certification of teachers using distance learning techniques, etc.
National Institute for Educational Planning and Administration (NIEPA) established in 1992	In draft yet to be promulgated	(i) provision of relevant professional planning and management skills for educational personnel at all level of the education system; (ii) training and consultancy services, research and development activities in educational management; (iii) continuing professional development of serving officers in educational planning and administration, etc.

Measurement and Evaluation/Examinations Parastat als		
Parastat als / Year established	Enabling Instrument	Basic Functions
West African Examinations Council (WAEC) established 1952	Convention establishing the West African Examinations Council	(ix) annual review and consideration of examinations to be held in member countries; (ii) conducting in consultation with member countries, such examinations as may be appropriate; (iii) awarding certificates on the results as may be appropriate.
Joint Admissions and Matriculation Board (JAMB) established in 1978	JAMB Decree No. 2 of 1978; JAMB Decree No. 33 of 1980 Amendment	(i) conduct of matriculation examinations for admission into all universities, polytechnics, monotechnics and colleges of education; (ii) placement of suitably qualified candidates into these institutions;

	Decree No. 4 of 1993	(iii) collation and dissemination of information on all matters relating to admissions into tertiary institutions, etc.
National Examinations Council (NECO) formerly National Board for Educational Measurement (NBEM) established in 1993	National Examinations Council (NECO)	(i) conduct of the National Common Entrance examination into Federal Government Colleges (FGCs); (ii) conduct of Junior Secondary Certificate Examination for FGC students and allied institutions; (iii) conduct of Senior Secondary Certificate Examination; (iv) conduct of screening examination into Federal Government Academy; (v) administration of Aptitude Tests; (vi) National Assessment of educational performance in junior secondary schools, etc.
National Business and Technical Examinations Board (NABTEB) established in 1992	NABTEB Decree No. 70 of	(i) conduct of technical and business examinations; (ii) issuing results and awarding certificates on the results of such examinations, etc.

Language Training and Development Parastatals		
Parastatals / Year established	Enabling Instrument	Basic Functions
Nigerian-French Language Village established in 1992	Draft Decree yet to be promulgated	(i) practical training for French majors in universities and colleges of education; (ii) provision of training in French for different Nigerian clients, etc.
National Institute for Nigerian Languages (NINLAN) established in 1992	NINLAN Decree No. 117 of 1993	(i) encouraging learning of Nigerian languages; (ii) providing courses.

Self Assessment Exercise 2.5

List some of the parastatals under the Federal and State Ministries of Education and describe their roles and responsibilities in regard to management and administration of Nigeria's educational system.

3.3 Factors that have influenced Education over the years

The factors that have influenced education over the years in this country would be discussed under the following subheadings:

3.3.1 Historical and Religious Factors

Every community in Nigeria had its traditional patterns of education that ensured socialization and inter-generational transmission of cultural heritage. With the coming of Islam, parts of the country assimilated Islamic education into the indigenous system. The Islamized sections of the country in fact developed highly sophisticated and organised literary civilization.

Western education began as an offshoot of Christian missionary efforts, and therefore, was slow in penetrating into the areas of strong Islamic influence, while areas with strong Christian influence readily embraced the new form of education. This historical incident has had the effect of polarizing the country in educational terms, giving rise to the well-documented and well-orchestrated phenomenon of educational imbalance. The phenomenon has remained an intractable challenge to educational development in the country.

3.3.2 Economic Factors

The fluctuations that the Nigerian economy has suffered over the years have also largely affected the country's educational development. During the years of the oil boom, centralization was introduced into the country's education policies and very ambitious expansion programmes were embarked upon by government with the objective of increasing access to all levels of education. The apparent wealth of the era (an annual GDP of 6.2%), although mostly (90%) accounted for by oil, impacted positively on the education system with government virtually intervening in all aspects of education delivery and thus visibly increasing inputs into the system.

With the end of the oil boom in the 1970s, government income diminished, at the same time as the incidence of poverty at the household level in both urban and rural areas increased. This in its turn has impacted negatively on access to basic service, and particularly on education. Increased household poverty in turn led to low and declining school enrolment. Parents were unable to bear the direct and indirect costs of sending their children and wards to school.

The Structural Adjustment Programme (SAP) which emphasized macroeconomic stability with little thought for the social dimensions of adjustment, introduced economic gains that made very little dent on the population of persons below the absolute poverty line (of less than \$D1.00 per day) the number of which increased from 12% to 14% between 1985 and 1992. The pool of out-of-school children and youth increased at this time, and more children were used to fetch needed extra cash for the family.

3.3.3 Sociological Factors

The factors referred to as sociological deal with the rising social demand for education leading to more private participation in education delivery. As government investment in education dwindled and infrastructure became more dilapidated, greater patronage was

recorded among private providers of education. The situation was the same across all levels of education.

An additional dimension was the unemployment situation that indirectly increased the demand for higher education. Although empirical sources do not exist to establish this link, it does appear that graduates quickly enrolled for higher degrees since the alternative was unemployment and idleness.

The rising demand for higher education in turn led to the establishment of satellite campuses that were the direct response from the universities to public demand for higher education. Other modernizing trends such as: the introduction of various remedial programmes in higher institutions including teacher training colleges, integration of western and islamiyya schools, and increased private participation in education provision at all levels, depict a trend of increased civil society demand for education.

3.3.4 Political Factors

Centralization of educational administration in the country began with the government take-over of schools between 1970 and 1985. Although differently applied across states, the 1976 introduction of the Universal Primary Education (UPE) by the federal government ended the differential education programmes in the regions.

Technical and Teachers Colleges were equally taken over by government in the 1970s while in 1975, the Federal Military Government decided to take over all the universities in Nigeria. The subsequent ban on establishment of private universities by state governments, voluntary agencies or private persons was lifted by the democratic dispensation and the 1979 Constitution of the Federal Republic of Nigeria.

As a result of this development, about 12 state universities were opened between 1980 and 1999 mostly in the South. Between 1977 and 1999 however, private universities were banned and un-banned twice (1977 and 1984) (1979 and 1999) respectively by military and civilian governments. These interventions also exposed the gaps created over the years between the north and the south.

The Ashby report diagnosis of the needs of Nigeria in higher education for instance revealed that only 9% of primary school age children in the North were enrolled in school as compared with over 80% of children of similar age in the South (east and west). It was also revealed that only 4,000 students were enrolled in secondary school in the north as against 40,000 in the south. This imbalance called for some political engineering to remedy it.

3.3.5 Geographical Factors

With a population of over 88 million, a surface area of 923,764 square kilometers and languages (about 350), Nigeria is indeed a vast country. This reality introduces complexities to the delivery of social services and infrastructure. People still essentially

ties to the land and think in terms of ethnic groupings and primordial loyalties thus leading to strong demands for evenness of spread in establishment and location of educational services. This law of even spread was applied to the establishment of the first set of Federal secondary schools, higher education institutions, and has continued to inform the establishment of educational facilities.

3.3.6 International Influences

The case for improved access to education has benefited from international attention and concerns over the years. The Jomtien 1990 Declaration and Framework for Action (1990) and the Dakar Education For All Declaration of April 2000 have influenced the orientation of Nigeria's UBE (Universal Basic Education) programme, as well as the on-going EFA planning exercise.

Other international conferences held during the 1990 decade: the Ouagadougou pan-African conference on girls' education (1993), the world conferences on higher education (1998), and technical/vocational education (1999) have all had their impacts on educational development in the country, and have particularly enabled Nigeria to network with other nations.

The same can be said of Nigeria's involvement in the work of ADEA (Association for the Development of Education in Africa), and its participation in successive MINEDAF conferences of UNESCO.

4.0 CONCLUSION

In order that education meets the challenges of the period, it is imperative that it is structured and managed by the federal, state, local government, parastatals, boards and commissions in line with the aspiration of the citizens.

5.0 SUMMARY

In this unit, we have discussed the organizational control of education in Nigeria. The structure and management of the educational system were discussed. The universal basic education (UBE) programme clearly explained the roles and responsibilities of the federal, state, local governments, local communities, voluntary agencies, non-governmental organisations (NGOs), the international community and donor agencies and individuals. We have also noted in this unit that there are some factors that have influenced education over the years.

6.0 TUTOR MARKED ASSIGNMENT

- 1a. List all the bodies that have roles and responsibilities towards the successful implementation of the Universal Basic Education (UBE) programme.
- 1b. Enumerate their roles.

2. State the functions of any five Federal educational parastatals you know.

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UNIT 4 NIGERIAN EDUCATION LAWS

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1.0 INTRODUCTION

Education laws in Nigeria have continued to change from one generation to another. This is so because very often the laws were adaptations of education laws from other countries on whose education system we were trying to model e.g. the Ordinances. Some others are derived from the United Nations Declaration of Human Rights e.g. the Universal Primary Education Decree (UPE) and the Universal Basic Education (UBE) Act. Yet others are also derived from the socio-cultural, political and economic conditions and needs of the Nigerian people e.g. National Institute for Nigerian Languages (NINLAN). All these laws were formulated in order to plan, organize and administer the educational system so that both efficiency and effectiveness can be achieved.

In this unit, we are going to look at the pre-independence laws such as the Ordinances. We shall also look at post-independence laws such as: Edicts, Decrees and Acts.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- mention the colonial Education Ordinances;
- enumerate the UPE and UBE laws;

- list specific laws in the Constitution affecting the education industry;
- highlight laws in relation to primary, secondary and tertiary levels of educational system;
- state and explain the laws on other education-related matters.

3.0 MAIN CONTENT

3.1 Colonial Education Ordinances

The first colonial education law known as Education Ordinance of 1882 was meant for the British West African territories of Nigeria and Gold Coast (now Ghana). The ordinance was an adaptation of the British Education Act of 1844. The 1882 Education Ordinance created an Education Board to manage education and laid down the criteria for the approval of grants by government for the payment of teachers salaries. The criteria included:

- (a) The quality of organisation and discipline in the school;
- (b) Academic standard of the school;
- (c) The percentage of pupils who pass the examinations especially in the critical subjects of English, Arithmetic and Religion;
- (d) Capitation grants for passes in each subject;
- (e) Capitation grant on the basis of average pupil attendance in the school.

According to Nwagwu (1993), the ordinance introduced some order and sanity into the educational activities of the missionaries who were opening schools indiscriminately in a keen competition to win converts to their religious denominations.

The Education Ordinance of 1887 was the first education law enacted specifically for Nigeria. Like the West African Education Ordinance of 1882, the 1887 ordinance provided for an Education Board. However, this new Board was given a lot of powers. The Board was to establish Local Education Boards and had to give its approval before any new schools were opened. The Board of Education had the Governor as its chairman, and vested interest groups nominated representatives as members.

The Education Board was given the responsibility to open government schools in districts that had no mission schools. The Local Education Boards recommended where such new government schools should be sited. Thus, government maintained control of standards in the education system through inspections and approval of grants-in-aid for good schools.

The Education Code of 1903 and the Education Ordinance of 1908 resulted from the determination of the newly created Department of Education to exercise full power and

authority over educational developments in Nigeria. Fafunwa (1974) and Taiwo (1980) have written extensively on the impact of these codes and ordinances of the Colonial Government in London for the Colony of Lagos and the Protectorates of Southern Nigeria and Northern Nigeria. The 1908 Ordinance established the post of Director of Education to head the Department of Education. The training of teachers and appointment of school supervisors and inspectors were emphasized by the 1908 Education Ordinance.

The Education Ordinance of 1916 was an initiative of Lord Lugard aimed at improving the quality of education for Nigeria whose Northern and Southern Protectorates had become amalgamated in 1914. Unwittingly, however, a dichotomy was created with different standards for the North and South. The assessment of Ogunsola (1974:30) is that the 1916 Education Ordinance encouraged educational expansion in the South, while it limited missionary expansion in the North.

The 1926 Education Code followed the Phelps-Stokes Commission Report of 1922 and the British Government's 1925 Memorandum on Education in British Colonial Territories.

The Education Act of 1952 which modified that of 1948 empowered each regional government to establish its own Department of Education. The Central Director of Education's role became mainly advisory, and his title was changed to that of Inspector-General. The legal duties of Local Education Authorities were entrenched while devolution of power and responsibility for education between the Central or Federal Government and Regional Governments were defined.

In Nwagwu (2004) views, every student of education laws in Nigeria should be knowledgeable about the contents and purposes of these codes and ordinances because of their implications for the education system we inherited at national independence in October, 1960. The influences of these vestiges can be seen up till today.

Self Assessment Exercise 5.1

List and discuss some of the educational ordinances, codes and Acts that were promulgated before Nigeria's independence in 1960.

3.2 Universal Primary Education (UPE) Laws and United Nations Human Rights Declaration

In December, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. The Declaration guaranteed to individuals the rights of liberty, equality and fraternity.

Article 26 of the Declaration was on the Right to Education. It proclaimed as follows:

- (i) *Everyone has the right to education. This shall be free at least in the elementary and primary stages;*
- (ii) *Elementary education shall be compulsory while technical and professional education shall be made generally available;*
- (iii) *Higher education shall be equally accessible to all on the basis of merit;*
- (iv) *Parents have a prior right to choose the kind of education that shall be given to their children.*

The above assertions in the Human Rights section of the United Nations Charter, according to Nwagwu (1993), constitute a universal legal framework from which all countries of the world have drawn inspiration and guidance when designing their national constitution and educational policies.

3.2.1 Overview of UPE Law/Scheme in Nigeria

The Western Region of Nigeria Parliament under the premiership of late Chief Obafemi Awolowo approved, in 1952, a legislation to introduce Universal Primary Education (UPE) in the region by January, 1955. Primary education was to be free and compulsory, but when the programme started in 1955, the attendance aspect was dropped for logistical reasons.

The Eastern Region UPE law quickly followed in 1953, but the scheme was modified in 1954 and again in 1955. The scheme took off in 1957, but was virtually abandoned soon after that because of financial and other problems.

The Northern Region Education law of 1956 emphasised partnership between voluntary agencies and government for rapid expansion of universal primary education.

Abermenthy (1969) reviewed and analysed the political, economic, ethnic and administrative forces that interplayed in the enactment and implementation of the UPE laws of the 1950s.

In 1976, the military regime of General Olusegun Obasanjo started a national UPE scheme. No specific decree was promulgated, but it was a policy programme approved by the Military Executive Council.

Nwagwu (1976) observed that the Federal Government was so overwhelmed by the financial demands of UPE programme that it scaled down its involvement and subsequently passed the task of running the programme to State Governments. Thereafter, each State managed as best as it could, within the context of the 1977 National Policy on Education, its financial capability and local priorities.

It should be noted that the National Policy on Education was not a law, but simply policy decisions and guidelines.

Self Assessment Exercise 5.2

Give a brief assessment of the UPE law in Nigeria and United Nations Human Rights Declaration that have guided the educational direction and policies of the government.

3.3 Post Civil War Decrees and Edicts on Education

The East Central State Education Edict of 1970 was promulgated to facilitate implementation of the State's Policy on Public Education (ECS, 1971). The Edict ensured government's complete take-over of all voluntary agency and private schools and colleges in the then East Central State. It was indeed a bold but controversial law under the leadership of Mr. Ukpabi Asika as the Sole Administrator of the State.

The uncertainties and military dictatorship of the early post-civil war years made the schools take-over law possible. The reasons given and the apparent success of the complete public school system encouraged other states to enact edicts similar to the East Central State Education Edict.

The forceful and un-negotiated takeover of voluntary and private agency schools without compensation by State Governments did not go unchallenged. The legal action initiated by Archbishop (now Cardinal) Anthony Olubunmi Okogie and others against the Lagos State Government and similar litigations in other states compelled the Federal Government to enact the Schools Takeover Validation Act of 1977. The law effectively confirmed the takeover of schools by State Governments. It also dropped and prohibited any and all court actions on the subject matter. The Federal Military Government also promulgated the following Education Decrees during this period:

- (a) Decree No. 47 of 1971, which established the Industrial Training Fund (ITF) to facilitate the active and financial participation of industries and organisations in the practical and field training of students;
- (b) Decree No. 29 of 1972 changed the school year calendar from January-December to September-July session;
- (c) Decree No. 24 of 1973 established the National Youth Service Corps (NYSC) scheme;
- (d) Decree No. 27 of 1973 established the West African Examinations Council (Nigeria) as an offshoot of the WAEC Ordinance No. 40 of 1951 of Gold Coast;
- (e) Decree No. 1 of 1974 on the establishment of the National Universities Commission (NUC). This was to ensure a regulated and coordinated

development of University education. The decree has since been amended several times;

- (f) Decree No. 9 of 1977 created the National Board for Technical Education (NBTE) to supervise development of technical education;
- (g) Decree No. 46 of 1977 empowered the Federal Government to takeover all Universities in the country, an action already taken in 1975;
- (h) Decree No. 2 of 1978 created the Joint Admissions and Matriculation Board (JAMB). It was amended by Decree No. 4 of 1993 to include Polytechnics and Colleges of Education;
- (i) Decree No. 7 of 1978 established the National Teachers Institute (NTI) to oversee rapid in-service training of unqualified teachers.

Self Assessment Exercise 5.3

Examine and assess the post civil war edicts and decrees on education. List some of them.

3.4 The 1999 Federal Constitution and the Legal Framework of Education

The Constitution of the Federal Republic of Nigeria is the basic law of the land from which all other laws draw their inspiration and legitimacy. The provisions in the 1979 and 1999 Constitutions are almost identical. In this section, we shall use the provisions of the 1999 Constitution to examine the laws on education therein. Section 18 in Chapter two of the Constitution stated the Educational Objectives of the nation. Chapter four presented the Fundamental Rights (twelve rights in all) which individuals, organisations and groups must respect as well as enjoy. These rights, of course, apply to all operators and participants in the education system. Part two of the Second Schedule of the Constitution contains the concurrent legislative list on which both the Federal and State Governments can make laws. Provisions are made for the devolution of power and responsibility between the two tiers of government: Federal and State Governments.

Paragraph 27 of item L in Part II of the Second Schedule is titled University, technological and post-primary education (FRN, 1999:137). It conferred on the National Assembly powers to make laws for the federation or any part thereof with respect to these kinds of education including professional education. The National Assembly was also empowered in paragraph 27 to establish institutions for the purposes of university, technological, post-primary and professional education. Paragraphs 29 and 30 gave powers to a State House of Assembly to make laws with respect to the establishment of University, technological or professional education, as well as technical, vocational, post-primary, primary or other forms of education.

The Fourth Schedule of the Constitution is on functions of a Local Government Council. Paragraph 2a gave to a Local Government Council the responsibility for the provision and maintenance of primary, adult and vocational education (FRN 1999:15). We need to observe here that the powers and functions of Local Governments with regard to primary education have been a source of controversy, and even litigation, between federal and state governments on the one hand, and between state and local governments on the other hand.

3.4.1 The Legal Framework of Education

The main legal frameworks of Education in Nigeria are the Constitution of the Federal Republic of Nigeria, 1999; and the Compulsory Free, Universal Basic Education Act, 2004 and Other Related Matters. However, between 2004 and 2008, several National Policies (which have force of law) have been introduced and are being implemented by Federal Ministry of Education and Education Agencies, and other competent ministerial agencies in the case of integrated inter-sectoral policies. The UBE Act underscores the Federal Government of Nigeria's political will to intervene, where necessary, to ensure inclusive, uniform and qualitative education for all based on the right of a child. In effect, Part 1 Paragraph 2 of the Act stipulates that:

- Every Government (Federal, State and Local) shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age;
- Every parent shall ensure that his child or ward attends and completes:
 - (a) primary school education, and
 - (b) junior secondary school education;
- The stakeholders in education in a Local Government Area shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under Section 2 (2) of this Act. Penalties are also prescribed for erring parents.

The strategy is driven by the new motto: Education for all is the responsibility of all and that the community's role is that of watchdog, facilitator and benefactor, and beneficiary in the final analysis.

Other normative/legal instruments introduced since the UBE Act are:

- The Child Rights Act which most of the 36 State legislatures have ratified;
- The National Policy on HIV/AIDS for the Education Sector in Nigeria;
- The National Policy for Integrated Early Childhood Development in Nigeria; and,
- The National Policy on Gender in Basic Education;
- The signing by Nigeria of Article 24, 2d of the 1st United Nations Millennium Convention on the Rights of Persons with Disabilities (2006);

- The Implementation of the decisions of the 53rd and 54th meeting of the National Council of Education in terms of:
 - o effective derecognizing of schools found guilty of aiding and abetting examination malpractice during national public examinations;
 - o the implementation of Road Safety Awareness as a subject in the primary and secondary school curricula;
 - o reinforcing the teaching and learning of French as a second official language in primary and junior secondary school;
 - o review of the national framework and implementation of the Home-grown School Feeding and health Programme (HGSFAP); and,
 - o the mandatory establishment of the School-based Management Committee (SBMC) by 2007 in all 36 States of the Federation and the Federal Capital Territory, Abuja (FME, 2003).

Self Assessment Exercise 5.4

Explain the term The Legal Framework of Education in Nigeria .

3.5 Laws on the various Levels of the Educational System

This will be discussed under the following sub- topics.

3.5.1 Laws on Primary Education

In addition to the few decrees specifically promulgated on primary education, we shall in this section, consider decrees on mass literacy and adult education, nomadic education, and the decree on women. These decrees focused, among other things, on the provision of basic literacy education, which is the ultimate purpose of primary education. The decrees, in effect, are all legal instruments towards the achievement of the Education for All (EFA) programme of both UNESCO and the Federal Government of Nigeria.

- (a) Decree 31 of 1988 established the National Primary Education Commission (*NPEC*) *to manage the development and financing of primary education* throughout the federation. It was a very important law aimed at improving the organisation and administration of primary education in the country. This level of education had witnessed serious problems of financing and neglect. The decree was a major intervention strategy, but it faced opposition from the State Governments because it gave too much power to NPEC.
- (b) Decree No. 3 of 1991 abolished the National Primary Education Commission in order to give back to the States and their Local Government Councils full authority and control over the management of primary education. Primary school teachers did not support this decree.

- (c) Decree No. 96 of 1993 brought back the National Primary Education **Commission (NPEC)**. **Part 4 of the decree provided for the Establishment of the** National Primary Education Fund and the criteria for disbursement of the fund. The ratio was equality of States (50%), school enrolment (30%), and educationally-disadvantaged states (20%). Part 5 of the decree specified the Structure and Functions of State Primary Education Board, while Part 6 was on Structure and Functions of Local Government Education Authority (LGEA).
- (d) Decree No. 17 of 1990 established the National Commission for Mass Literacy **and Non-formal Education**. **It has the function of working with all concerned in** education and other agencies and Non-Governmental Organisations (NGOs) to eliminate illiteracy in Nigeria.
- (e) Decree No. 30 of 1989 created the National Commission for Women. Apart from seeking to protect the fundamental human rights of women who were considered one of the marginalized, vulnerable and disadvantaged groups in the country, the law was to ensure that the girl-child enjoyed equal educational opportunities with the boys. The aim was to reduce the high level of illiteracy among adult women by increasing the access of girls to education at all levels.
- (f) Decree No. 41 of 1989 established the National Commission for Nomadic **Education to organise and manage the education of migrant groups in the** country, including migrant cattle herdsman, farmers and fishermen.
- (g) U.B.E. Act, 2004 to establish the Universal Basic Education (UBE) Programme in Nigeria. Section One makes it obligatory for all governments in Nigeria to provide free, compulsory and universal basic education for every child of primary and junior secondary school age, all adult illiterates, and persons with special education needs. There is a National Council on UBE, State Basic Education Board (SBEB), and Local Government Education Authority (LGEA). Penalties are specified for defaulting parents.

3.5.2 Laws on Secondary Education and Universal Basic Education (UBE)

The following are the relevant laws.

- (a) Decree No. 4 of 1986 was promulgated on Federal Government Colleges. The law constituted governing councils to manage the Colleges.
- (b) Decree No. 27 of 1973 was promulgated to regulate the operation of the **West African Examinations Council in Nigeria**. **The Council conducts examinations** for secondary school leavers and is responsible for their certification. It also, in the past, conducted entrance examinations into Federal Government Colleges.
- (c) National Examinations Council (NECO) Act of 2001 was passed by the National Assembly as a parallel body to WAEC for conducting examinations for secondary

school leavers, and for the certification of successful candidates. NECO has a Governing Board, and its functions include: conducting examinations into Federal Government Colleges and other allied institutions, the Suleja Academy and the development and administration of Aptitude Tests. NECO replaced the National ***Board for Educational Measurement (NBEM), which was established by Decree No. 69 of 1993.***

- (d) Universal Basic Education Act of 2004. The National Assembly and the Presidency haggled over differences on this Bill for over two years until it was passed into law in 2004. Section One makes it obligatory for all governments in Nigeria to provide free, compulsory and universal basic education for every child of primary and junior secondary school age, all adult illiterates, and persons with special education needs. There is a National Council on UBE, State Basic Education Board (SBEB), and Local Government Education Authority (LGEA). Penalties are specified for defaulting parents.
- (e) Decree No. 70 of 1993 established the National Business and Technical ***Examinations Board (NABTEB) to conduct examination in business and technical subjects.*** It has a Post Examination Investigation Committee.

3.5.3 Laws on Higher Education

Many laws, most of them in the form of decrees, have been promulgated on different aspects of higher education in Nigeria. The laws will be identified here and learners are advised to get conversant with the details of each law. Decrees on higher education of the 1970s, such as those on the NUC, NBTE, ITF, NTI, JAMB and NYSC (have already been presented above under the section on Post-Civil War Education Laws, and so will not be repeated in this section).

1. National Universities Commission (Amendment) Decree No. 49 of 1948;
2. Universities (Miscellaneous Provisions) Decree No. 11 of 1993 on the appointment of Principal Officers and the retirement and pensions of Professors;
3. Federal Colleges of Education Decree No. 4 of 1986;
4. Federal Universities of Technology Decree No. 13 of 1986;
5. Federal Universities of Technology (Miscellaneous Provisions) Decree No. 37 ***of 1990;***
6. Decree No. 3 of 1989 established the National Commission for Colleges of ***Education (NCCE);***
7. Decree No. 12 of 1993 amended the NCCE Decree of 1989;

8. Federal Polytechnics were established by Decree No. 33 of 1979;
9. Joint Admissions and Matriculation Board (JAMB) was established in 1978 by ***Decree No. 2. The Decree was amended by Decree No. 33 of 1989, and again amended by Decree No. 4 of 1993 to include Polytechnics and Colleges of Education. The NCCE is asking for its own separate JAMB;***
10. The National Open University Act of 1983 approved the establishment of the ***National Open University and the powers of its Governing Council and Senate;***
11. Decree No. 19 of 1984 was on the Abolition and Prohibition of all Private ***Universities in Nigeria;***
12. Decree No. 16 of 1985 was on Education National Minimum Standards and ***Establishment of Institutions. Decree No. 9 of 1993 amended the 1985 Decree*** and prescribed conditions for the establishment of private Universities and hence effectively nullified Decree No. 19 of 1984;
13. Decree No. 26 of 1988 Proscribed and Prohibited ASUU (Academic Staff Union ***of Universities) from participation in trade union activities. Decree No. 36 of 1990 (Revocation of Prohibition Decree) revoked the proscription order on ASUU;***
14. Decree No. 47 of 1989 was on Student Union Activities. The purpose was to regulate membership and funding of Union activities;
15. Decree No. 40 of 1989 established the National Mathematical Centre (NMC);
16. Decree No. 53 of 1988 established the Nigerian Educational and Research ***Centre (NERC);***
17. Decree No. 33 of 1992 established the Nigerian French Language Village at ***Badagry. In the same year, the Nigerian Indigenous Languages Village and the Nigerian Arabic Language Village were established by Decrees;***
18. Decree No. 12 of 1988 established the Students Loans Board;
19. Decree No. 26 of 1987 established the National Library Board ;
20. Decree (now Act) No. 31 of 1993 created the Teachers Registration Council of ***Nigeria (TRCN). The purpose was to ensure full professionalization of teaching*** in Nigeria by regulating the training, qualification, certification, registration and membership of the teaching profession.

Self Assessment Exercise 5.5

Mention at least three (3) laws on the various levels of the educational system.

3.6 Laws on other Education Related Matters

In this section, some education laws with cross-cutting ramifications are listed. They include: the Education Tax Fund law, Miscellaneous Offences law, which targets offences like cultism and examination malpractices. Others are the law on teaching as an essential service, the copyright law, and the law on the removal of public officers from service.

- (a) Education Tax Fund Decree No. 7 of 1993 was intended to get companies and corporations to participate compulsorily in the financing of education. The decree compelled companies to contribute 2% of their assessable pre-tax profit to support educational development. The fund generated from the ETF is allocated to Higher Education (50%), Primary Education (40%), and Secondary Education (10%).
- (b) Decree No. 30 of 1993 proclaimed Teaching an Essential Service. This was intended to exclude teachers from participation in any strike action as a means of settling disputes or airing their grievances.
- (c) Decree No. 17 of 1984 was on Public Officers Special Provisions. It is now ***Act CAP 381 Laws of the Federation 1990. The law provides for the dismissal*** or retirement of a public officer, for reasons of reorganization, declining productivity, inefficiency, corruption or poor general conduct. The law is considered by many to be very obnoxious because of its draconian and leviathan nature.
- (d) Decree No. 33 of 1999 was on Examination Malpractices. The law defines what constitutes an examination malpractice and stipulates stiff penalties for different persons involved in various aspects of malpractices before, during and after examinations.
- (e) Decree No. 47 of 1988 is on Copyright. The law defined and specified works eligible for copyright and the general nature of copyright and criminal liability. In the field of education, this includes intellectual property. Only Federal High Courts have jurisdiction for the trial of offences and disputes under this decree.

You will recall that in Unit 2, we discussed educational Parastatals, Boards and Commissions, and the laws establishing them in a tabular form. Let us go back and glance at them again.

Self Assessment Exercise 5.6

List and discuss some of the laws on other education related matters that you know.

4.0 CONCLUSION

For an education system that is only about 160 years old, there appears to be too many education laws of various descriptions. Commissions, agencies, boards, councils and institutions have been established apparently in order to ensure efficiency and effectiveness in the management of education. However, the frequency with which the education laws are decreed or enacted and often amended leaves the impression of unsynchronized laws made in a hurry to meet expediencies and exigencies rather than purposeful, articulated and well-formulated laws with adequate arrangements for their implementation or enforcement.

Overlaps, controversies and sudden revocation or abandonment have, at times, characterized our education's law making efforts, especially during the military regimes

5.0 SUMMARY

In this unit, an attempt was made to present important laws that were made to enhance law, order and efficiency in the organisation and administration of the education system in Nigeria.

The analysis started with the ordinances and codes of the colonial era through the decrees and edicts of the many military regimes and ended with Acts of the present democratic government. The United Nations Declaration of Human Rights, the 1999 Federal Constitution and the Compulsory Free Universal Basic Education Act 2004 are basic framework for the education laws.

6.0 TUTOR MARKED ASSIGNMENT

1. What are the educational objectives of Nigeria as contained in the 1999 Constitution of the Federal Republic of Nigeria?
2. The 1999 Constitution prescribed the devolution of power among the three-tiers of government with respect to the making of education laws and the establishment of educational institutions. Discuss.

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Education Acts:

NECO Act of 2001
 UBE Act of 2004
 NOU Act of 1983

MODULE II THE LAW, THE LEARNER AND THE TEACHER

- Unit 1: Fundamental Rights and Education
- Unit 2: Fundamental Rights of Students and Punishments
- Unit 3: Legal Issues in Teachers Contract/Employment
- Unit 4: Student Control, and Discipline in Schools
- Unit 5: Control and Discipline of Teachers

UNIT 1 FUNDAMENTAL RIGHTS AND EDUCATION

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 - 3.5 Right to Freedom of Thought, Conscience, Religion Expression and the Press
 - 3.6 Right to Peaceful Assembly, Association and Movement
 - 3.7 Right to Freedom from Discrimination
 - 3.8 Right to Acquire and Own Immovable Property anywhere in Nigeria
 - 3.9 Compulsory Acquisition of Property Selected Case Laws
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References and Further Readings

1.0 INTRODUCTION

The constitution has guaranteed fundamental rights for the citizens. It is therefore, necessary that education officials and teachers should constantly examine their actions and inactions in the light of these rights so that they do not infringe on or violate them.

Our interest in these Fundamental Rights stems from the fact that they determine the constitutionality or legality of all laws, rules and regulations which government and educational authorities may produce from time to time in the organisation and administration of the school system.

The constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- list the Fundamental Rights as listed in the 1999 Constitution;
- state the conditions under which the Rights may be abridged;
- enumerate the Rights of Children as declared by the 1959 General Assembly of the United Nations Organisation;
- Cite some case laws on fundamental rights in the educational sector.

3.0 MAIN CONTENT

3.1 Fundamental Rights and Education Law

Education is a legal right of every child. As far back as November 29, 1959, the General Assembly of the United Nations Organisation adopted the following declaration, among others, about the Rights of Children, namely:

- (i) The right to special care if handicapped;
- (ii) The right to free education;
- (iii) The right to learn to be a useful member of the society;
- (iv) The right to develop his abilities;
- (v) The right to enjoy full opportunity for play and recreation (Ukeje, 1993).

These rights were endorsed by Nigeria in 1990. Therefore, the 1999 Constitution of the Federal Republic of Nigeria spells out the right of every Nigerian.

The following sections: 33 – 44 of the 1999 Constitution embrace the principal rights of the citizens that are repeatedly referred to in many of the education law cases. The Fundamental Rights provided for in the 1999 Constitution in Chapter IV are:

- Section 33: Right to life
- Section 34: Right to dignity of human person
- Section 35: Right to personal liberty
- Section 36: Right to fair hearing
- Section 37: Right to private and family life
- Section 38: Right to freedom of thought, conscience and religion
- Section 39: Right to freedom of expression and the press
- Section 40: Right to peaceful assembly and association
- Section 41: Right to freedom of movement
- Section 42: Right to freedom from discrimination
- Section 43: Right to acquire and own immovable property anywhere in Nigeria
- Section 44: Compulsory acquisition of property.

In its relationship with the pupils/students and the staff (academic and non-academic), the school and other educational establishments should recognize and respect these fundamental human rights.

Peretomode (1992) pointed out that these Rights are not absolute. He went further to say that the fears of the minority groups and the need to allay their fears is one of the reasons for including the fundamental rights in the Constitution.

What follows is a discussion of these rights and the conditions that may justify any restriction, deprivation or withdrawal of these rights.

Self Assessment Exercise 1.1:

Enumerate the declarations made by the General Assembly of the United Nations Organisation in November, 1959 as the rights of the children which have guided the Constitution of the Federal Republic of Nigeria.

3.2 Right to Life and Dignity of Human Persons

Section 33: Right to Life

1. Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
2. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.
 - (a) For the defence of any person from unlawful violence or for the defence of property;
 - (b) In order to effect a lawful arrest, or to prevent the escape of a person lawfully detained ; or
 - (c) For the purpose of suppressing a riot, insurrection or mutiny, provided that a judicial inquiry to determine the cause of the death of such a person shall be held within one month.

Section 34: Right to Dignity of Human Persons

1. Every individual is entitled to respect for the dignity of his person, and accordingly:
 - (a) No person shall be subjected to any form of torture or to inhuman or degrading treatment;
 - (b) No person shall be held in slavery or servitude; and

- (c) No person shall be required to perform forced or compulsory labour.
2. For the purposes of sub-section (1) (c) of this section, "forced or compulsory labour" does not include:
- (a) Any labour required in consequence of the sentence or order of a court;
 - (b) Any labour required of members of the Armed Forces of the Federation, the Nigeria Police Force or other government security services established by law in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the Armed Forces of the federation, any labour required instead of such service;
 - (c) Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
 - (d) Any labour or service that forms part of:
 - (i) normal communal or other civil obligations for the well-being of the community;
 - (ii) such compulsory national service in the Armed Forces of the federation as may be prescribed by an Act of the National Assembly;
 - (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

Self Assessment Exercise 1.2:

Discuss the rights to life and dignity of human person as enshrined in the Constitution.

3.3 Right to Personal Liberty and Fair Hearing

Section 35: Right to Personal Liberty

1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law;
 - (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
 - (b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

- (c) For the purpose of bringing him before a court in the execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) In the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;
- (e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or the protection of the community; or
- (f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto;

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence;

- 2. Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
- 3. Any person who is arrested or detained shall be informed in writing within 24 hours; (and in a language that he understands) of the facts and grounds for his arrest and detention;
- 4. Any person who is arrested or detained in accordance with sub-section (1c) of this section, shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:
 - (a) 2 months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail, or
 - (b) 3 months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date;
- 5. In sub-section (4) of this section, the expression a reasonable time means:

- (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of 40 kilometres, a period of one day; and
 - (b) In any other case, a period of 2 days or such longer period as in the circumstances may be considered by the court to be reasonable;
6. Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this sub-section, the appropriate authority or person means an authority or person specified by law;

Section 36: Right to Fair Hearing

1. In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or a tribunal established by law and constituted in such manner as to secure its independence and impartiality;
2. Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising from the administration of a law that affects or may affect the civil rights and obligations of any person, if such a law:
 - (a) Provides an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person;
 - (b) Contains no provision making the determination of the administering authority final and conclusive;
3. The proceedings of a court or the proceedings of any tribunal relating to the matters mention in subsection (1) of this section (including the announcement of the decisions of the courts or tribunal) shall be held in public.
4. Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court or tribunal;
5. Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts;
6. 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 with a legal practitioner of his own choice;
 - (d) examine in person or with the aid of his legal practitioner the witnesses to testify on his behalf before the court on the same conditions 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;
7. When any person is tried for any criminal offence, the court shall keep a 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 judgement in the case within 7 days of the conclusion of the case;
 8. 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;
 9. No person who shows that he has been tried by any court of competent jurisdiction for a criminal offence, either convicted or acquitted, shall again be tried for that offence or for a criminal offence having the same ingredients as that offence, save upon the order of a superior court;
 10. No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.
 11. No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
 12. Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor 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, any subsidiary legislation or instrument under the provisions of a law.

Self Assessment Exercise 1.3:

State and explain the constitutional provisions relevant to the right to personal liberty and fair hearing.

3.3 Right to Private and Family Life

Section 37: Right to Private and Family Life

The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communications is hereby guaranteed and protected.

3.4 Right to Freedom of Thought, Conscience, Religion, Expression and the Press

Section 38: Right to Freedom of Thought, Conscience and Religion

1. Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance;
 2. No person attending any place of education shall be required to receive religious instruction or take part in or attend any religious ceremony or observance if such instruction, ceremony or observance related to a religion other than his own, or a religion not approved by his parents or guardian;
 3. No religious community or denomination shall be prevented from providing religious instruction for people or students of that community or denomination in any place of education maintained wholly by that community or denomination;
 4. Nothing in this section shall entitle any person to take part in the activity or be a member of a secret society;
- Two decided cases in the United States of America may be applicable in the Nigerian context. In *West Virginia State Board of Education Vs Barnette* (1943), the Supreme Court of the United States held that required participation in flag salute (and recitation of National Pledge) is unconstitutional. In *School District of Abington Township, Pennsylvania Vs Schempp* (1963), the Supreme Court held that Bible reading at the beginning of each day in public schools conflicts with freedom of religion. (Peretomode, 1992)

Section 39: Right to Freedom of Expression and The Press

1. Every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference;
2. Every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions;

Provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

3. Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:
- (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films; or
 - (b) Imposing restrictions upon person holding office under the government of the federation or of a state or a local government, members of the Armed Forces of the federation or members of the Nigeria Police Force or other government Security Services established by law.

** In Attorney-General Imo State Vs. Dr. Basil Nnanna Ukaegbu (1988), the Supreme Court of the Federal Republic of Nigeria held that every citizen has the fundamental right, by virtue of section 36 of chapter IV of the 1979 constitution, to own, establish and operate any medium for the dissemination of information, ideas and opinions including the right to own, establish and operate any school or institution for imparting information, ideas and opinions.

**The Private Technical University and the School of Basic Studies which Dr. Ukaegbu established at Imerienwe in Imo State were declared legal under the constitution. However, the promulgation of Decree No. 19 of 1984 which abolished existing private universities and prohibited the establishment of new ones witnessed the demise of private higher education.

**Similarly, in Archbishop Anthony Olubunmi Okogie and 6 others Vs. The Attorney-General of Lagos State (1981) the Federal Court of Appeal (Lagos Division) held that a circular letter dated 26th March, 1980, by which the Lagos State Government purported to abolish private primary education in the state was unconstitutional. The Court held that the letter contravened Section 36 the Freedom of expression, freedom to hold opinions and to receive and impart ideas enshrined in the 1979 constitution.

**In the United States, in Pierce Vs. Society of Sisters of the Holy Names of Jesus and Mary (1925), the Supreme Court of the United States similarly held that the compulsory education law requiring all children to attend public school (which was similarly the intention of the 26th March, 1980 Lagos State Government circular purported to abolish private primary education in that state) violated due process clause of the constitution.

Self Assessment Exercise 1.4:

What do you understand by the Rights to Freedom of Thought, Conscience, Religion Expression and the Press?

3.5 Right to Peaceful Assembly, Association and Movement

Section 40: Right to Peaceful Assembly and Association

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party; trade union or any other association for the protection of his interest:

Provided that the provisions of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition

Section 41: Right to Freedom of Movement

1. Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom;
2. Nothing in sub-section (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society:
 - (a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria;
 - (b) Providing for the removal of any person from Nigeria to any other country to
 - (i) be tried outside Nigeria for any criminal offence, or
 - (ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is a reciprocal agreement between Nigeria and such other country in relation to such matter.

Self Assessment Exercise 1.5:

List and explain the Right to Peaceful Assembly, Association and Movement as constitutional provisions of the Federal Constitution.

3.6 Right to Freedom from Discrimination

Section 42: Right to Freedom from Discrimination

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, circumstance of birth, sex, religion or political opinion shall not, by reason only that he is such a person-
 - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, circumstances of birth, sex, religions or political opinions are not made subject; or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, circumstance of birth, sex, religions or political opinions;
2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth;
3. Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the Armed Forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

** The United States District Court, District of Massachusetts, in the case of *Bray v. Lee* (1972), held that admission standards and quotas favouring male and different standards to evaluate examination results to determine the admissibility of boys and girls to the Boston Latin Schools constituted a violation of the Equal Protection Clause of the Fourteenth Amendment which prohibited prejudicial disparities between all citizens, including women or girls. He found that of the records of the case (girls were required to score 133 points, while boys 120 out of 200 points in order to gain admission), female students seeking admission to Boston Latin School have been illegally discriminated against solely because of their sex and that discrimination has denied them a place at the Latin School. The court therefore permanently enjoined the school district from thereafter using a different standard to determine the admissibility of boys and girls, and was affirmatively ordered to use the same standard for admission of boys and girls to any school operated by the city of Boston, including the Boston Latin School.

This case is particularly of interest to us in Nigeria because the issue of differential score involved is similar to the practice of differential score for candidates seeking admission to Nigerian Universities or Federal (unity) Secondary Schools under the quota system of admission. By the quota system, candidates from states classified as educationally advanced are required to obtain higher scores (sometimes up to 100 points and more) than those regarded as educationally disadvantaged or backward states). The 14th Amendment Clause of the American Constitution under which the *Bray Vs. Lee's* case was decided is similar to our human right provision of Section 41 of the 1989 Federal Republican Constitution which provides for freedom from discrimination on the basis of ethnic group, place or state of origin, circumstances of birth, sex, religion and freedom from subjection to any law or executive or administrative action of government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places or state of origin, sex are not subject, (Section 11 (b)).

In the light of the above provisions in the Nigerian constitution, is the policy of the quota system of admission with differential JAMB score (on the basis of state) into Nigerian universities and other federal colleges and institutions discriminatory (illegal) or not? The quota system was challenged in *Badejo v. Federal Ministry of Education* (1989). To enable you answer the question raised and before we examine in detail the *Badejo* case, let us turn to the United States for two other related cases cited by Peretomode, 1992

In *Berkelman v. San Francisco Unified School District* (1974), the United States 9th Circuit court held that higher admission standards for female than for male applicants for admission to a public college preparatory high school violates the Equal Protection Clause .

In another related and celebrated case, *Regents of the University of California vs. Bakke* (1978), the California Supreme Court held that special admissions programme or quota for disadvantaged students conflicts with the right to freedom from discrimination and the right to equality of rights and opportunities before the law. The facts of the case were that Allan Paul Bakke, a thirty-two-year old white male, applied to the Medical School of the University of California at Davis. For two straight years, 1973 and 1974, he was rejected because UC Davis operated a special admission programme to facilitate a larger enrolment of disadvantaged (mostly black) students. Sixteen of the hundred entering slots were reserved for students applying under the Special Admissions Programme. The mean score of students admitted under this programme were forty-sixth percentile on verbal tests and the thirty-fifth on science tests. Bakke's scores on the same tests were at the ninety-sixth percentile on the verbal test and at the ninety-seventh on the science tests. After

receiving his rejection letter from Davis in 1974, Bakke decided to sue UC Davis claiming that it denied him equal protection of the law by discriminating against him because of his race. The Supreme Court ordered Bakke admitted, holding that the Davis Special Admissions Programme did discriminate against him because of race. The court said:

*** It is evident that the Davis Special Admissions Programme tells applicants who are not Negro, Asian, or Chicgo that they are totally excluded from a specific percentage of the seats in an entering class.,, The fatal flaw in the petitioner's preferential programme is its disregard of individual rights as guaranteed by the 14th Amendment of the Constitution.

This case has become so famous in the United States that it is often referred to as the reversed discrimination case. The Badejo vs the Federal Ministry of Education (1989) case in Nigeria on the basis of the quota system of admission into the Unity Schools in the country belongs to the category of the cases reviewed above. It will be presented fully at the end of this unit.

Self Assessment Exercise 1.6:

What does the Constitution say about the Right to Freedom from Discrimination?

3.7 Right to Acquire and Own Immovable Property anywhere in Nigeria

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

3.8 Compulsory Acquisition of Property and Selected Case Laws

Section 44: Compulsory Acquisition of Property

1. No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria, except in the manner and for the purposes prescribed by a law that, among other things-
 - (a) requires the prompt payment of compensation therefrom; and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
2. Nothing in sub-section (1) of this section shall be construed as affecting any general law-

- (a) for the imposition or enforcement of any tax, rate or duty;
 - (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
 - (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
 - (d) relating to the vesting and administration of the property of persons, adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons,, and of corporate or unincorporated bodies in the course of being wound up;
 - (e) relating to the execution of judgements or order of courts;
 - (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
 - (g) relating to enemy property
 - (h) relating to trusts and trustees;
 - (i) relating to limitation of actions;
 - (j) relating to property vested in bodies, corporate directly established by any law in force in Nigeria;
 - (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
 - (l) providing for the carrying out of work on land for the purpose of soil conservation, or
 - (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter survey or dig any land, or to lay, install or erect poles, cables, wires, pipes or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
3. Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

SELECTED CASES (Cited by Peretomode, 1992)

- (a) **In education law, a celebrated case against compulsory acquisition of schools by state governments without adequate compensation was that of Chief Sam Warri Essi v. the Mid-Western State (later Bendel State). By Edit No. 5 of 1973, all schools in Mid-Western State and property related thereto were vested on the state government. The government compulsorily took over all schools and equally by the provisions of the edict, the compensation payable to owners of schools was computable as provided in the edict. Opportunity was denied school proprietors to go to court in the first instance to determine compensation payable. Chief Essi who was the proprietor of Essi College (a secondary school) took the Attorney-General of the State to the High Court, Warri, which gave judgement in favour of the plaintiff. The state government appealed to the Court of Appeal and lost. The Supreme Court also decided the case in favour of Chief Sam Warri Essi because the purported transfer and vesting of his school to the Mid-Western State Government by virtue of Edict No. 5 of 1973 was contrary to the provisions of the constitution. This provision is the right which states that no interest in any immovable property shall be taken possession of compulsorily without the payment of compensation and given any person claiming such a compensation a right of access for the determination of the amount of compensation
- (b) *** Another landmark case that touches on almost all the human rights provisions of the constitution is that by Alhaji J.A. Adewale and 5 others vs Alhaji Lateef and others (1981). By a circular dated 26th March, 1980 from the Ministry of Education, Lagos State Government proposed the abolition of private primary schools in the state with effect from 1st September, 1980. The plaintiffs went to the Lagos High Court claiming that the circular infringes on the fundamental right of the parents, the teachers and children guaranteed under the Federal Republic of Nigeria, 1979, particularly sections 13, 16, 18, 32, 36, 38 and 40. They therefore sought a motion declaring the circular as illegal and unconstitutional and the proposed abolition or take-over by the Lagos State Government of private primary schools in Lagos State or declaring the said schools illegal or unconstitutional and invalid.

Among others, the Lagos High Court, in restraining the Lagos State Government and granting the reliefs sought by the applicants, held that if the proposal of the Lagos State Government as indicated in the circular was implemented; it would contravene the applicants fundamental rights under:

Section 32: The right to personal liberty;

Section 36: The right to freedom of expression, and the press;

Section 37: The right to peaceful assembly and association;

Section 38: The right to freedom of movement;

Section 39: The right to freedom from discrimination on grounds of ethnic or communal belonging, sex, religion or political opinion, and

Section 40: The right to prevent compulsory acquisition of an individual's property without payment of due compensation.

- (c) Enforcement of Fundamental Rights to Freedom of Association, Freedom of Assembly etc.

Constitutional Law Abolition of Primary Schools with Fundamental Rights

1. ARCHBISHOP ANTHONY OLUBUNMI OKOGIE (Trustee of Roman Catholic Schools)
2. LADY AYODELE ALAKIJA
3. MRS. TITILOLA SHODEINDE
4. MRS. ADUKE MOORE (For Themselves and as representatives of Corona Schools Trust Council)
5. CHIEF O. O. BALOGUN
6. DR. D. O. OLURIN
7. ALHAJA S. A. SOKIMU
(For Themselves and on Behalf of other parents and guardians of Children in Private Primary Schools in Lagos State)

Vs.

THE ATTORNEY-GENERAL OF LAGOS STATE

Facts: By a circular letter dated 26th March, 1980, the Lagos State Government purported to abolish private primary education in the State. The plaintiffs challenged the circular as unconstitutional. The case was heard at Ikeja High Court by Hon. Justice Agoro (see 1981 INCLR page 218). The plaintiffs applied under Section 259 of the 1979 Constitution for reference:

- i. Whether or not the provision of educational service by a private citizen or organisation comes under the classes of economic activities outside the major sectors of the economy in which every citizen of Nigeria is entitled to engage in and whose right so to do the State is enjoined to protect within the meaning of Section 16(1)(c) of the Constitution of the Federal Republic of Nigeria.
- ii. By Section 18(1) of the Constitution of the Federal Republic of Nigeria the Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. Is this not only an obligation placed on the Government of the State to provide equal and adequate educational facilities in all areas within its jurisdiction, rather than preventing or restricting other persons or organisations from providing similar or different educational facilities at their own expense?
- iii. Whether or not freedom to hold opinion and to receive and impart ideas is not tantamount to imparting knowledge, and whether such right does not come within those protected by Section 36(1) of the Constitution of the Federal Republic of Nigeria.

- iv. If the reference in (3) is answered in the affirmative, whether every person or organisation shall not be entitled to own, establish and operate any institution for the dissemination of such knowledge within the meaning of Section 36 (2) of the Constitution of the Federal Republic of Nigeria.
- v. If the reference in (4) is also answered in the affirmative, whether the requirement of obtaining the consent of the State Commissioner provided for in Section 39 (1) (b) of the Education Law Cap. 37 Laws of the Lagos State of Nigeria, 1972 as additional conditions for the establishment of a new private educational institution is unconstitutional and as such invalid.
- vi. If in the light of the answer to the reference (1) to (5) above, whether the content of the Circular Letter dated 26th March, 1980 has not threatened or are likely to infringe the fundamental right of a citizen of a State of freedom of expression as prescribed by Section 36 of the Constitution of the Federal Republic of Nigeria.
- vii. If in the light of the answer to the reference in (6) above, whether or not the plaintiffs are entitled to the reliefs sought in their originating summons.

HELD:

1. The basic principle of interpretation and construction of any legislation, be it a Constitution or any statute, is the same:
 - (a) Constitution must therefore be interpreted and applied liberally. A Constitution must always be construed in such a way that it protects what it sets out to protect or guides what it sets out to guide. By its very nature and by necessity a Constitutional document must be interpreted broadly in order not to defeat the clear intention of its framers.
 - (b) The words used in a Constitution are necessarily general and recourse must be made not only to the past but also to the present wherever necessary or desirable in order to get the true meaning and intent of the instrument.
- ***
2. No provisions of Chapter II can override or inhibit the provisions of Chapter IV on Fundamental Rights. In particular, no legislation in implementing the provisions of Section 16 and Section 18 can override the provisions of the Fundamental Rights enshrined in Chapter IV.
 3. The establishing and running of primary and secondary schools, if undertaken by government is a social service, but if undertaken by a private citizen, could be an economic activity under Section 16 of the Constitution.

4. The educational objectives under Section 18 of the Constitution are a directive to government and not to private citizens. The government is enjoined to provide educational opportunities free of charge when practicable; and if by so doing the business of running schools becomes unprofitable, then it is for the proprietors to consider whether they should continue with such ventures or not.
5. It is not our system that a child or any citizen for that matter is a mere creature of the State. In our system, the State has no right to interfere with the freedom or any other constitutional right of the citizen save as allowed by the Constitution itself. In our system, there is mutual and co-existing relationship in which the State owns the citizen and the citizen also owns the state and each must protect the interest of the other.
6. A school must be accepted as a medium for the dissemination of knowledge, information and ideas.
7. The freedom of expression enshrined in the said Section 36 is intended to cover all persons and organisations who may or may not have any direct connection with the press.
8. Section 18 of the Constitution cannot, nor is it intended in any way to minimize or abrogate the enjoyment of the right of freedom of expression guaranteed by Section 36 of the Constitution.
9. Section 16 of the Constitution, which still supports free enterprise, and ipso facto allows the plaintiffs, in this case to carry on their chosen economic activity, namely the establishment and operation of primary and secondary schools cannot be impeached on the ground that Section 18 provides separately for the educational objectives. If this is so, then, the rights of the plaintiffs to own and operate schools must be protected from being abolished by the government.
10. Sections 16 and 18 are complementary to each other. While Section 16 enjoins the State to participate in all the major and other sectors of the economy, the citizen has specifically been allowed to participate; if not in the major sectors, definitely in all sectors of the economy which the National Assembly has not declared as major sectors of the economy.

Self Assessment Exercise 1.7:

With the aid of one or two selected case laws, what does the constitution say about Compulsory Acquisition of Property?

4.0 CONCLUSION

Since the Constitution of the country is supreme to all other laws, it means that it will continue to guide our activities in the education industry. Ignorance of its existence or content is no excuse for teachers and other education practitioners

5.0 SUMMARY

Fundamental Rights are also referred to as Bill of Rights or Civil Rights or sometimes, as Civil Liberties. They are legal and constitutional protections of individuals against government. The cited cases have shown that the infringement of the fundamental rights in the school system are being resisted and frowned at by the courts.

6.0 TUTOR MARKED ASSIGNMENT

1. List the fundamental rights contained in the 1999 Federal Constitution of Nigeria.
2. Relate the rights to education by citing any relevant case and its facts (6mks)

7.0 REFERENCES AND FURTHER READINGS

Federal Republic of Nigeria (1999). Constitution of the Federal Republic of Nigeria, Abuja: Federal Government Press.

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UNIT 2 FUNDAMENTAL RIGHTS OF STUDENTS AND PUNISHMENT

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1.0 INTRODUCTION

School children, like adults in the society, have rights as provided for in the Constitution. They also have other rights by virtue of their status as students, which non-school persons are not entitled to. Students do not forfeit their rights because they are in the school compound. They have a status before the law worthy of equal protection. As such students/pupils can seek reliance on the Nigerian Constitution for their rights not to be subjected to any infringements by unwarranted punishment.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- mention the fundamental rights of students/pupils;
- list those punishments in schools that violate fundamental rights of students/pupils;
- enumerate the guiding principles for administering punishment;
- list the different types of punishment in schools;
- explain the different types of punishment.

3.0 MAIN CONTENT

3.1 Fundamental Rights of Students and Punishments in School Violating Them

In Section 33 to Section 44 of Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria enshrined the fundamental rights of the citizens. Below is each of these rights relevant to education law and the types of punishment and practices in

schools that tend to violate them in tabular form in Figure 11.1. You will recall that these fundamental rights were treated in Unit 2 of Module II.

Table 2.1: Fundamental Rights of the Student and Punishments and Practices that tend to infringe upon them in Schools

S/N	Fundamental Rights	Punishments or Practices in Schools that Violate or Tend to Infringe on these Rights
1.	Section 33: Right to Life	*Corporal punishment or any other form of punishment that leads to the loss of student's life or causes him permanent disfigurement. *Maintenance of attractive nuisance e.g. unsafe playground or dangerous condition of premises that may cause death or serious injury to student etc.
2.	Section 34: Right to Dignity of Human Person	*Excessive or unreasonable corporal punishment. *Shaving student's hair or cutting student's skirt to fit in school assembly or classroom in the name of grooming. *Making a student go partially naked before other students for wearing wrong dress. *Using excessive or derogatory or dirty language on a student in the presence of others that lowers his person before others or causes him emotional disturbance. *Teacher's assault and battery (trespass) on the person of a student.
3.	Section 35: Right to Personal Liberty	*Barring a student from taking an examination which he has duly registered for. *Barring a student from graduation ceremonies after satisfactory completion of studies. *Unreasonable detention of student after school. *Refusal to issue or sign transfer certificate in the form approved by the Ministry of Education to a parent or guardian if all fees owed the school had been paid. *Refusal to issue a leaving certificate to a pupil at the request of his parent or guardian after all fees owed the school has been paid.
4.	Section 36: Right to fair hearing	*Punishing a student (e.g., suspension, expulsion etc.) without giving him the opportunity of defending himself against the charges which should be made known to him in advance. *Not following laid down procedure in punishing (suspending or expelling) a student. *Not giving opportunity to a student to call his witnesses and to question his accusers or those who must have testified against him. *Accusers taking part in the trial of students. *Appoint as a member of an investigating panel, a staff who is a party to or has a special interest in the incident that incriminated the student. *Suspending or expelling or denying a student a right without formally accusing him and allowing him to state his case.
5.	Section 37: Right to Private and Family Life	*Reading the private mails/letters of students before delivering them to the students. *Asking students to submit their private letters to be mailed to a class teacher unsealed, who reads them before mailing them, if nothing bad is contained. *Unnecessary or arbitrary searches (of student boxes, lockers or even pockets) and seizures.
6.	Section 38: Right to freedom of thought, conscience and religion	*Not honouring parents/guardians request to allow their children/wards attend only a particular religious denominational service. *Requiring students to take part in Sunday services or morning

		assembly worship where the religious observance related to a religion other than their own. *Encouraging the formation of a particular religious movement in a school. *Punishing students who refuse to recite the pledge and take part in the flat salute.
7.	Section 39: Right to freedom of expression and the press	*Disallowing the formation of a press club or other social or educational clubs that are not prohibited by the law. *Preventing students from expressing their opinions, in a peaceful manner or in protest letter. *Limiting and censoring the contents or opinions of students (which are not likely to cause a breach of the peace or constitute libel or immorality) in student's newspaper. *Suspending a student for expressing his views about certain practices or aspects of the school administration.
8.	Section 40: Right to peaceful assembly and associations	*Barring students from forming or belonging to social clubs/societies of their choice in school. *Barring students from carrying out peaceful demonstration or rally. Conduct disruptive of good order on campus is not protected. *Forcing membership of a certain social school club on student (N.B. The right to associate also implies the right not to associate).
9.	Section 41: Right to freedom of movement	*Excessive or unreasonable use of detention or false imprisonment in a school room or office as a form of punishment.
10.	Section 42: Right to freedom from discrimination	*Refusing to admit a qualified student to your school on the basis of tribe, religion, political belief, state etc. *Subjecting a student to disabilities or restrictions to which other students are not subjected. *Basing admissions on quota-system, particularly admitting candidates with lower test scores and leaving unadmitted those with higher scores on the same test because of state of origin, sex, religion etc.

Source: Peretomode, V. F (1992) Education Law Principles, Cases and Materials on Schools. Owerri: International Universities Press

3.1.1 Parental Rights and Obligations

The parents who beget the children also have legal rights and responsibilities in respect to the education and upbringing of their children and wards. Education Laws of the various States of the Federation make provisions for the right of parents to sue the public school and/ or any of its employees, for the violation of the rights of the child. For instance, the Education Law (Cap 34) of Western Nigeria 1954 stipulates that '*...so far as compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, every pupil shall be educated in accordance with the wishes of the parent and in accordance with his age, ability and aptitude.*'

There are also relevant legal parental obligations. For instance, Section 372 of the Criminal Code Ordinance Cap. 42 of the Laws of the Federal Republic of Nigeria, Volume 2 states:

Any person who being the parent, guardian or other person having the lawful care of charge of a child under the age of twelve years, and having the ability to maintain such a child, willfully and without lawful or reasonable cause deserts the child and leaves it with-

out means of supports, is guilty of misdemeanor, and is liable to imprisonment for one year.

3.2 Concepts of Corporal Punishment

Corporal punishment entails physical chastisement of a pupil. It is a punitive response to student misbehaviour and even has an extensive Biblical support. For instance in the Book of Proverbs (22:15 and 23:12,14), it is written:

Apply thine heart unto instruction and thine ears to the words of knowledge.. foolishness is abound in the heart of a child; but the rod of correction shall drive it far from him....Withhold not correction from the child ; for if you beat him with the rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell.

Today, the desirability and effectiveness of corporal punishment have been called to question. While some parents, teachers and school administrators support its use, others are strongly opposed to its use in schools.

In his work, the Practical Defense of Corporal Punishment, Reinholz (1979) made the following points in support of corporal punishment:

- (1) nothing else has worked, and something with more impact is needed;
- (2) some students only respond to corporal punishment, usually because that is what they experience in the home;
- (3) corporal punishment is effective because it makes students think before committing the same offence, and,
- (4) the use of physical punishment can be deterrent to other students who might violate a rule in the absence of such punishment.

On the other hand, Ratliff (1980) in his work entitled, Physical Punishment must be Abolished, gave the following reasons for opposing corporal punishment:

- (1) It is cruel and inhuman;
- (2) Unreasonable corporal punishment is too difficult to prove in court, and many affected students and parents lack either the knowledge of court remedies or the resources to pursue them;
- (3) Corporal punishment holds considerable potential for child abuse;

- (4) The use of corporal punishment tends to be discriminatory, in that it is used more often with younger children, boys and children from poor home;
- (5) There are more effective non-physical alternatives to correcting student misbehaviour.

The debate on the desirability and effectiveness of physical chastisement of pupils continues unabated. Those countries prohibiting it (e.g. Sweden and other Scandinavian countries) consider it as constituting cruel and unusual punishment to students. However, those countries which do not prohibit it (such as America) maintains that persons imposing physical punishment could be sued for liability if they used unreasonable force (Gorton, 1983). While the courts will attempt to establish reasonableness or unreasonableness by examining a number of factors. These include:

- (1) Whether the punishment is in accordance with school regulations and state or school board laws on corporal punishment;
- (2) Whether the punishment is in proportion to the offence;
- (3) The ability of the child to bear the punishment by considering the age, sex, size, physical, mental and emotional status of the child,
- (4) The purpose of the punishment whether retributive, deterrent or reformatory, or whether to gratify teacher's passion or rage or desire to revenge an insult or assault, and
- (5) The duration and type of instrument used for the caning (Nwagwu, 1987, p. 141).

In Nigeria, the administration of corporal punishment has led to the loss of lives and permanent injury or disfigurement of pupils. The result of such unreasonable, brutal and excessive corporal punishment has on several occasions led to legal suits by parents or guardians against the teacher concerned and Schools Board or State Ministry of Education. Most State Ministries of Education in Nigeria have therefore responded by restricting the category of staff who can administer the cane. For instance, the 1989 Imo State Education Edict (Miscellaneous Provisions) states that:

All punishment shall be reasonable, taking into account the age and sex of the offender and the nature of the offence. Corporal punishment shall be administered only by the head master/principal or by a teacher authorized by him; provided that excepting the headmaster/principal, no male teacher shall administer corporal punishment on a female pupil (p. 11).

The Rivers State Ministry of Education circular letter of May, 1984 even went further to dictate the maximum number of strokes (6) that may be administered and the offences that may attract such punishment.

The dangers and fears associated with Corporal Punishment are very real. For instance, a student in Army Children's Primary School in G.R.A. II, Port Harcourt, the Rivers State capital, was flogged to death by an army official who was requested to administer the cane by the teacher on a boy for alleged gambling in school (Tide, July 1, 1987). In an earlier incident in Calabar, the capital of Cross River State, a teacher at Duke Town Secondary School flogged a Form One Student, Grace Okon Akpan, 12 years old, with a cane and she collapsed and became unconscious. She later died in hospital. Grace was among four other students who were being punished for noise-making in class.

In another related incident, captioned: **TEACHER NABBED FOR ALLEGEDLY BEATING PUPIL TO DEATH**, National Concord (Wednesday, April 20, 1989, p. 9) reported that Mr. Luke Madaki, a Grade One headmaster in Zangon-Kataf district, Kachia Local Government Area, was arrested by the police and charged to court for allegedly beating a primary school pupil to death.

The pupil, Miss Rebeccah Woje, aged 14, was a primary four pupil at the Local Education Department, Mabushikataf. The pupil was accused of stealing one naira from her home by a colleague. The master was reported to the headmaster who discovered that the girl actually stole the money. He asked her to lie on a school bench to be flogged and he administered the beating.

The girl suffered from severe head injuries and several cuts on her back and buttocks as a result of serious caning received from the headmaster. The girl complained to her parents two days later that she was yet to recover from the punishment meted out to her by the school's headmaster. Before arrangements were concluded to take her to hospital which was about 35 kilometres away, the girl died. The autopsy on her revealed that she died from multiple injuries as a result of severe beating.

Furthermore, in the case of *Fadahunsi Kokori v. A.I. Ukhure and the Benin Board of Education* (1977), a student lost one of his eyes consequent upon the corporal punishment administered by his teacher in the classroom. The teacher was charged for tort liability and negligence. The teacher's action contravened the fundamental right of the student the respect for the dignity of the human person, freedom from any form of torture or inhuman or degrading treatment and the right to life. The Benin High Court awarded the student N20,000 as damages.

In another similar case, *Elizabeth Aliri v. John Ekeoru*, the plaintiff, a primary school pupil, in the High Court of Imo State holden at Owerri, sued the defendant as well as the Director of Schools, Imo State and the Imo State Schools Management Board, claiming N4,000.00 as special damages for medical bills by her mother and N96,000.00 as general damages for assault, battery and negligence which resulted in the permanent loss of the plaintiff's left eye.

The teacher John Ekeogu had hit the left eye of little Aliri, an eleven year old primary school pupil with a cane causing her permanent injury in 1987. The flogging of little Aliri was even without justification. You will recollect that this case was mentioned in Module 2, unit 3. It was one of the case laws cited in connection with assault, battery and negligence.

The aforementioned are only very few of the numerous cases of the beastly and brutal actions and incidents of deaths that often accompany caning. This is why the opponents of corporal punishment would want it banned.

3.2.1 Guiding Principles for Administering Punishments

It is important that in developing a policy on corporal punishment, the administration and the education agency should consider a number of guiding principles. Gorton (1983, pp. 351-352) has identified the following ten guidelines extracted from various court cases and often recommended by education authorities:

1. Corporal punishment should not be used at all except when the acts of misconduct are so antisocial in nature or so shocking to the conscience that extreme punishment seems warranted.
2. The particular offences that will result in corporal punishment should be specified. Also, the nature of the corporal punishment which will be permitted should be made explicit.
3. Evidence that other non-physical methods were used earlier in an attempt to help improve his/her behaviour should be required before corporal punishment is employed.
4. Corporal punishment should not be used in those situations where physical restraint is more properly called for.
5. If possible, a neutral party, specifically identified, should administer the punishment rather than the person who was in conflict with the student.
6. Corporal punishment should be administered only in the presence of another or administrator (or parent) as witness, an individual who was not in conflict with the student.
7. Exempt from receiving corporal punishment those students who have psychological or medical problems.
8. Provide due process before administering the corporal punishment, including informing the student of the rule that has been broken, presenting the student with the evidence indicating that the student has violated the rule, and providing the student with an opportunity to challenge the allegation and/or the evidence.

9. Specify the kinds of documentation that will be required for administering corporal punishment, including those items specified in number (8) above.
10. Forbid corporal punishment to be used on a continuing basis for those students whose behaviour does not improve after it has initially been administered.

Self Assessment Exercise 2.1:

What punishment and practices tend to infringe upon these fundamental rights in schools?

3.3 Types of Punishment

They include corporal punishment, suspension, detention, expulsion or academic rustication.

3.3.1 Corporal Punishment, Suspension, Detention, Expulsion and Academic Rustication

- (1) Corporal Punishment :

This has been discussed extensively in the unit under 3.2.

- (2) Suspension and Expulsion:

Suspension and expulsion are two other punitive responses or punishment alternatives utilized by school administrators in cases involving extreme misbehaviours (assault or battery) upon a member of staff or some other person on school ground, possession or sale of narcotics or dangerous drugs on school premises, academic dishonesty, theft, damage to school property, (female) student becoming pregnant, etc. Suspension generally connotes a temporary exclusion of a student from school for a specified period of time (from one day to several weeks), or until something is done by the student or his parent. According to Ukeje (1993) Suspension implies temporary exclusion from school pending the correction of some defect or completion of an investigation. Suspension is not a very good device for weak students. Unless in cases of investigations other forms of punishment may be more effective for weak students.

Expulsion connotes permanent separation removing the student from school, on a more permanent basis (Gorton, 1983; Reutter and Hamilton, 1976).

Most of Nigerian states have statutes related to suspension or expulsion and the procedure to be followed in arriving at that decision. For instance, in Rivers State, Principals/Headmasters can suspend offending students for a maximum of two weeks, during which a full report of the offence is made to the Ministry with

recommendations for the ratification of the action taken. Instruction to expel a student from school must come from the State Ministry of Education.

Expulsion is a more serious form of punishment than suspension. It is a more permanent exclusion, at times for one year or permanently. Therefore, conditions for expulsion must be set in the statutes either of the State Education Board or the particular educational institution. In case of expulsion the right to be heard must be observed because this may violate the child's right to be educated.

But it is to be noted that the right of the child to attend school is predicated upon his submission to appropriate rules and regulations and upon his presence not being detrimental to the morals, health, or education and progress of the other pupils. This makes a hearing necessary and imperative.

(3) Academic Punishment (Rustication):

Academic punishment may be given either for academic weakness or for behavioural offences. For instance, academic probation may be a legitimate punishment designed to get a pupil recognize the importance of his academic work. Again grades may be lowered in a course as a result of some disciplinary problems rather than on the basis of academic performance.

In extreme cases, certificates may be withheld or in fact cancelled or withdrawn. However, such extreme cases must be covered by statutes.

The Education Law of Ogun State states as follows in respect of the procedure to be adopted in the suspension and/or expulsion of a student.

The Principal shall . have power of suspending pupils for any cause he considers adequate, provided that he immediately gives reasons in writing to the board of governors of the school who shall meet without delay to discuss and take a final decision on such cases. The Governors may expel a student provided:

- (1) The student is allowed to state his case in writing to the governors;
- (2) The Ministry's representative is given adequate notice of a meeting summoned for the purpose of discussing the discipline of a pupil;
- (3) A formal report of the governors' decision, as contained in the minutes of the meeting is sent to the Ministry of Education, Abeokuta and to the Divisional Education Office without delay;
- (4) The student and his parents are informed in writing of the Governors' decision and of their right to appeal against the decision to the Ministry of Education, Abeokuta .

School administrators and officials of the Schools Management Boards and those of the Ministry of Education should proceed very cautiously in making a decision to suspend or expel a student from a school because of the serious nature of the punishment. These

bodies must provide the due process safeguards mandated by Section 35 (right to fair hearing) of the 1989 Federal Republican Constitution.

A reasonable number of students disciplinary cases involving suspension and expulsion have been decided against school authorities/Schools Board/Ministry of Education not on their merit but on the ground that fair hearing was denied the student or the action was taken against the principle of natural justice (Reutter & Hamilton, 1976).

The questions that the courts will ask are: was the student given oral or written notice of the specified charges or misconduct against him? Did the student have sufficient opportunity to respond to the charges? Was he given the chance to examine or cross-examine those witnesses? Was he given the opportunity to call his witnesses? Was his side of the matter impartially considered before a decision is taken to suspend or expel him?

If the court found that the procedure followed in the entire decision-making process to remove the student from school was not reasonable, fair and just, it may declare the action null and void and of no effect.

The result is that the Ministry and its agencies or representatives may be ordered to reabsorb the student, even if he has committed the act of serious misconduct which naturally should attract the penalty of suspension or expulsion (see the following cases, the State v. (1) the Principal, Ijebu-Ode Grammar School, Mr. A. Kehinde, (2) Mr. S.O. Adelaja, Chief Inspector of Education, (3) Commissioner for Education, Ogun State (1982); Olufemi Ajayi and Morufu Olaiya v. The Principal, Ijebu-Ode Grammar School and another (1982); Olajide Odutola Odunsi v. (1) The Principal (A. Kehinde); Ijebu-Ode Grammar School and (2) Mr. S.O. Adelaja, Chief Inspector of Education, Ogun State (1982).

However, there are certain situations in which procedural due process cannot be insisted upon. As Reutter and Hamilton (1976, p. 619) point out, students whose presence poses a continuing danger to persons or property, or an ongoing threat of disrupting the academic process, may be immediately removed from school.

In such cases, it is important that the necessary notice and hearing should follow as soon as practicable.

3.3.2 Cited Case Laws by Peretomode, 1992

3.3.2a Constitutional Law Enforcement of Fundamental Human Rights Ministry of Education's decision to Expel Secondary School Students and disallowing them from sitting the G. C.E. Examination without regard to the Principle of Natural Justice will be declared null and void and of no effect

THE STATE APPLICANT

Vs.

(1) *THE PRINCIPAL, IJEBU-ODE GRAMMAR SCHOOL*
(MR. A. KEHINDE)

(2) *S.O. ADELAJA, CHIEF INSPECTOR OF EDUCATION*

(3) *COMMISSIONER FOR EDUCATION, OGUN STATE*

RESPONDENTS

IN RE: (1) ALHAJI FASASI AWOJOBI

(2) *MADAM A. OTITOJU APPLICANTS*

(3) *YINKA BAKARE*

(IJEBU-ODE HIGH COURT, ODUNSI, J. 22/6/83 M/19/82)

FACTS:

The Ogun State Ministry of Education, Abeokuta published in a national daily the purported expulsion of some students from Ijebu-Ode Grammar School and the disallowance of the students from sitting the G.C.E. (ordinary level) examinations.

HELD:

- (1) The school authorities were not under any obligation to address invitation to the offending students in writing. The announcement in the school assembly that they should make themselves available was sufficient.
- (2) There ought not to be any variation in the offence for which the students were accused and tried (in their absence) and the offences for which the Principal recommended their suspension to the Ministry of Education.
- (3) It is against the principle of natural justice that the accusers should take part in the trial of the students.
- (4) The decision to expel the three students from school was taken in breach of the rules of natural justice and is null and void and of no effect.

JUDGEMENT:

Odunsi, J. On 17th May, 1982, the applicants filed a motion ex-parte under Order 1 Rule 2 (1) of the Fundamental Rights (Enforcement Procedure) Rules 1979 seeking leave to apply by originating summons for certain reliefs. The application arose out of a decision of the Ogun State Ministry of Education, Abeokuta published in the *Nigerian Tribune Newspaper of 13th April, 1982 purporting to expel certain students from Ijebu-Ode Grammar School and disallowing those students from sitting the General Certificate of Education (Ordinary Level) examinations.* On 18th May, I granted the applicants leave to apply as prayed and I also ordered a stay of all action relating only to the exclusion of the students affected from the G.C.E. O/Level examinations. Each of the applicants sued as the next friend of the student concerned.

The respondents to the summons as filed are: (1) Mr. Kehinde, Principal, Ijebu-Ode Grammar School, (2) Mr. S.O. Adelaja, Inspector of Education and (3) the Commissioner for Education, Ogun State. Presenting his case, Mr. Adebayo, Learned Counsel for the applicants stated that the application was brought under Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 1979. The applicants seek five reliefs in each case and there is an affidavit of 12 paragraphs:

Ground (a):

A declaration that the decision to expel the applicants for the offence alleged, as contained on page 6 of the issue of the *Nigerian Tribune* of 13/4/82 was made in contravention of the fundamental rights of the applicants as guaranteed under Section 33 of the Nigerian Constitution of 1979.

Mr. Adebayo submitted under this ground that the students were never formally accused of any offence and that they were not allowed to state their case or to call witnesses. There is a counter-affidavit sworn to by Mr. O. Oduko (Vice-Principal, Ijebu-Ode Grammar School) on 2nd June, 1982; the two averments of the applicants in the said paragraphs 10 and 11 were not controverted in that counter-affidavit or anywhere else. What Mr. Oduko said in paragraph 6 of his counter-affidavit is that the students disappeared from the school after their occasional misconduct.

This, according to Mr. Adebayo, meant that the school authorities knew that the students were not in the school at the time they, (the school authorities) according to paragraph 7 of the affidavits were announcing that the students should come forward. Mr. Adebayo said that the school authorities should have sent written invitations to the students through the addresses of their parents and that since this had not been done, the decision to expel them without hearing their defence is contrary to the rules of natural justice. He cited (1) *Stephen O. Adedeji vs. Police Service Commission* (1968) N.M.L.R. 102 in support of his contention that the students were entitled to know the names of their accusers and the allegations made against them.

Mr. Bakare's answer to this submission is that since, as deposed to in Mr. Oduko's counter-affidavit, announcements were made in the school assembly, the students have themselves to blame if they did not attend the regular assembly and thus put themselves

in a position in which they could not hear announcements made there. I accept Mr. Bakare's submission and I do not think that the authorities of the school were under an obligation to address invitation to the culprits in writing since it was announced in the school assembly that they should make themselves available.

Ground (b):

The decision was also contrary to the rule of natural justice of *nemo iudex in causa sua* in that Mr. A. Kehinde (Principal) who is one of the accusers conducted the alleged investigation and also recommended the punishment.

Mr. Adebayo's submission on this head however, is that as contained in paragraph 10 of Mr. Oduko's counter-affidavit, the disciplinary committee set up to investigate alleged students' indiscipline and insubordination found the students to be persistent truants and members of a terror group formed to molest both staff and students of the institution as contained in Exhibit B, that is, the minutes of the disciplinary committee meetings.

A look at Exhibit B shows the column "Role played by the boys", that Rasidi Bakare was accused of smoking and abusing. V. P. II as well as the games master, Mr. Odesanya Monsuru Otitoju was accused of "fighting an R.S.S. student" whilst Fatai Awojobi's name does not appear at all in that portion of Exhibit "B" dealing with the role played by the boys. However, in the same Exhibit "B" where the letter of the Principal of the School, Mr. A. Kehinde appears, he recommended to the Ministry of Education the indefinite suspension of 21 boys including the three involved in this application and their withdrawal from taking the June 1982 G.C.E. examination through the school. The names of the boys and their offences as stated by the Principal are as follows:

- (1) Rasidi Bakare: persistent truancy, forming a terror group, destruction of school properties, rioting against R.S.S. students and smashing their school vans. Refusal to take punishment from the school principal.
- (2) Monsuru Otitoju: rioting against R.S.S. students, smashing their school vans and refusal to take punishment from the Principal,
- (3) Fatai Awojobi: ganging to fight and riot after football match, persistent truancy and refusal to take punishment.

The last named is the student whose name does not appear in the minutes of the disciplinary committee meeting, as already stated. Mr. Adebayo submitted that the obvious differences in the role the disciplinary committee said that the boys played and what the Principal conveyed to the Ministry of Education are enough to render the decisions null and void.

Mr. Bakare said that the role alleged to have been played by the students as contained in the minutes of the disciplinary committee meeting differs from what would appear to be the offences for which the principal recommended their suspension but he added that the incessant student troubles in the school as contained in Exhibit "C" formed the basis of

the principal's recommendation. I do not see how incessant troubles into which it does not appear any enquiries were held could justify the variations between the offences for which the students were accused and tried (in their absence, rightly in my view), and the offences for which the Principal recommended their suspension to the Ministry of Education.

A more serious irregularity was the fact that the Vice Principal II and Mr. Odesanya whom Rasidi Bakare was accused of abusing were Chairman and member respectively of the disciplinary committee. Mr. Oyekan, a member of the committee also testified for what may loosely be called the prosecution. Mr. Bakare agreed that this was irregular but he submitted that a Court of law should be able to vary the ambit of the rules of natural justice according to circumstances.

I am of the view that the maxim *nemo iudex in causa sua* has been breached and that for this reason, the decisions of the Ministry of Education complained against cannot stand. The applicants also complained in Ground D that although the names of three other students Segun Adeusi, Egbus Moses and Kolawole Oduwole were recommended for suspension in the Principal's letter (Exhibit C) these names do not appear in the press notice of the Ogun State Ministry of Education in which the names of the expelled students were published; the applicants therefore alleged bias. Mr. Oduko's counter-affidavit is completely silent about this allegation.

It seems to me that the decision to withdraw the students from taking the G.C.E. O/L examination through the school (which is the complaint in Ground C) followed as a corollary to the recommendation for their indefinite suspension. The Ministry of Education decided instead to expel the students. Since as I have found, some of the complainants sat on the disciplinary committee, which investigated the complaints against the students and at least two of these judges also gave evidence against the students, it is my view that the students are entitled to the reliefs which the applicants seek on their behalf.

I therefore hold that the decision to expel the three students affected by this application (Monsuru, Otitoju, Rasidi Bakare and Fatai Awojobi) from Ijebu-Ode Grammar School as contained in the publication on page 6 of the Nigerian Tribune of 13th April, 1982 aforesaid was taken in breach of the rules of natural justice and it is accordingly declared null and void, and of no effect. The said order is hereby set aside.

The other decision to disallow the three students from sitting for or taking part in the June, 1982 G.C.E. O/L examination announced on the 13th May, 1982 is also hereby set aside.

All servants, agents or representatives of the Ijebu-Ode Grammar School and/or the Ministry of Education, Ogun State are hereby restrained from carrying out or otherwise giving effect to the said decision.

**3.3.2b Constitutional Law Expulsion of Students
Right to Fair hearing in exercising Administrative
Powers and Discipline enforcement of Fundamental
Rights and approved Procedures must be observed**

OLAJIDE ODUTOLA ODUSI (Master) } *Applicant*
(Suing by his friend Madam Modupe Odusi)

v.
1. *The PRINCIPAL (A. KEHINDE,*
IJEBU-ODE GRAMMAR SCHOOL)
2. *S. O. ADELAJA, CHIEF INSPECTOR OF EDUCATION,*
OGUN STATE } *Respondents*
(IJEBU-ODE HIGH COURT, SOGBETUN, J. 7/782)

FACTS:

The applicants in the consolidated actions misbehaved and they were expelled and barred from taking the 1982 GCE 'O' Level. The panel that tried them consisted of two people who testified as witnesses. The applicants were never formally accused of any offence nor were they allowed to state their case.

HELD:

- (1) The right to fair hearing cannot be brushed aside in the determination of the civil rights of a citizen, except it is so specifically provided for by the law.
- (2) It is contrary to the principles of natural justice for a witness in a matter to sit as a member of the investigation panel sitting in judgement over the applicants.
- (3) The school is only conduit pipe used by the students to register for the examination.
- (4) There is privity of contract between the students and WAEC.

JUDGEMENT:

Sogbetun, J. The learned counsel for the applicants in the above-mentioned cases under Order 1 Rule 2(1) Fundamental Rights (Enforcement Procedure) Rules 1979 requested for leave to apply by originating summons for the following reliefs:

(a) A declaration that the decision or purported decision to expel the applicants as students of Ijebu-Ode Grammar School as contained on page 6 of the issue of the Nigerian Tribune of April. 13, 1982 is unconstitutional, null and void and of no effect.

(b) An order setting aside the said decision.

(c) An order setting aside the further decision of disallowing the applicants from sitting for or taking part in the June 1982 GCE "O" Level Examination commencing on the 13th day of May, 1982.

(d) An order restraining all servants, agents or representatives of Ijebu-Ode Grammar School or Ministry of Education, Ogun State or any other person or persons acting on the said decision from giving effect to or otherwise implementing the decision aforesaid.

(e) An interim order under Section 20 High Court Law and Inherent Powers of the High Court restraining the functionaries, servants or agents of Ijebu-Ode Grammar School or Ministry of Education, Ogun State or any other person or persons acting on the said decision from giving effect to or otherwise implementing the decision complained about pending the final determination of the substantive application in this matter

After a formal argument before me the application was duly considered and an interim order was accordingly made in the first instance against Ijebu-Ode Grammar School. Subsequently an application was brought by learned counsel to the respondents urging me to rescind my former order because Ijebu-Ode Grammar School is a non-juristic person. Due consideration was given to this argument and I found legally that Ijebu-Ode Grammar School is a non-juristic person. My former order was therefore rescinded.

But in the interest of justice, I felt an interim order must be granted against the respondents as disclosed above to enable the Court to consider the substantive issues involved in the originating summons. This interim order was therefore granted on the 24th June, 1982 restraining the respondents or any other person or persons acting on the decision complained of by the applicants pending the final determination of the substantive action.

The learned counsel for the applicants said that the decision to expel the applicants for the alleged offences as contained on page 6 of the issue of the Nigerian Tribune on 13th April, 1982 was made in contravention of the Fundamental Rights of the applicants as guaranteed under Section 33 of the Nigerian Constitution of 1979. He explained further that the applicants were never formally accused of any offence and they were never allowed to state their cases or call witness if any. He argued further that the expulsion preceded a trial of the applicants for the offences allegedly committed which, according to him, is wrong in law and contrary to principles of natural justice. From the documents exhibited by the respondents, there is no proof that this procedure was followed and the actual offences were not stated. Furthermore, the evidence was not stated. All these according to him are contrary to the rule of natural justice. The names of eight persons were mentioned as members of Investigating Panel and five witnesses were named. There it was mentioned that seven boys and one boy from Adeola Odutola College were involved in vandalistic act. He stressed that there is no evidence that the students were present at the panel to defend themselves.

According to him the minutes were signed by the chair man and not by the secretary, and this in his view is irregular. See *Ridge v. Baldwin* (1964) A.C. 40 at 125. He argued that

in exercising administrative powers roles governing Fundamental Rights must be observed, but he regretted that in these cases the rules have not been observed. Furthermore, he argued that some of the people who served as members of the Investigating Panel such as Mrs. S. O. Oyekan and T. A. Odesanya were also witnesses. Therefore he added they acted in two capacities: firstly as judges and secondly as witnesses. This, according to him, is contrary to the principles of natural justice.

Learned counsel also argued that the school authorities have no right to terminate the contract between W.A.E.C. and the students because the students paid personally to sit for the examination and the school is just an agent or servant in respect of the transaction. He argued that it is only WAEC that can terminate the contract between it and the students if the students are found guilty of malpractices.

Furthermore, the Ijebu-Ode Grammar School and/or Ministry of Education unilaterally withdrew certain names from the list of candidates suspended and some of those suspended, now were never on the original list. That as a matter of fact gave rise to doubt as to the sincerity of the whole exercise. He stressed that the likelihood of abuse vitiates the exercise of expulsion and makes it null and void.

Learned counsel also said that Exhibit "C" attached by the respondents to the counter-affidavit says the Principal has the right to discipline. He argued that this right must be exercised within the limit of the law. Section 32 of the exhibit states the details of the power. He maintained that the slightest defect or irregularity in the exercise of the power will vitiate the whole exercise of dismissal or suspension. He argued that the Principal did not do what he ought to do according to law and regulation. He therefore asked me to quash the suspension and dismissal. In support of this contention he also directed my attention to the case of *Adeigbe v. Salami Kusimo* (1965) N.M.L.R. 284.

Learned counsel for the respondents on the other hand says that the totality of the argument and submission of learned counsel to the applicants is not that offences have not been committed but that such offences have not been properly tried.

In his own opinion, the school authorities not being judicial officers have done their best in the circumstances. He argued that if the Court feels that the school authorities have done their best in the circumstances the Court can refuse to interfere especially where the outcome could have been different if natural justice has been fully observed.

The principle of *audi alteram partem* is subject to complexity. Even though the procedure has not been followed, the students should still be punished in a way so as not to defeat the end of justice. In his opinion, law and morality must go *pari passu* and the school must be given the residual power to punish so as to serve as a deterrent to other students. He urged that variation of punishment could be ordered by the Court.

The whole of the argument of learned counsel to the applicants revolves round Fundamental rights relating in particular to right to fair hearing. It can not be over-emphasised that the Court of Law is established to guard jealously against the civil rights

of every citizen and to enforce at all times the inalienable right to fair hearing. Section 33 of the Constitution of the Federal Republic of Nigeria 1979 states very clearly that this right to fair hearing cannot be brushed aside in the determination of the civil rights of a citizen except it is so specifically provided for by the law.

It is in compliance with this provision of the Constitution that Section 32(1) (i) of Exhibit "C" attached to this affidavit of the Principal, provides in part that the governors may expel a student provided: the student is allowed to state his case in writing to the governors. There is no evidence that this procedure was ever followed in these cases.

I agree entirely with the submission of learned counsel to the applicants that the students were not given fair hearing as provided by the law and 'the principles of audi alteram partem were never observed. *It is my view that these principles can never and must never* be released in order to ensure that justice is done at all times.

It has been established without any contradiction that some of those who were witnesses in this matter also sat as members of the Investigating Panel sitting in judgement over the applicants. This as a matter of fact is contrary to the principles of natural justice. This situation cannot by any imagination be regarded as fair trial especially when one considers that the punishment meted out to the students is a grave one.

Even though the school authorities might have done their best in the circumstances, this being a Court of Law and not Court of Moralists, the principles of law cannot be compromised or administered half way. Not only must justice be done it must be manifestly seen to have been done.

Exhibit B attached to the counter-affidavit of the first respondent showed that the Investigating Panel finished its work on 4th November 1981, but the Ministry of Education did not do anything about this report until about four months thereafter 30th March, 1982. This in my view is not in keeping with the spirit of the provisions of Section 32(1) of Exhibit C which deplore delay.

If prompt action had been taken by the Ministry of Education as expected that might have given the applicants (the students) the opportunity to register for their examination with WAEC as private students. Perhaps the authorities concerned in future would guard against such delay. There is no doubt about it that the students simply used the school as a conduit pipe to register for the examination and there is privity of contract between the students and WAEC only.

That being so the school lacks the power to stop the students from sitting for such examination already paid for by them. The publication at page 6 of the Nigerian Tribune dated 13th April, 1982 stopping the students from taking their examination is ultra vires and it is therefore null and void

**3.3.2c Disciplinary Action Taken Against Students
Students Expulsion Fair Hearing**

OLUFEMI AJAYI (Master)

(Suing by his next friend, Mrs. Adebisi Ajayi,

and

MOROFU OLAIYA

(Suing by his next friend, Madam Sikiratu Olaiya)

v.

*THE PRINCIPAL, Ijebu-Ode Grammar School & Another
(Ijebu -Ode High Court 7/15/82)*

FACTS:

Some students of a Grammar School were expelled without complying with the principles of natural justice and audi alteram partem.

HELD:

1. There is likelihood of bias in two tutors of the school who are on the disciplinary panel to testify. Such a procedure offends against the principle of audi alteram partem.
2. Not to have formally accused the students and allowed them to state their case offends against the principle of natural justice.
3. The Grammar School has the right to prevent the applicants from taking the G.C.E. examination as its candidates if the School had acted procedurally.

JUDGMENT:

Sofolahan, J. - This originating summons is sequel to leave of this Court which was granted to applicants on the 13th May, 1982 after hearing an ex-parte motion seeking certain reliefs and also to restrain the respondents from carrying out the threats published in the Nigerian Tribune of 13th April, 1982, (i) expelling the applicants, Olufemi Ajayi and Morufu Olaiya from the Ijebu-Ode Grammar School and (ii) nullifying their entries for 1982 General Certificate of Education (Ordinary Level) examination which commenced with effect from 13th May, 1982.

By virtue of Order 1 Rule 2(6) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 the leave granted had the effect of an injunction and as a result, the applicants were able to commence their examinations at the scheduled dates together with their colleagues.

The application of Olufemi Ajayi suing by his next friend Mrs. Adebisi Ajayi and Morafu Olaiya also suing by his next friend Madam, Sikiratu Olaiya were consolidated into one

as all the papers to be used in respect of the two applications are similar and there is no difference * * *

The grounds upon which reliefs are sought in the summons on notice, issued on behalf of the applicants, pursuant to Order 1 Rule 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 1979 and against (a) Mr. Kehinde, Principal, Ijebu-Ode Grammar School and (b) Mr. S. O. Adelaja, the Chief Inspector of Education, Ogun State as Respondents were four-fold, itemized as A, B, C, and D in the statement filed along with the summons. I shall now consider the grounds.

1. Ground A, B, and D were taken and argued together. These were that:

Ground A:

The decision to expel applicant for the alleged offence as contained on page 6 of the issue of the Nigerian Tribune of 13/4/82 was made in contravention of the Fundamental Rights of the applicants as guaranteed under Section 33 of the Nigerian Constitution of 1979.

PARTICULARS:

- (i) Applicant was never formally accused of any offence.
- (ii) Applicant was not allowed to state his case and call witnesses, if any.

Ground B:

- (i) The decision to expel the applicant was contrary to the rule of natural justice of *audi alteram partem* for reasons given in A (i) and A (ii) above.
- (ii) The decision was also contrary to the rule of natural justice of "nemo-judex in causa sua" in that Mr. A. Kehinde (Principal) who is one of the accusers conducted the alleged investigation and also recommended the punishment.

Ground D: Likelihood of Bias or Interest

- (i) in that the Ijebu-Ode Grammar School authorities and/or the Ministry of Education unilaterally withdrew certain names from the list of candidates suspended and subsequently expelled.
- (ii) in that some of those expelled were never earlier suspended or accused of any offence.

In arguing these three reliefs together, Mr. Mamora contended that the applicants were not given fair trial as guaranteed under the Constitution, Section 33 of the Nigerian Constitution of 1979, because the students were not informed when the enquiry about them was to start. It is Mr. Mamora's view that the students and/or their parents ought to have been informed in writing to answer to the charges against them but this was not

done. In support, he referred, to paragraphs 10 12 of applicants' affidavits the gist of which was that the applicants were not accused of any offence and also never appeared before any disciplinary committee to give evidence or answer questions and neither were they asked to neither make any statement nor give any explanation in their defence.

Mr. Bakare's answer to these points is that the main complaint of the applicants is that they were not given a fair trial as guaranteed under the Constitution, Section 33(1) of the 1979 Constitution which leads to the maxim audi alteram partem but Mr. Bakare went further to say that after the students (including the applicants) had caused disruption of classes and performed all sorts of vandalism, they absconded from the school: but following the incident, the Principal of the School, Mr. Kehinde, made several announcements in the School Assembly that the applicants and others should come forward to defend themselves but they refused or neglected to do so. Therefore, if applicants failed to come forward after being given the opportunity, they would appear to have waived their rights and cannot be heard to complain that they were not given opportunity of being heard.

Still on grounds A, B and D, Mr. Mamora complained that the procedure laid down in Section 32(1) of Exhibit "E" of the counter affidavit which is an extract of the Education Law of Ogun State giving direction on the conduct of institutions, Governors was not followed. The relevant section states:

"The Principal shall have power of suspending pupils for any cause he considers adequate, provided that he immediately gives reasons in writing to the governors who shall meet without delay to discuss and take final decision on such cases.

The Governors may expel a student provided:

- (i) The student is allowed to state his case in writing to the governors;
- (ii) The Ministry's representative is given adequate notice of a meeting summoned for the purpose of discussing the discipline of a pupil;
- (iii) A formal report of the governors' decision, as contained in the minutes of the meeting is sent to the Ministry of Education, Abeokuta, and to the Divisional Education Office without delay;
- (iv) The student and his parents are informed in writing of the Governors' decision and of their right to appeal against the decision to the Ministry of Education, Abeokuta.

Mr. Bakare, when "taken up upon this, he immediately conceded that none of the procedures laid down was followed.

On the question of bias, learned counsel to the Applicant, Mr. Mamora, contended that two of the members of the panel (out of the five witnesses contended to testify before the

committee) who investigated the offences against the students were also witnesses to that panel. They are Messrs S. O. Oyekan and T. Odesanya. These two, are teachers of Ijebu-Ode Grammar School. This, Mr. Mamora submitted, offends against the rule of natural justice of being a judge in one's own case. Once there is the likelihood of bias, the whole trial is vitiated. In further support of this submission, Mr. Mamora contended that the Ijebu-Ode Grammar School and the Ministry of Education unilaterally withdrew some names from the list of candidates suspended and subsequently expelled.

For instance, from the list of expelled students as was published in Nigerian Tribune of 13/4/82 of applicants' summons the names of Segun Adewusi and Kolawole listed in respondents' affidavit are missing and whereas two new names Adebowale Atunrase and Ayorinde Ogunbanjo were published expelled. Taking an overall look of the whole situation, it would be seen that there was no bona fide on the part of the respondents.

Mr. Bakare, in answer expressed the view that the participation of members of staff in dual capacity (as witness and also members of the panel) may appear improper but does not suggest a miscarriage of justice.

Examining these three grounds A, B and D and the submissions of the two counsels, I shall treat them as one because, from the arguments, they are inextricably interwoven. It is my view that these student applicants were given parole, I repeat, parole opportunity to come and defend themselves because, at the heat of passion the only ready and immediate means by which the erring students could be reached was through announcements on the School Assembly as deposed to in paragraph 10 of respondents' affidavit. The applicants were not around and could therefore not avail themselves of the opportunity. This is their fault and they should blame nobody. But, two pertinent questions are: (a) were these two applicants actually tried? and, (b) as provided by Section 32(1) of the Education Law of Ogun state? I have my doubts.

*** Out of those 21 names (in fact, they were only 20 because the name Mr. Adewusi was repeated twice) sent to the Ministry for final disciplinary action by Mr. Kehinde, the principal, only eight students were actually tried and the two applicants, Olufemi Ayayi and Morufu Olaiya were not included as having been "tried".

I can now see the inconsistency referred to by Mr. Mamora. The records clearly showed that no offences were preferred and tried by the Disciplinary Committee against these two applicants. Apart from the fact that the Principal has not fulfilled the procedure for the trial contemplated in Section 32(1) find that out of the eight students who were "tried", only six names were included in the list of names of expelled students. This shows real inconsistency and it is enough to vitiate the "trial". It is also clear that the trial was not in the manner prescribed by the Law and that was why I said earlier that the applicants were only given parole opportunity to come and offer their defence; but this is just only not good enough but not in accordance with the Law.

The so-called trial cannot be sustained because a man cannot be a judge in his own cause. Both Messrs S. O. Oyekan and T. A. Odesanya are teachers in Ijebu-Ode Grammar

School and are also members of the trial committee; the main complaint of the respondents against these students is that the sum total of the students' behaviour is a disgrace to the School and it is the reputation of the School that the Principal and the two teachers as well have interest to protect and it is the involvement of each of the students that the panel was out to enquire into. Therefore there is the probability of bias in the eyes of a reasonable person.

The case of Dr. M. O. Alakija v. Medical Disciplinary Committee (1959) 4 F.S.S is relevant where it was held that although the evidence did not disclose that the Registrar actually took part in the committee's deliberations, nevertheless, his mere presence thereat offended against the principle that justice must not only be done but must also be manifestly seen to be done and that the presence of the registrar was contrary to the principle of natural justice. The position is even worse in this case because both Messrs. Oyekan and Odesanya, teachers of the complaining school not only testified but effectively took part in the recommendation to dismiss these students. The possibility of bias need not arise from personal interest but may be due merely to the capacity in which an individual is acting.

"In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then, he should not sit. And if he does sit his decision cannot stand.

There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking "The Judge was biased".

It is clear to me that the Disciplinary panel set up by the authorities of the Ijebu-Ode Grammar School did not satisfy the above tests. In the instant case, I find it difficult to accept that the two teachers will be able to divorce themselves of any prejudice particularly when they have been plagued by disrespect, acts of vandalism which can really do incalculable damages to the reputation of the school they are associated with as teachers. What is more, the Chairman of the Investigating Panel was Mr. O. O. Oduko and he is also the vice principal of the school. Also Mr. Olufowobi will naturally be disappointed that the students had fought and disgraced the school at a football match with another sister school. All these members of the panel will, in my view be biased and it will be difficult not to conclude that "the investigating panel is biased".

All these apart, Section 32(1) quoted from the Education Law of Ogun State specifically gave directions on the procedure to be adopted by the Principal in suspending students of institutions. As Mr. Bakare agreed, the procedures laid down were never followed *Ignorantia juris non excusat* (ignorance of the law excuses no man). The fact that a man does not know the law is no excuse for him to commit a crime and the court will not condone it. Failure to observe the procedure laid down, a procedure which affords two parties to a dispute the opportunity of fair hearing cannot be slightly overlooked and neither could the irregularity be condoned. What is substantial justice? I will venture to say that there are two essential elements of substantial justice and these are:

- (a) the roles of *audi alteram partem* i.e., both sides must be heard; and,
- (b) "*nemo iudex in causa sua* no man shall be judge in his own cause".

As regards the second principle, such panel, like Caesar's wife should be above suspicion. On the whole, the respondents' authority has failed to observe their own regulation which is fatal to their case. But, I may suggest that in future, incidents of serious cases of this nature should be investigated by independent persons preferably from the Ministry of Education or another sister school in order to create an atmosphere of fairness.

Ground "C" that:

"The Ijebu-Ode Grammar School authority or the Ogun State Ministry of Education has no right to terminate the contract between the applicant and the West African Examinations Council by preventing applicant from sitting for or taking part in June G.C.E. 'O' Level Examination" starting on 15/5/82.

This was taken solo. Mr. Mamora contended that neither the Ijebu-Ode Grammar School nor the Ogun State Ministry of Education had right to terminate the contract between the applicant and the W.A.E.C. by preventing them from sitting or taking part in General Certificate of Education (Ordinary Level) examinations because the applicants paid their fees personally to W.A.E.C. and have not been guilty of any examination malpractices.

I think this statement should be modified, because by Section 7 of Exhibit F i.e., in respondents' counter affidavit, the School would have been competent to take action as specified therein, which says that:

"A pupil duly entered as a candidate for the examination, must be permitted to take the examination as school candidate unless expelled by the Head of the school for gross misconduct before the examination".

If the authorities of Ijebu-Ode Grammar School had acted rightly procedurally, i.e., in accordance with the provisions of Education Law Section 32(1) or the Education Law of Ogun State, the Grammar School would have been right to prevent the two applicants from taking the examinations. Thereafter, it will be a matter between the applicants and the W.A.E.C. Nevertheless, I have stated, that the Grammar School through its authorities acted improperly, and, in any case, the respondents in paragraph 23 of their counter affidavit stated that the applicants are:

"not barred from sitting the examination but being barred from taking it as
School Candidate..."

Just a word about Morufu Olaiya. This applicant, along with other students, was convicted of a criminal offence. They all pleaded guilty and by the decision of Mr. Odubekun, Magistrate, they were each bound over to keep peace and be of good behaviour for 12 months in the sum of N200.00 and a surety in like sum. Each accused was also given, four strokes of the cane by the Police. I observe that this judgement was delivered on the 9th December, 1981.

At that stage, Morufu ought to have been dismissed from the School but the authorities of Ijebu-Ode Grammar School kept him on and suddenly woke up in May, 1982 to recommend him for dismissal when no known offences were counted against him since December, 1981 after he was convicted. He should have been left alone. I take the attitude of the respondents as a waiver of their rights.

Once the respondents have waived their rights, it is wrong and it is even against the principle of natural justice and equity, to punish a man twice for a single offence because it is clear that Morufu stands convicted of a criminal offence even though it is a misdemeanour. That is sufficient life punishment for him and others unless the conviction is quashed on appeal.

On the whole, I have no hesitation in granting all the prayers of the applicants and dismissing the respondents' objections to the effect that:

- (a) the decision to expel the applicants, Olufemi Ajayi and Morufu Olaiya as was published in the Nigerian Tribune of 13th April, 1982 at its page, 6 is hereby declared to be of no effect, and therefore null and void ;
- (b) since the applicants have completed writing their G.C.E. O Level Examinations, the School authority and/or the Ministry of Education are hereby ordered to do nothing that will jeopardize the interests of the applicants with the WAEC. The applicants are deemed to be among the official candidates of the Ijebu-Ode Grammar School and the authorities of the School, their agents, servants or representatives including those of the Ministry of Education are hereby restrained from giving effect to the decision in the aforesaid publication (Exhibit "A" in applicants affidavit).

I wish to say that the applicants success is neither due to their ingenuity or the righteousness of their case nor is it due to the weakness of the respondents own case but the case turned out to be what it is because the School authorities failed to follow the laid down procedure for suspension and/or dismissal as provided for by their own law. There is nothing for these applicants and/or their relatives to jubilate upon.

The complaints against them are heavy and disturbing. They give rise for greater concern about the future of these young generations, in view of their acts of vandalism, vulgarity, wanton destruction of properties and utter disregard and contempt for constituted

authorities. They should bow their heads in shame. Those who have control over them, who are the guardians of these students should pray for a change of heart. Today, they have succeeded simply because the law is an ass and due to no fault of its own, it permitted unconsciously the iniquities of these vandals that go under cloak of students exuberance. Today is theirs, but it will not be so all the time unless they have a change of heart and repent immediately.

3.3.2d Bible Reading in Public Schools Conflicts with the Free Exercise of Religion

*SCHOOL DISTRICT OF ABINGTON TOWNSHIP)
PENNSYLVANIA V. SCHEMP (1963)*

The Supreme Court confronted this question: Does a Law requiring that public Schools begin each day with a short reading from the Bible, but permitting parents to have their children excused, conflict with the first Amendment, that is, the freedom of religion? The Commonwealth of Pennsylvania had a law that read: At least ten verses from the Holy Bible shall be read, without comments, at the opening of each public school on each school day. Any child shall be excused from such reading upon the written request of his parent or guardian.

A Unitarian family named Schempp objects to the policy. They filed suit against this Bible reading by intercom, charging that school Bible reading violated their religious beliefs. The Commonwealth of Pennsylvania, on the other hand, argued that the exercise was not required and that the constitution had not meant to forbid religious exercises. According to the Commonwealth, the constitution simply forbade favouring one religious over another. No where, it claimed, does the constitution forbid religious and moral teachings in the public schools, provided they do not single out one religion for preference!

The issue was, did the Pennsylvania statute violate the first Amendment's establishment clause? The Supreme Court's answer was yes. The court ruled that the establishment clause had definitely been violated. Although it noted, the place of religion in our society is an exalted one, the court majority held that in the relationship, between man and religion, the state is firmly committed to a position of neutrality.

3.3.2e Official Prayer adopted by a School District to be Recited by Students of Public Schools at the beginning of each day is an encroachment of Freedom of Religion

ENGEL v.. VITALE

SUPREME COURT, 370 U.S. 421 (1961) U.S.

The State Board of Regents is a government agency created by the New York Constitution and to which the New York legislature had granted broad supervisory,

executive, and legislative powers over the State's public school system. The regents composed the following prayer, which they recommended and published as a part of their Statement on Moral and Spiritual Training in the Schools: Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

The Board of Education of Union Free School District, No. 9, New Hyde Park, New York, acting in its official capacity under the state law, thereafter, directed the school district's Principal to cause the prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day. Shortly after the practice of reciting the prayer was adopted by the school district, the parents of ten pupils brought this action against it in New York courts, insisting that the use of the official prayer was contrary to the beliefs, religions, and religious practices of themselves and their children. Specifically, the parents challenged the constitutionality of both the state law authorizing the school district to direct the use of the prayer in public schools and the school district's regulation ordering the recitation of the prayer on the ground that these actions of official government agencies violate the part of the First Amendment of the U.S. Constitution that commands that Congress shall make no law respecting the establishment of religion. The state courts of New York ruled that neither the statute nor regulation was unconstitutional and the U.S. Supreme Court reviewed those rulings.

Black Justice *** We think that by using its public school system to encourage recitation of the Regent's prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's programme of daily classroom invocation of God's blessing as prescribed in the Regent's prayer is a religious activity. It is a solemn avowal, a divine faith and supplication among other things for the blessings of the Almighty. ***

The practitioners contend, among other things, that the state laws requiring or permitting use of the Regent's prayer must be struck out as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental programme to further religious beliefs. For this reason, petitioners argue, the State's use of the Regent's prayer in its public school system breaches the constitutional wall of separation between church and State. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is not part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious programme carried on by government (emphasis added).

(Here the court exhaustively reviewed the history of the establishment of the Church of England in 1548, the struggles that ensued in England as a result of this action, the establishment of various official religions by the colonial governments in this country, and the bitter resistance that such religions met from minority religious groups. The court then continued):

There is no doubt that New York's state prayer programme officially establishes the religious beliefs embodied in the Regent's prayer. The respondents' argument to the contrary, which is largely based upon the contention that the Regent's prayer is non-denominational and the fact that the programmes modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the programme's constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the Fourteenth Amendment.

*** The first and most immediate purpose (of the Fourteenth Amendment) rested on the belief that a union of government and religion tends to destroy government and to degrade religion. (Emphasis added).

*** The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with the particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its unhallowed perversion by a civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of historical fact that governmentally established religions and religious persecutions go hand in hand (Emphasis added). The Founders knew that only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel all Englishmen to attend those services and to make it a criminal offence to conduct or attend religious gatherings of any other kind a law which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding unlawful (religious) meetings *** to the great disturbance and distraction of the good subjects of this Kingdom. ***

It has been argued that to apply the Constitution in such a way as to prohibit state law respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from religion. And perhaps it is not too much to say that since the beginning of that history, many people have devoutly believed that more things are wrought by prayer than this world dreams of. ***It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance (emphasis added).

It is true that New York's establishment of its Regent's prayers as an officially approved religious doctrine of that State does not amount to a total establishment of one particular religious sect to the exclusion of all others; that, the governmental endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago. To those who may subscribe to the view that because the Regents' official prayer is so brief and general, there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

It is proper to take alarm at the first experiment on our liberties. ***Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

The judgement of the Court of Appeal of New York is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Self Assessment Exercise 2.2:

What is corporal punishment?

4.0 CONCLUSION

The school has the responsibility to ensure that there is order and decorum in the school. It is only under such a situation that teaching and learning can take place. The students have different backgrounds and the school has rules and regulations in place to check the excesses of deviant students. In doing this however, the rights of the child should not be infringed upon except where it is proved that such rights interfere with the proper education of the child.

5.0 SUMMARY

In this unit, we reminded ourselves of the fundamental rights of students and tried to look at some punishments in schools violating them. Parental rights and obligation were also considered.

The concept of corporal punishment, guiding principles for administering punishments and the types of punishment were discussed. Cited case laws and Education Laws were reviewed to further enlighten us on the need for caution in meting out punishment.

6.0 TUTOR MARKED ASSIGNMENT

Briefly explain the following other punishments:

- (a) Detention
- (b) Suppression

- (c) Expulsion
- (d) Academic rustication.

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UNIT 3: LEGAL ISSUES IN TEACHERS CONTRACT/ EMPLOYMENT

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1.0 INTRODUCTION

The employment of teachers into public institutions is based on the law of contract, a contract between the teacher and the appropriate organisation. The basic law related to a binding contract is applicable to those made by Schools Boards. A knowledge of some of the basic concepts of the law of contract is therefore necessary in understanding teachers contract employment and termination or revocation of such contracts.

Even when teachers have been employed, their rights, privileges and benefits ought to be protected by the government and the law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define the term contract;
- explain the elements requisite to the validity of all contracts;
- enumerate the rules to be observed with regard to offer and acceptance;
- discuss the ways a teaching offer may be terminated;
- explain some terms associated with employment: (a) probation; (b) tenure; (c) offeror, and (d) offeree.

3.0 MAIN CONTENT

3.1 Teachers Employment

Contract is more than a mere agreement or promises between persons and groups, or between a person and a body. It is a promise or set of promises creating a legal duty of performance. The Funk and Wagnall New Encyclopaedia describes the term as an agreement that creates an obligation binding upon the parties thereto (p. 7). The *Webster New Twentieth Century Dictionary of the English Language* (1980, p. 396) defines it as an agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act and each acquires a right to what the other promises (p. 396).

In legal terms, contract may be defined simply and comprehensively as a legally binding agreement between at least two parties, imposing rights and obligations on the parties which will be enforced by the courts. Thus, some contracts may not be enforceable in a court of law. In other words, while every contract is based on an agreement of the parties, not every agreement between parties is necessarily a contract (Frank, 1975, p. 80). Most contracts can be made by way (orally, in writing or evidence of positive conduct) or in a particular form, such as under seal, in writing or evidence by writing.

3.1.1 Requisite to the Validity of all Contracts

There are a number of elements requisite to the validity of all contracts. Reutter and Hamilton (1976) have identified five essential requirements that must be fulfilled for a contract to be valid. They are:

- (1) Mutual assent (i.e., offer and acceptance);
- (2) Consideration;
- (3) Legally competent parties;
- (4) Subject matter not prohibited by law;
- (5) Agreement in form required by law.

Mutual Assent means that there must be a meeting of the minds, i.e., the parties must have reached or deemed to have reached an agreement. One party (the employer) must have made a binding offer and the offer must have been accepted by the other party concerned (the employee). The parties must agree as to the subject covered, the conditions of service, including remunerations and other benefits, time of performance and other details.

Consideration refers to the price which each side pays and the advantages or benefits each side enjoys for the promise or performance of the other. Usually, consideration is something of value—money or the equivalent in kind (merchandise or services). Promises to make gifts or to perform gratuitous services are not contracts because they are not supported by consideration (Ibid, p.318).

Competency of Parties refers to the fact that the parties to the contract must possess legal capacity to enter into the contractual obligations. Thus, a Schools Board has legal power to enter into valid Contract in areas it has been so legally empowered by the instrumentalities of the state that created it, and the other party must be legally competent to bind himself or herself or corporation in such an agreement. Contracts beyond the power of a Schools Board are ultra vires and are not enforceable. Furthermore, no agreement can result in an enforceable contract if the execution of its terms is prohibited by law. *Finally, the contract must be made by the partners in the particular form (e.g., written form) required by law.*

It is important to note that the absence of one or more of these elements does not in every case destroy the validity of the contract; in some cases the element may be so fundamental that its absence will render the contract void, while in others the absence may merely make the contract voidable (Major, 1978, p. 14). Similarly, Frank (1975, p. 84) points out that in any contract where one of the essential features of a valid contract is missing, it may either be void, voidable or unenforceable.

A contract, according to Frank, is said to be void if it lacks one of the essential ingredients, so that in reality it does not exist at all. A contract which is voidable is one that is valid to start with but which may be brought to an end (or violated) at the option of one of the parties. If that party exercises this option, the contract will cease to be operative from that time. It is unenforceable if it is perfectly valid in all respects, except for the fact that it cannot be enforced by an action in law. This will be the case if a party wishing to enforce it lacks some particular type of evidence (e.g., evidence in writing) which is necessary for the enforcement of this type of contract.

3.1.2 Offer and Acceptance of Contract

The definite rules to be observed with regard to offer and acceptance have been succinctly summarized by Westwood (1975, p. 31). They are:

Offer

1. The offer (the statement of a willingness to be bound on certain specified terms) may be made either to a definite person (a specific offer) or to individuals generally (general offer), but there is no contract until it is accepted. In order to conclude a contract, acceptance must be by the person specified, or where the offer is addressed to a group of people, by any member of the group, or where the offer is general (the world at large), by any member of the public to whom the offer is made and who has knowledge of the offer. An offer of a reward to the finder of some lost property would fall into the third category. The offer must be communicated to the offeree or to his agent.
2. The offeror may attach any conditions and prescribe any terms of acceptance, but they must be notified to the offeree.

3. The offeror cannot bind the offeree unless there is some positive form of assent on his part. In other words, the conditions will be binding on the offeree if he accepts the offer.
4. The offer may be revoked at any time before acceptance.
5. Revocation must be communicated before acceptance. That is, if an offer is revoked by an offeror after it has been accepted by an offeree, even before the latter assumes duty, the offeror can be sued for a breach of contract.
6. The offer must not be vague, and must be such that legal consequences may ensue.

Acceptance

7. Acceptance must be unconditional. Frank (1975) points out that where the offeror has laid down how the offer is to be accepted, the acceptance must comply with the offeror's requirements, otherwise it will not be valid. A conditional acceptance by the offeree amounts in law to a rejection of the offer, coupled with the making of a counter offer.
8. The offer can be accepted only by the person to whom it is made (if made to a particular person) and acceptance must be communicated, by words or positive conduct. Offers made by Schools Boards to potential teachers are often specific offers.
9. Acceptance must be within the time stipulated or within a reasonable time, if no time limit is imposed.
10. Acceptance cannot be revoked.

3.1.3 Termination of Offer

Redmond and his colleagues (1979, p. 91) have provided us with a number of ways by which an offer becomes terminated. An offer, the authors stated, lapses:

- (a) If either offeror or offeree dies before acceptance.
- (b) If it is not accepted within
 - (i) the specified time (if any); or
 - (ii) a reasonable time, if none is specified. What is a reasonable time depends on the facts. Five months has been held to be an unreasonable delay in accepting an offer.
- (c) If the offeree does not make a valid acceptance or conditional acceptance.
- (d) If the offer is subject to fulfillment of a condition and the condition is not fulfilled.

3.1.4 Probationary Period and Tenure

Tenure laws are referred to as continuing contract laws or pensionable appointment as in the contract of Public Service in Nigeria. As Remmiein and Ware (1970) rightly pointed out, practically all tenure laws or pensionable appointments require the staff newly appointed to pass through a probationary period before acquiring tenure status. In many school systems in Nigeria, the probationary period is two years. In some school systems the question of a period of probation is silent, meaning that a qualified teacher once employed is given permanent appointment without being subjected to the requirements of a probationary period.

In school systems, where the probationary requirement exists, teachers acquire tenure status at the end of two year probationary period, usually by a letter of confirmation from the appointing body following a satisfactory report from the head of school where the teacher teaches. It is crucial that a teacher should make all efforts to get his confirmation of appointment letter from the employing schools board at the end of his/her probationary period to avoid any complications, legal or otherwise, in his records in future.

It is important to note that it is fundamental in education law that tenure cannot be granted by negligence of the administration concerned or by default. Tenure can be granted only by actual or implied policy properly administered by the employing body concerned, except it can be shown that tenure has been obtained without the actual confirmation papers because it has never been the practice of the employing body to send such letters in the past to those who have completed probationary period and are yet presently considered as being on the pensionable appointment of the School Management Board.

The probationary period is a very important trial period for the teacher newly employed. He/she has to do his/her work diligently and be dedicated to his/her assigned responsibilities because he/she can have his/her appointment terminated at the end of the period or even during this period without any formal hearing and without stating reasons for the dismissal.

However, after a teacher has acquired tenure status, termination or dismissal is legal only for certain Causes and after certain procedures that will be discussed later in the course material. Thus a teacher on tenure or permanent or confirmed appointment "enjoys certain privileges and immunities denied to those on probation or temporary appointment" (Nwagwu, 1987, p. 47; Tenure laws, for example protect tenured teachers from unjust demotion or reduction of salary as well as dismissal. The practice whereby a State Commissioner of Education who is visiting a school instantly proclaims the reduction in rank of a headmaster or principal to a vice or a classroom teacher for one reason or another because of his observation during his visit, without following the formally stipulated disciplinary procedure may be considered *ultra vires*. This is because if the laid down procedure is not followed, actions resulting therefrom could be declared null and void by the law courts.

Tenure does not however interfere with the right of schools boards to transfer teachers, since tenure does not guarantee continuance in the same position (Remmlein and Ware, 1972). However, such transfer must not be arbitrary, vindictive or punitive because a teacher exercises his constitutional right of peaceful association or assembly right to freedom of speech and the press, etc. (See *Lt. Col. E. O. Omoniyi v. Central School, Akure and 3 Others*).

3.1.5 Resignation

After a teacher has been employed, he is free to resign his appointment without giving to his employer his reasons for resigning, but such a resignation must conform to the stipulated conditions in the contract of employment. Some Schools Boards may require the teacher to give notice of his/her intention to withdraw his/her services with the board for at least one, two or up to three months depending on the status of the teacher concerned. In some cases, the conditions of employment may stipulate that a teacher's resignation can only become effective at the end of a term or end of the academic session. It may also include a penalty clause to the effect that if a teacher did not resign at the appropriate time in the academic session, he would be required to pay to the schools board a stated sum of money or certain month's salary in lieu of notice, subject to the approval of the Schools Board. That is, a contract can be terminated by mutual consent, without any claims on either side- teacher or schools board.

In Nigeria, most teachers do not honour this condition of their contract, particularly where they had put in less than ten years and therefore not entitled to any gratuity, except where the teacher wants to transfer his accumulated years of service to his new employer. In most cases; the board is never notified of the intention to quit the job. They just abandon their place of work. In such cases, rarely, if ever, has a school board sued a teacher for the breach of contract. This one-way procedure has been succinctly explained by Remmlein and Ware (1972). They wrote:

The one way procedure is not a matter of legal rights but mere expediency. Damages from the school board are measurable by the contract salary of the teacher; if the schools board sued a teacher, however, there would be difficulty in measuring the damages the school district sustained, Some teachers are harder to replace than others, and much depends upon the current labour market (p,71).

While it could be argued that because schools boards had no practical redress at law when teachers abandoned their contracts hence they include the penalty clause mentioned above, it must be pointed out that a teacher who abandons his/her job or resigns in an improper manner can have his/her appointment terminated or be dismissed for mally, by the schools board, and this latter action is a very severe punishment.

When a teacher's appointment is terminated, he may never get his entitlements (such as gratuity, transfer of service etc., or be employed again into the teaching profession, at least in that state and when he is dismissed he may never be employed by any schools board within the country, except by an unsuspecting board. But once it comes to the

knowledge of the employing body, that teacher will again be immediately shown the way out with ignominy.

3.1.6 Rights, Privileges and Benefits of Teachers

Teachers as citizens of the country enjoy both constitutional rights and benefits provided by law as employees of the Schools Board, like other civil servants. The fundamental rights provided for in Chapter IV of the 1999 Constitution can be referred to in Module 2, Unit 2. Let us refer to these Fundamental Rights.

Closely related to the issue of constitutional rights is that of privileges and benefits rights or advantages available to a teacher by virtue of his or her belonging to the school system as a civil servant and an employee of the schools board. Unlike the fundamental rights which are automatic, privileges (at least some) are to a high degree, based on discretion, that is, they are not automatic e.g. study leave, sabbatical leave, staff development etc.). Most Handbooks of Schools Administration or Condition of Service for Teachers embody these privileges and benefits.

Handbook on the Federal Ministry of Education published in 1990 by the Personnel Management Department of the Federal Ministry of Education, Lagos, contains the current and up-to-date list of these entitlements. Peretomode, (1992). They include the following

1. Salary Advance: An officer on first appointment may, on application, receive an advance not exceeding one month's salary.
2. Car Loan or Motor Vehicle Refurbishing Loan: The loan to be given for this purpose is usually repayable over a specified period.
3. Kilometer Allowance: This allowance is payable when an officer undertakes an official tour outside his station in his own car. The rate of this allowance is usually pre-determined.
4. Travelling Allowance: This is allowance payable in lieu of hotel bills for each night an officer is away from his station. The rates of allowance are reviewed from time to time.

NB: State Civil Service allowance rates are slightly lower than those of the federal civil service in travelling, transport, leave and disturbance allowances.

5. Transport Allowance: Depending on salary grade level.
6. Annual Leave and Leave Grant: Annual leave grant varies with salary grade levels. The maximum vacation leave entitlements for all public employees in Nigeria are usually specified

7. Housing Loans: This may be granted to qualified officers at the rate of an officer's eight years salary subject to a maximum of N80,000.00.
8. House Rent Allowance: This varies depending on salary grade levels.
9. Promotion: All teachers who fall within the field of selection or who are eligible for promotion must be considered except those who are under disciplinary action. The minimum number of years a teacher must spend in a post before being considered to come within the field of selection for promotion is not uniform through the states of the country. It also varies according to the level.
10. Casual Leave: Teachers may be granted, at the discretion of the Head of their school, occasional permission to absent themselves from duty for a few days (not more than seven days in any leave year) without loss of salary, provided that officer so permitted to leave his station on such leave does so at his own expense.
11. Examination Leave: A head of a school may allow a teacher a period of leave for the purpose of taking an examination. The period should just be short enough to allow the employee to reach the appointed place, sit the examination and return to his station.
12. Leave for Cultural and Sporting Events: A staff or teacher may be granted leave by his head of school for the purpose of taking part in any cultural/sporting event and such leave is determined as follows:
 - (i) the number of days required for the actual activity;
 - (ii) number of days required for travelling to and from the place arranged for the event;
 - (iii) any number of days in excess of (i) and (ii) above, which are certified as necessary by the appropriate cultural/sports council.

An officer granted this kind of leave will not be eligible for transport at government expense, except the organizing body so stipulates.

13. Sick Leave: The maximum sick leave with any pay which can be allowed an officer, who is not hospitalized during any period of twelve months, is six weeks. Where such an officer has been absent from duty on grounds of ill-health for an aggregate period in excess of six weeks within twelve calendar months, he is made to appear before a Medical Board to ascertain whether he will be invalidated.

Any period of absence on grounds of ill-health in excess of the aggregate period mentioned above, will be without pay and the period will not count for purposes of increment or pension.

An officer incapacitated as a result of injury in the course of his official duty is entitled to his full salary until he is permanently invalidated if need be.

Sick leave with pay up to three months in the first instance may be allowed on the certificate of a Government Medical Officer to an officer who is hospitalized. If at the end of that period the officer is still hospitalized, he may have to be examined by a Medical Board to ascertain whether he should be permanently invalidated or allowed further sick leave.

14. Maternity Leave: This is granted to pregnant women. It is taken at a stretch counting from the day the female teacher or staff commences the leave. However, a medical certificate showing the prospective date of confinement must be presented not less than three months before that date.

All female officers (married or single) who are pregnant are entitled to maternity leave for the duration of twelve weeks with full pay. The affected officer's annual leave for the year in question is regarded as part of her maternity leave but where the annual leave has already been consumed before the grant of maternity leave, part of the maternity leave equal to the annual leave already enjoyed will carry no pay.

15. Study Leave: for further studies may be granted to confirmed teachers by the Schools Management Board. This may be with or without pay depending on the policy and needs of the state. When a study leave is granted with pay, however, the teacher is bonded to the employer for a specific number of years.

16. Medical Care: Government medical facilities are provided free to all public officers and their families. An officer, such as a teacher, who prefers to be treated by a private practitioner instead of availing himself of government medical facilities must himself bear all expenses incurred through such treatment.

However, in certain cases, an officer or a member of his family may avail himself of the services of a private medical practitioner (e.g., where there is no public medical officer), be responsible in the first instance for the fees payable and after on get a refund on the advice of Government Chief Medical Officer.

17. Salary Increments: This is not automatic but teachers who have worked creditably well within the year are entitled to annual salary increment. Annual increment varies according to salary grade level.

18. Compulsory and Voluntary Retirement: The compulsory retirement age is sixty years or thirty-five years of service, whichever is earlier. When an officer stays beyond the date he attains 60 years or the date his services aggregate to 35 years, all emoluments earned thereafter is then deducted from the officer's retirement benefit. The onus is on a retiring officer to give six months notice of his intention to retire from the service.

An officer can retire voluntarily from the service provided he has put in at least ten years of service. He will be entitled to his gratuity and pension.

3.1.7 Cited Case Laws by Peretomode, 1992

(1) Fair Hearing Hostility of Judge toward Party Refusal of a Principal to go on Transfer Dismissal

Lt. Col. E. O. Omoniyi

Vs

1. *Central School Board, Akure*
2. *J. A. Ogundele*
3. *W. O. Akintola*
4. *D. A. Ogidan*

Court of Appeal (Benin Division) CA/B/144/84

Michael Ekundayo Ogundare, J.C.A. (Presided)

Dahiru Mustapher, J.C.A.

Emmanuel Takon Ndoma-Egba, J.C.A. (Read the Lead Judgement)

Tuesday, 31st May,

1988

ISSUE: *Whether the appellant was given a fair hearing as guaranteed under Section 33 (1) of the 1979 Constitution taking into consideration the conduct of the proceedings as a whole.*

FACTS: *The Appellant (Plaintiff at the Court of trial) was on 23/2/76 employed as teacher by the defunct Western State Government. Upon the creation of Ondo State, his service was transferred to the said Ondo State on 1/9/76 and was assigned to St. Augustine's Comprehensive High School, Oye-Ekiti as principal. Owing to some disagreement with some sectors of Oyo Community, petitions were addressed to the 1st Respondent (1st Defendant at the Court of Trial).*

On 21/12/77, a letter was written by the 1st Respondent to the appellant transferring him to Aquinas College, Akure with effect from 1/1/78. The Appellant refused posting and after efforts to persuade him to resume at his new posting failed, the appellant was dismissed vide a letter dated 10/1/78.

Two months later, the Appellant took out a writ of summons questioning the basis or validity of his dismissal. The writ of summons and the statement of claim were signed and filed by a legal practitioner, but the Appellant later personally took over the prosecution of the case.

During trial, the Appellant personally, examined and cross-examined the witnesses. This lasted several hours. Several instances of frictions between the Appellant, the Respondents counsel and the Trial Judge were recorded. On one of the occasions, the

Appellant asked for adjournment to enable him continue the cross-examinations of a witness since the time then was about 4.15 p.m. This application for adjournment was refused. On being refused, Appellant insisted on having an hour's rest, as according to him, he was tired of standing up. This application was also refused. He then refused to go on with the cross-examination. The trial judge heard further evidence from witnesses called by the Defence.

On another occasion, the appellant applied to be allowed to have a friend in court to take notes for him. The trial judge intimated him that such practice was not allowed. The Appellant insisted on having somebody to take down notes because, according to him, Order 35 Rule 10 of the High Court (Civil Procedure) Rules, Ondo State permits him to have a friend in Court. This application was also refused.

Consequent on the above and other events, the appellant accused the trial Judge of being biased against him. The Trial Judge commented thus:

The Plaintiff says that the Court is biased against him because the Court has refused to allow him pursue his vexatious and irrelevant cross-examination of the witnesses. The Plaintiff has insulted and shown so much disrespect to the Court that it is not in the interest of the Bench that he should be allowed to go away with it as he has been doing. However, I do not want to commit him for contempt of Court at this stage but I have no alternative other than to remand him in prison custody until Monday, 31/3/80.

The Trial Judge, amongst other things, said the case ought to have been disposed of within 3 days but that the Appellant who was not represented by a Counsel spent 14 days in the witness box; that realizing he was not a legal practitioner he was given every cooperation by the Court and the opposing Counsel; that every indulgence granted to the appellant was turned into a right by him and that if he was not pampered like a baby, he became hysterical; that he insulted the court and every other person; that he behaved in a manner I had never seen in a Court of Law even when trying cases involving insane criminals; that on several occasions, he attempted to turn the Court into a boxing arena charging at witnesses with clenched fists.

Particularly, the learned Judge further said Whenever his imagination ran riot, and that was quite often he found himself incapable of distinguishing between fact and the fiction emanating from his fertile imagination. He is a bundle of evil genius, mischief maker and a brazen liar, full of theatrical display of peevish temper like a baby. The plaintiff, an extremely mischievous character, tried as much as he could to rope everybody into a web.

After hearing evidence, the trial Judge dismissed the claims of the Appellant. Appellant appealed to the Court of Appeal on the grounds, inter alia, that the trial Judge erred in law in conducting the proceeding in the suit in such a manner as deprived him of his fundamental right to fair hearing in that:

- (a) he displayed personal hostility to the appellant by remanding him in custody for 3 days without being guilty of contempt;
- (b) the appellant was prevented from seeking the help of anyone in Court to help him to take notes of the proceedings;
- (c) the appellant was refused an hour's rest during the cross-examinations after an adjournment had already been refused on the ground that he had already taken too long a time in his cross-examination.

Held: (Unanimously Allowing the Appeal and ordering a retrial),

Fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. No difference exists between the two. 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 (Muhammed v. Kano Native Authority (1968) 1 ALL N.L.R. 424 at 426 applied).

*** In the instant case, the irresistible inference one can draw from the trial as disclosed on the printed record is that the appellant has not had a fair trial. This is the impression a reasonable person sitting in court would have had at the end of the trial.

*** Once the Appeal Court holds that an appellant did not receive a fair hearing at the court of trial, the appropriate consequential order which it should make is one of re-trial.

A retrial was ordered.

The issues that would have to be resolved at the trial were:

1. Whether the respondents are competent to transfer the appellant without giving reasons thereof. (Was the transfer of the appellant ill-motivated or biased?)
2. Whether the dismissal of the appellant is in compliance with the provisions of the Teachers Service Manual, 1974.

**(2) Claims for Damages for Wrongful Dismissal
Payment of Arrears of Salaries Contract Law**

JOSEPH M. OKOROAFOR Plaintiff

Vs

- 1. IMO STATE EDUCATION BOARD**
- 2. MRS. C. C. NWOSU, Principal Girls Defendants**
Secondary School, Ogbaku

**High Court of Imo State, The Owerri Judicial Division Holden at Owerri
(Nwogu, E.I.N.) 26/287 Suit No. How/265/82.**

FACTS: *The first defendant is a statutory body charged with the responsibility for secondary schools in Imo State. The second defendant is the Principal of the Girls Secondary School, Ogbaku, where the plaintiff worked as a casual labourer. The plaintiff's case as presented to the court may be stated as follows:*

Sometimes in January 1981, the plaintiff was informed that the Principal of the school, 2nd defendant, needed men to work in the newly opened school (the Ogbaku Girls Secondary School).

The plaintiff and other applicants were referred to a domestic organisation known as the Ogbaku Projects Interim Committee who would select and recommend the proper persons to the second defendant, who would in turn make formal presentation of the successful applicants to the first defendant, Imo State Education Board, for possible employment.

The Ogbaku Projects Interim Committee eventually selected eight persons including the plaintiff. They started work in the school premises on 16/2/81. They were not issued with any employment paper. The workers were made to sign attendance register to show the dates they worked.

The plaintiff was stopped on 30/7/82 after he had worked for a period of 18 months. The second defendant promised the plaintiff that he would be paid when Government gets money.

On 30/7/82, the second defendant summoned the eight applicants to her office and gave out employment papers to five of the men. Three of them, including the plaintiff, were not favoured. The second defendant there and then informed the plaintiff that his appointment had been terminated. On 8/8/82, the plaintiff was paid for seven months (at the rate of N147.40 per month) instead of for 18 months.

The plaintiff then brought this action for:

- (a) Eleven months pay at a rate of N147.64 = N1,624.04
- (b) One month's pay in lieu of notice = N 147.64
- (c) and General damages for wrongful dismissal = N1,000.00

The second defendant (the Principal) testified that when the first defendant requested for names of workers in the premises, she submitted the names of the eight persons who were already helping in the compound. After submitting the names, some of the villagers vehemently protested and sometimes physically barricaded the entrance of the school compound.

Their main complaint was that they were the land owners and should be employed instead of some of the people whose names were submitted to the first defendant.

At the heat of the problem, the second defendant reported the matter to the first defendant who invited both sides to the dispute. The first defendant eventually gave appointment papers to five out of the eight men who had worked in the compound and to three new ones. The plaintiff was not favoured. She denied employing the plaintiff and said she has no power to do so. She did not wrongfully dismiss the plaintiff.

RULING: *Before the Judge decided whether the plaintiff is entitled to anything at all, he asked himself a question was the plaintiff a servant of the defendant at the particular time in question? He said Yes, basing his answer on the definition of servant as a person employed by another to do work for him on the terms that he, the servant, is to be subject to the control and directions of his employer in respect of the manner in which his work is to be done (p. 5).*

In the above circumstance, the judge held that the plaintiff is entitled to his unpaid wages (N1,622.50). A servant, he maintained, must be paid his wages for services rendered.

For the other arms of the plaintiff's claims to succeed, the judge examined the terms of his contract with the first defendant. The judge opined that, for a contract to be valid in law there must have been a definite offer by the offeror and a definite acceptance by the offeree.

In the case before the court, nothing which could be described as a service agreement was tendered. In such circumstances, the judge does not see any basis for allowing the claim for one month's salary in lieu of notice, for wrong dismissal and for salary from August 1982 until judgement is delivered.

In the final analysis, the plaintiff is awarded the sum of N1,622.50k being wages due and unpaid to the plaintiff for 11 months at the rate of N147.50k per month, subject to deductible income tax, with N50.00 costs.

ORDER: *There will be judgement for the plaintiff against the first defendant in the sum of N1,622.50k, minus income tax payable therefrom, with N50.00 costs.*

(3) Civil Procedure Juristic Person What happens if a Party to an action is not a Legal Person How an unincorporated Association can be given Legal Personality whether the Board of Governors of a School is a Juristic Person

***THE BOARD OF GOVERNORS, OLOFIN
ANGLICAN GRAMMAR SCHOOL, AKURE***

v.

S. A. O. AINA AND OTHERS

**(High Court of Ondo State, Akure Judicial Division, Ojo, J., 13th July, 1976)
Suit No. AK/31/72.**

FACTS: *The first defendant was a student sponsored by the plaintiff for Bachelor of Science degree course/programme at the University of Ibadan between 1964 and 1967. Under the agreement, the first defendant was obligated to serve the plaintiff for a period of two years upon the completion of his course. In pursuance of the said agreement, the plaintiff spent a sum of N1,178 on the first defendant during the course of his studies. On completion of his course on June, 1967, the first defendant refused to serve the plaintiff and the defendant refused jointly and severally to pay the sum of N1,178 when demanded by the plaintiff.*

In his statement of defence, the first defendant denied the claim and contended that the plaintiff was not a legal body capable of suing the defendants.

HELD:

1. That a party to an action must be a person known to law, or an entity with its own legal personality;
 2. That if it is shown that a party to an action is not a legal person, that person must be struck out of the suit, and if such a person is the plaintiff, the action should be struck out;
 3. That an unincorporated association is not a legal person and therefore cannot sue or be sued unless it is authorized by express or implied statutory provisions; and
 4. That the Board of Governors of a school is not a natural person, it can only sue if it is authorized by statute either expressly or impliedly.
- The case was struck out

Self Assessment Exercise 3.1:

What is contract? Explain the statement that all contracts are agreements, but not all agreements are contracts.

3.2 Duties, Obligations and Termination of Contracts

Once a valid contract has been made, there are certain rights, duties and obligations on the side of both parties, but these depend on the terms of the contract. Where no express terms have been agreed upon, Frank (1975, p. 121) has identified a number of terms that will apply. These are that:

(A) The Servant must

1. render his services personally and not by a substitute;

2. exercise reasonable care in the execution of the employer's orders and indemnify the employer if causes any damage to his interests through his negligence;
3. maintain loyalty to his employer by not disclosing confidential information acquired during his employment;
4. account to the employer for anything received on the employer's behalf;
5. carry out all lawful orders given by the employer.

(B) The employer on his part must

1. pay the servant the agreed wage/salary, and if no wage has been agreed but the service was not intended to be an unpaid one, a reasonable wage;
2. indemnify the servant against any liabilities which he may have assumed on the employer's behalf in the course of his employment (vicarious liability);
3. make reasonable provision for the employee's safety by ensuring that the method of work to be followed, the equipment to be used, and the premises on which work is permanently conducted are reasonably safe for their purposes.

(C) The employer may terminate the contract of service in any of the following ways:

1. He may give notice. The period of notice is that agreed upon, and if none has been agreed, it will have to be that which is customary for the employee's occupation. In the absence of any custom, reasonable notice must be given.
2. He may give the employee his wages for the period in lieu of notice and make the employee leave at once.
3. He may dismiss the employee summarily if the employee has been guilty of something which constitutes a total breach of his contract.

(D) The employee may terminate his contract by giving notice on the same terms as given in (1) above in Section C. Under the Contract of Employment Acts the minimum notice which the employee has to give ranges from one or few weeks to three months, depending on the level of the member of staff and the length of his employment. He may also leave his employment summarily if the employer has been guilty of a total breach of contract. He may not leave his employment summarily by paying his own wages in lieu of notice.

A number of decided court cases cited by Peretomode (1992) in Nigeria relating to the school/education system will make more explicit the requisite elements of a valid contract and other principles discussed in this unit.

In the case of *Mrs. Onwuachi v. The American International School, Lagos* (1975), the defendant prematurely terminated the contract of the teaching employment of the plaintiff before the due date of performance, even after the contract had been signed and accepted by the plaintiff.

The trial judge decided the case in favour of the plaintiff and held that the plaintiff was entitled to recover, by way of damages an amount of money which could have been her earnings had the breach of contract never been committed. The judge pointed out that it had been an established law that revocation of a contract is possible and effective at any time before acceptance, because up to this moment, no legal obligation exists. But in this present case, the plaintiff, Mrs. Onwuachi, successfully proved all the elements of a valid contract, including assent and consideration, and the judge decided the case in her favour. She was awarded costs.

In *E.A. Oyediji v. J.O. Fasheun* (1976), the plaintiff, Oyediji, who was employed as principal of Ebenezer Grammar School for a period of three years (from 1st April, 1971), had his appointment terminated on 10th July, 1973, by the defendant who is the proprietor of the school on the ground that he (the plaintiff) left the school without permission.

The plaintiff then brought action against the defendant for special and general damages for wrongful termination of appointment from the defendant's service. The defendant submitted that the contract between him and the plaintiff was void because there was no evidence to show that the plaintiff accepted the offer of employment from the defendant.

After reviewing the facts of the case, the judge dismissed the defendant's case and held that where no particular mode of acceptance of a contract is expressly required, performance of a condition in the contract is evidence of acceptance, and there was judgement for the plaintiff.

In another illustrative case, *Joseph M. Okoroafor v. The Imo State Education Board and Mrs. C.C. Nwosu, Principal, Girls Secondary School, Ogbaku*, the plaintiff worked as a casual labourer in the defendant's school.

The plaintiff and other applicants were referred to and selected by a domestic organisation and recommended to the principal who would in turn make formal presentation of the successful applicants to the 1st defendant, the Imo State Schools Board, for possible employment.

After working for a period of eighteen months, he was stopped as the Schools Board gave employment papers to five of the men. Three of them, including the plaintiff, were not successful.

The plaintiff then brought an action against the defendant for:

- (a) eleven months pay;
- (b) one month's pay in lieu of notice, and

(c) general damages for wrongful dismissal.

In his ruling, amongst others, the judge opined that for a contract to be valid in law, there must have been a definite offer by the offeror and a definite acceptance by the offeree. In the case before the court, nothing which could be described as a service agreement was tendered.

In such circumstances, the judge does not see any basis for allowing of claim for one month's pay in lieu of notice, for wrongful dismissal and for salary until judgement is delivered.

Finally, in the case between Kpebimoh and the Board of Governors, Western Ijaw Teachers Training College (1969), the plaintiff who got a contract for the building of one dormitory block brought an action against the defendants to recover balance of payment for work done under the building contract and damages for breach of contract.

The plaintiff agreed to erect and furnish a building for the defendants at an agreed price. When it appeared after the work had begun that the price was inadequate for what the defendants required, they agreed to increase it by an amount to be determined, and the plaintiff went on with the work and incurred expenditure exceeding the agreed price.

The new price was never agreed between the parties and the defendants refused to pay the amount expended by the plaintiff in excess of the agreed price and withheld the report of an expert who had valued the work for them. The plaintiff did not complete the contract, and the defendants occupied the building, paid the plaintiff the agreed price, and terminated the contract.

The plaintiff instituted the present proceeding claiming a balance of payment for the value of work done for the defendants at their request, and damages for breach of the building agreement.

The plaintiff contended that he was entitled to recover his expenditure on the uncompleted work and the profit he would have made had the work been completed. The defendants contended that the plaintiff could not recover anything for the incomplete performance of the contract, which was an entire contract.

The presiding Judge, OVIE-WHISKY, held that an aggrieved contractor is entitled to any balance of payment for the work he has been prevented from doing. Judgement was entered in favour of the plaintiff against the defendant for the sum of £1,415, being special and general damages for breach of a building contract.

(1) Contract of Employment Whether Unwritten Acceptance of Offer voids the Contract Wrongful Termination of a Principal's Employment

E. A. OYEDEJI Vs. J. O. FASHEUN
High Court of Ogun State, Abeokuta Judicial Division
(Odunsi, J., 31st March, 1976), Suit No. AB/90/73.

SOURCE: *The University of Ile-Ife Law Reports Volume 6 Part 1, pp. 134 – 141.*

FACTS: *The plaintiff was employed as the Principal of Ebenezer Grammar School for a period of three years from 1st April, 1971. On the 10th July, 1973, the defendant who is the proprietor of the school terminated the plaintiff's appointment on the ground that he left the school without permission.*

It would appear from the evidence that the immediate cause of the defendant's action was the plaintiff's absence from duty, when he went to Ile-Ife to take part in the marking of the 1973 West African School Certificate Examination Scripts. According to the plaintiff, he received a letter dated 15/6/73 addressed to Principals of Secondary Schools by the Western State Ministry of Education, stating that teachers who were markers of the school certificate examination scripts be released to the West African Examinations Council. He himself had been appointed a team leader for the exercise, according to a letter from WAEC. On receipt of the WAEC's letter, the plaintiff wrote a letter to both the defendant and the chairman of the school's Board of Governors asking to be allowed to take part in the marking exercise. The plaintiff delivered a copy of the letter to the said chairman the same day. He delivered that of the defendant to him the next day on the defendant's return from a trip in Lagos. The defendant permitted him to go. The plaintiff also advised his deputy, Mr. Isola who was also invited to the marking exercise to submit a written application to both the defendant and the chairman, Mr. Odebela, and Mr. Isola did so and travelled to Ile-Ife accordingly.

When the plaintiff for Ile-Ife on the 2nd July, 1973, he (Mr. Isola) made an entry in the school's log book. Before the plaintiff left for Ile-Ife, promotions had been concluded for the year and the staff had met and decided who and who were to be promoted. He also had asked one Mr. Adegboye a relation of the defendant who was a graduate teacher in the school to take charge of the school in his absence (NB: The thoroughness of the plaintiff in this paragraph to avoid any likely charges of having not completed his school assignment before he left for Ile-Ife or any charge of incompetence). The plaintiff returned to the school for a night on July 7, to put finishing touches to preparations for end of session activities, went back to Ile-Ife on the 8th July, and finally returned to the school on July 10, before the school vacated on the 12th July.

The defendant in a letter dated 7th July, 1973 purported to terminate the plaintiff's appointment on 10th July, on the allegation that the plaintiff absented himself from duty without permission.

The plaintiff then brought this action against the defendant for the sum of N5,000.00 being special damages, the salaries he would have earned from 1st July, 1973 to 31st March, 1974 (when his contract was due to expire) and general damages for wrongful termination of appointment from the defendant's service. The defendant submitted that the contract between him and the plaintiff was void because there was no evidence to show that the plaintiff accepted the offer of employment from the defendant.

HELD: *That where no particular mode of acceptance of a contract is expressly required, performance of a condition in the contract is evidence of acceptance.*

There was judgement for the plaintiff in the sum of N2,722. 40 made up as follows:

- (A) Difference in salaries due from the defendant and those earned from the Central School Board N 662.40
- (B) Annual Central allowance for three years N1,500.00
- (C) Car basic allowance N 360.00
- (D) General damages N 200.00

Plaintiff's claim succeeds.

**(2) Claims for Damages for Wrongful Dismissal
Payment of arrears of Salaries Contract Law**

JOSEPH M. OKOROA FOR Plaintiff
Vs
1. IMO STATE EDUCATION BOARD
2. MRS. C. C. NWOSU, Principal, Girls Defendants
Secondary School, Ogbaku

**High Court of Imo State, The Owerri Judicial Division Holden at Owerri
(Nwogu, E.I.N.) 26/287 Suit No. How/265/82.**

The Case has been cited under 3.1.7. in this Unit. You may wish to refer to it.

**(3) Civil Procedure Juristic Person What happens if a Party
to an Action is not a Legal Person How an Unincorporated
Association can be given Legal Personality whether
the Board of Governors of a School is a Juristic Person**

THE BOARD OF GOVERNORS, OLOFIN
ANGLICAN GRAMMAR SCHOOL, IDANRE
Vs
S. A. O. AINA AND OTHERS

**(High Court of Ondo State, Akure Judicial Division, Orojo, J., 13th July, 1976)
Suit No. AK/31/72.**

The Case has been cited under 3.1.7. in this Unit. You may wish to refer to it.

(1) For a Contract of Employment to be Valid, there must be evidence of Offer and Acceptance

PHILIP IHEMEBIGE

IMO STATE EDUCATION BOARD & 1 OTHER

(High Court, Owerri, Justice N.N. Wachukwu 9/4/84, Suit No. HOW/264/82)

JUDGEMENT:

In his particulars of claim, the plaintiff claimed as against the defendants jointly and severally the sum of N2,771.68 which he said represents his arrears of salary from February, 1981 to December, 1981 at the rate of N147.64 per month; one month's salary in lieu of notice and that is N147.64 and another sum of N1,000.00 which he described simply as wrongful dismissal, whatever that means.

Plaintiff claimed that the Ogbaku Projects Interim Committee recruited himself and seven other persons to work for the Girls Secondary School, Ogbaku on the 16th of February, 1981 as night watchmen. He also claimed, in his evidence in court that he was also employed by the 2nd defendant as a night watchman and that he received some of his salaries from the 2nd defendant except for the period which is subject matter of this suit. He said he was later dismissed by the 2nd defendant except for the period which is subject matter of this suit. He said he was later dismissed by the 2nd defendant and that he was never issued with any employment papers.

Plaintiff's witness Michael Iheme confirmed plaintiff's story that plaintiff was initially recruited by the Ogbaku Projects Interim Committee and handed over to the 2nd defendant for service. He also confirmed that the Committee pressurised the 2nd defendant to ensure that the Education Board employed the plaintiff. Witness said that as a result of the pressure, five (5) out of the seven men the Committee sent up to the Board for employment were employed. The 2nd defendant who is the Principal of the Ogbaku Projects Interim Committee for onward transmission to the Board for employment. She said the plaintiff was not one of those whose application succeeded.

I think it is now well settled that for a contract of employment to be valid and indeed any other contracts, there must be an offer and acceptance. This means that there must be a definite offer of employment and also a definite acceptance of that offer. See *Ajayi-Oba v. The Executive Secretary, Family Planning Council of Nigeria* (1975) 3 SC. p. 1. There is agreement between the parties that the authority that could employ the plaintiff was the 1st defendant.

There is also agreement that this body did not offer any employment to the plaintiff and that plaintiff never worked for it as an employee. Indeed, the plaintiff told this court that he was recruited by the Ogbaku Projects Interim Committee and employed by the 2nd defendant.

Though the general law is that a contract of employment may be in any form, that is, that it may even be oral, the provision of Section 4 of the Statute of Frauds 1677, which is still applicable in Imo State, makes it mandatory that a contract of employment must be in writing since it falls into the group of contracts not to be performed within one year. The plaintiff has not established any contract of employment on the basis of this well-established principle of law and this court cannot assume employment on the mere ipse dixit of the plaintiff.

Plaintiff has not discharged the burden placed on him to prove employment and his claim ought therefore to fail. It is accordingly dismissed with no order as to costs.

(2) Contract of Employment Wrong Dismissal Fair Hearing

MRS. D. AWUNOR Plaintiff

- 1. THE TEACHING SERVICE BOARD**
- 2. THE PRINCIPAL, EZEMU GIRLS
GRAMMAR SCHOOL, UBULU-UKU Defendants**
- 3. THE ATTORNEY-GENERAL,
BENDEL STATE**

(High Court, Ogwashi-Uku, Bendel State, NWAKE, B. A.) Suit No. 0/6/89

FACTS:

The plaintiff, Mrs. D.N. Awunor who hails from Obior in Ika Local Government Area of Bendel State has been a teacher since 1976 and was employed to teach at the Ezemu Girls Grammar School, Ubulu Uku at salary level 07 being the salary rating for NCE holder ; which she possessed.

On 14/10/88, her appointment was terminated as contained in the letter presented to her by the 2nd defendant, the principal of the school. The plaintiff claimed that the termination of her appointment has deprived her the various allowances, her salaries, bonuses, her pensions and gratuity she would be entitled to if allowed to work to retiring age. The plaintiff in effect made the following claims:

- (a) A declaration that her termination is wrongful, ultra vires, void and of no effect.
- (b) A declaration that the plaintiff was not given a fair hearing before her termination.
- (c) N100,000.00 (One hundred thousand naira) being special and general damages for wrongful termination of her appointment against the defendants jointly and severally.

At various hearings it was discovered that the 1st defendant, the statutory body charged with the employment, promotion and discipline of teachers within the Teaching Service Board, was unable to put forward, a specified period that the plaintiff carried out the

fraudulent act of adjusting her salary from level 07 step 3 to 07 step 6 which eventually led to the termination of her appointment as the letter of termination contained.

During the course of the trial, it was also discovered that the plaintiff was not duly involved in the activities of the panel that tried her. The court however recognizes the right of the Teaching Service Board to employ, promote, transfer and discipline teachers.

Going through the verdict of the panel that tried the plaintiff, it was also discovered that the plaintiff indulged in the act under which her appointment was terminated.

JUDGEMENT:

The evidence before this court shows that the plaintiff was not given a fair hearing. Where a board decides to terminate the appointment of any teaching staff, the Board is duty bound to adhere to the law creating the Board otherwise such action can be described as null and void and unconstitutional (Eperokun V. Unilag (1985) 4 N.W.L.R. (pt. 34) 5162 applied (p. 618 paras C.G.).

In the case before this court, the defendants had failed to comply with the terms that established the Teaching Service Board, it therefore follows that the plaintiff's termination was unlawful, null and void, wrongful and unconstitutional.

The court therefore rules that the plaintiff is entitled to her salaries and other entitlements from the date of termination up till the date of judgment.

The court also orders that the plaintiff be transferred from Ezemu Girls Grammar School to any other school within the jurisdiction of the Board (Shitta-Bey vs. Federal Civil Service Commission (1981) 1 SC. 40 referred to, followed and applied).

(3) Wrongful Dismissal of a Teacher Allegation of Forged Certificate

ABIGAIL P. AKOR

Plaintiff

1. RIVERS STATE SCHOOLS BOARD

***2. THE COMMISSIONER FOR EDUCATION Defendant
MINISTRY OF EDUCATION, RIVERS STATE***

***3. THE ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE, RIVERS STATE***

(High Court of Rivers State, Port Harcourt, Mr. Justice J. A. Fiberesima Ag. Chief Judge, 16/08/90) Suit No. OHC/216/88.

JUDGEMENT:

This is a claim by a teacher, Abigail P. Akor who was dismissed from service on 24th March, 1987.

She was employed in 1971 and since her employment has been quite studious and has progressed from Salary Level 04 to 05 (4) per year as Grade II Teacher after passing the Teachers Grade Two Certificate Examination in Arithmetic, English Language, Principles and Practice of Education, History, Practical Teaching, Geography, Social Studies and Physical & Health Education.

Her examination results confirmed by the Rivers State Ministry of Education by various letters Reference Nos. RE/MOE/2/Vol.10/770 of 13th March, 1983, RE/MOE/2/Vol.19/259 of 12th April, 1984 and RE/MOE/2/Vol.23/302 of 23rd January, 1985.

In 1987, she was interrogated by the police on an allegation that her supplementary result sheet was a forgery.

She denied the allegation, the police did not even show to her the forged document, the police did not prosecute her either: she was also not questioned by the Teachers Disciplinary Committee or by any Teacher's Personnel Audit.

She said she protested against her dismissal but nothing was done to reverse her dismissal so she came to court to challenge the dismissal because it was wrongful, unlawful, unconstitutional, invalid, irregular, null and void.

Her dismissal letter reads:

DISCIPLINARY ACTION

1. Following upon the outcome of the report of the Teacher's Personnel Audit with regard to forged certificate; I am directed to inform you that you are hereby dismissed from the Teaching Service of the Rivers State with immediate effect.

2. You are to handover all school property in your custody to the Head of your institution or to the next officer below if you are the Head.

SGD.

E.N. IKORO

SECRETARY

RIVERS STATE SCHOOLS BOARD

She claimed to be 35 years of age and a pensionable employee entitled to gratuity and pension on retirement at the age of 60 years and would have continued in her employment with enjoyment of salaries, remunerations, emoluments and other employment benefits until retirement but for the wrongful dismissal.

She claims:

- (i) Cumulative net salaries from 1987 to 2013 at
N2,103.00 per year
N54,678.00
- (ii) Gratuity from 1971 to 2013 at 250% N 5,325.00
- (iii) 3 months salary in lieu of notice to retire at

N166.81 per month		N	_____
500.43 TOTAL	*	N62,	_____
503.43			_____

(iv) Annual increment, housing, transport and leave allowance.

She also claims a declaration against the defendants that she is still in the employment of the 1st defendant as a Teacher Grade Two.

* * *

Defendants did not resist the claim; they did not file any statement of defence.

In that circumstance, there will be judgement for plaintiff:

1. I declare that the dismissal of the plaintiff from the Teaching Service of Rivers State of Nigeria is unlawful, illegal, null and void, and of no effect whatsoever.
2. I order the defendants to re-instate the plaintiff into the Teaching Service of Rivers State of Nigeria forthwith that is from the date of this judgement.
3. I order the defendants to pay to the plaintiff all arrears of salary due her from March 1987 to July 1990 at N2,013.00 per annum.
4. I order defendants to pay plaintiff all arrears of salary increments; leave, transport and housing allowances from March 1987 to July 1990 at the appropriate rate.

The claim for gratuity is refused because I have ordered that she should be re-instated. I also refuse the claim for 3 months salary in lieu of notice to retire at N166.81 per month because I have made an order for re-instatement. I am of the view that the RIVERS STATE GOVERNMENT needs trained teachers like this plaintiff.

Judgement for plaintiff.

J. A. FIBERESIMA
Ag. Chief Judge, 16/8/90

Chief P. Ibeku asks for costs of N500.00.

Mrs. C. A. Okirie leaves issue of costs to court.

She argues that plaintiff will receive her salary from 1987 without doing any job so the court should be lenient.

Cost for plaintiff N200.00.

Self Assessment Exercise 3.2:

1. Identify and briefly discuss the five essential elements of a contract.

2. Explain the terms offeror and offeree. What are the rules to be observed with regard to offer and acceptance of a teaching appointment?

3.3 Employment Procedure

There is no uniform procedure for the employment of teachers throughout the various States of the Federation.

However, most employment processes tend to follow the pattern summarized below:

1. An advert calling on interested/or specific categories of trained applicants to apply for teaching appointment with the Schools Board. In some cases, interested applicants pick up employment application forms, fill them and submit same to the Board even without advert calling for application.
2. Qualified or suitable applicants are shortlisted; the names are published and are invited for interview on a scheduled date sometimes according to discipline or teaching subject areas.
3. Applicants are interviewed.
4. Names of successful candidates are published and are requested to report to the Schools Board to pick up their letters of employment/posting within a given deadline.
5. Successful candidates pick up their letters of appointment/posting including such other vital forms as acceptance of offer of appointment, assumption of duty form, identification form and medical history and examination form.

Self Assessment Exercise 3.3:

1. Briefly explain the ways by which a teaching offer may be terminated.
2. Identify and discuss the duties and obligations of teacher to his employer and those of the employer (Schools Board) to the teacher.

3.3.1 The Letter of Appointment

Usually, this letter is one of provisional offer of pensionable teaching appointment. It contains information as to position to which the successful applicant has been appointed, the grade level and step, the school to which the successful applicant has been posted, the subject the candidate has been appointed to teach and the duration of assumption of duty when his/her Principal is required to notify the Schools Board and the Zonal Schools Board in the area in which the school is located.

3.3.2 Acceptance of Appointment Offer

If the individual is interested in taking up the offer of appointment on the terms and conditions stated in the letter of offer of appointment, he/she then signs acceptance document. It is only after this form has been signed and the other documents duly completed and submitted that the applicant has formally entered into a contract employment as a teacher with the educational institution.

3.3.3 The Medical History and Examination

This is a standard form to be completed by a qualified medical practitioner in government service and returned under confidential cover to the Board from the date the applicant assumes duty. It is the responsibility of the applicant to cause the report to be sent to the institution within a stipulated time.

4.0 CONCLUSION

In conclusion, all the issues in employment procedure have been discussed. Employment as a contract has binding features on the offeree and offeror. Caution should therefore be exercised in all matters and issues relating to employment of teachers. This is necessary in order to avoid litigation.

5.0 SUMMARY

In this unit, we have discussed the requisite to the validity of all contracts, offer and acceptance of contracts, termination of offer, probationary period and tenure, resignation, and rights, privileges and benefits of teachers.

Having assumed duty, we looked into the duties and obligations and termination of contracts. Some cited case laws were reviewed to buttress the constitutionality of what goes on in the school environment. The employment procedure was discussed, along the area of letter of appointment, acceptance of appointment offer and medical history as well as examination.

6.0 TUTOR MARKED ASSIGNMENT

1. Probation and tenure are two basic terms often associated with the employment of teachers. Explain both terms.
2. Cite any relevant cases to either of the two stating the facts of each case

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UNIT 4 STUDENTS CONTROL AND DISCIPLINE IN SCHOOLS

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1.0 INTRODUCTION

Control is an essential element of group life. Pupil control is a central aspect of school life. It is indispensable in maintaining law, order and peace in order to ensure a suitable environment and efficient operation of schools for effective teaching and learning. While control is a problem that all organizations face, this problem is especially important and most acute in service organizations, such as public schools, that have no choice in the selection of their clients who participate in the organization. The problem of student control is accentuated in schools because these organizations are often confronted with pupils who may have little or no desire for the services provided by these institutions.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- enumerate the three criteria that school administrators should apply to every proposed rule before being enforced in a school context;
- explain the term in loco parentis ;
- list the types of students discipline problem;
- state the causes of student indiscipline;
 - explain the guidelines on punishments of students for offences in Colleges;
- state the four common law principles that should guide school officials in administering punishment;
- discuss retributive punishment, deterrent punishment and reformatory punishment;

- list the different types of punishment in Nigerian schools.

3.0 MAIN CONTENT

3.1 Concept of Students Control

Most State Education Laws or Edicts contain rules and regulations for schools. These often cover such matters as various forms of records (admission, progress and withdrawal, time table, weekly diaries, corporal punishment book), attendance register, accommodation requirement, punishment, transfer and leaving certificates. We will discuss these records and some other ones and the justification for keeping them in Module 3. You will then see and appreciate how useful the records are.

3.1.1 Issues in Discipline

In an effort to prevent and resolve student discipline problems and ensure efficient functioning of the schools, Schools Boards have long realised the need to promulgate reasonable disciplinary policies and procedures. These rather broad policies are made more specific as rules and regulations at the individual School level. Only School rules and regulations that are reasonable, have an educational purpose, are administratively feasible and are legally enforceable should be maintained in a school (Gorton, 1983).

The New Jersey Schools Board in the United State as reported by Peretomode, 1992 has recommended three criteria that School administrators should apply to every proposed rule before being enforced in a School Context. These are also relevant to the Nigerian School system:

1. Is the proposed rule necessary for the orderly and effective operation of the School?
2. Does the rule involve some suppression of freedom?
3. If so, is the incidental restriction on freedom any greater than is reasonably necessary for the orderly functioning of the School?

While the reasonableness of rules and regulations cannot be decided in the abstract except in the context of the application or fact of the situation, the three questions above provide a useful guide for judging the reasonableness of School rules. This point is similarly expressed by Reutter and Hamilton (1972) when they wrote:

Clearly a compelling interest of the state is the maintenance in its Schools of a proper atmosphere for learning. But many rules ostensibly so aimed have been invalidated by courts because they are not rationally connected with the purported objective. The closer a rule encroaches on a constitutional right of students, the greater the burden of justification on School authorities to show a compelling need for the rule ... Any enforceable rule of conduct

must be connected with the welfare of the schools.

The implication of the above quotation is that while School Boards and School authorities (principals and teachers) are vested with powers and prerogative to make rules and regulations to govern the behaviour of students for the efficient operation of schools, such rules must be reasonable, i. e., rules which measurably contribute to the advancement of the educational process. As Alexander (1980) rightly pointed out, where governmental actions, Schools Board or School-building rules and regulations have been unreasonable, vague, arbitrary, or direct violations of constitutional rights or freedoms, the courts, will impose limitations or declare them null and void and of no effect in order to protect the students (p. 318).

3.1.2 The In Loco Parentis Doctrine

School administrators and teachers have the power, authority and responsibility for administering a School's disciplinary programme. This power to control and discipline students for infractions is traceable to the age-old doctrine of in loco parentis, in place of the parents. This position of the School administrator or teacher with regard to disciplinary control of students is well explained in the Corpus Juris Secundum (79 C.J. S. 493).

As a general rule, a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him to properly perform his duties as teacher and to accomplish the purpose of education; he is subject to such limitations and prohibitions as may be defined by law...

The courts in democratic societies all over the world had also viewed school officials as standing in loco parentis allowing them to regulate the student in any manner subject only to the standards and restraints that a parent would use in supervising the welfare of the child. For example, In Gott vs. Berea College in the U. S. (1913), the justices held that:

College officials stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the Government or betterment of their pupils that a parent could for the same purpose.

The implication of this statement is that courts ordinarily will not interfere with the authority of a school to make rules governing student behaviour unless such rules are unlawful, unreasonable, capricious or against public policy.

The doctrine of in loco parentis had been based on the assumption that by sending their children to school, parents agree to delegate to school officials the power or parental authority to control their children's conduct in a manner that will be of the best interest to the child. Cravan (1981), however, points out that today, this situation is drastically changing. Parents now argue that when the concept originated, education was voluntary

and personal, the parent voluntarily committed the child to the authority of the teacher who usually spent the entire day with the child in a small classroom or school, thereby developing something akin to a parent/child relationship with the pupil. Most teachers today instruct children for only part of the day and have fewer opportunities to form close relationship in large classes and schools. It is in the light of this latter point the Ohio Department of Education in the United States has come to reject the idea that schools may act in place of the parents. The Department was of the view that to stand in loco parentis, one must assume full duties, responsibilities and obligations of a natural parent to a pupil. What is the situation in Nigeria? Are teachers really standing in loco parentis to the students under their care?

Crayan stated thus:

That students' relationship to School and to parents are entirely different. The School/Child relationship is intermittent with different adults involved at different times of the day and year; they often at superficial levels and for short periods of time stayed with the child. Parents' relationship on the other hand ordinarily incorporates deep feelings of mutual love and affection. For this reason, corporal punishments inflicted by parents would have an entirely different effect than the same punishment meted out by School authority (1981.p, 4).

What this means is that the doctrine of in loco parentis is on the wane not only in the United States but also in Europe and even in Nigeria.

Self Assessment Exercise 4.1:

1. What do you understand by the phrase in loco parentis ?
2. Of what importance is the doctrine in the control and discipline of pupils in the school?
3. Why is the in loco parentis doctrine being challenged today?

3.1.3 Problems and Causes of Indiscipline

There is a wide variety of student misbehaviour in schools but these discipline problems vary in degree from school to school. Gorton (1983) has classified the various types of problems, namely, misbehaviour in class, misbehaviour outside class but within the school, truancy and tardiness as shown in Figure 10.1.

Gorton also proposed taxonomy of the causes of students discipline problems in which he categorized the possible causes of students' misbehaviour into three categories, viz:

Figure 4.1: TYPES OF STUDENT DISCIPLINE PROBLEMS

Misbehaviour in Class		Misbehaviour outside class (but in School on School grounds)		or Truancy		Tardiness	
1.	Talking back to the teacher	1.	Fighting	1.	Cutting class	1.	Frequently being late to class
2.	Not paying attention	2.	Vandalism	2.	Skipping school	2.	Frequently being late to school
3.	Distracting others	3.	Smoking				
4.	Gum chewing	4.	Using illegal drugs				
5.	Vandalism	5.	Student dress				
6.	Profanity	6.	Theft				
7.	Cheating	7.	Gambling				
8.	Assault	8.	Littering				
		9.	Student activism				
		10.	Located in an unapproved area				

Source: Richard A. Gordon (1983). School Administration and Supervision, Leadership Challenges and opportunities, Dubuque, IA: Wcb. P.327

School-related factors, personal factors and home-community environment. A fourth category referred to as governmental/external factors has been added to the Gordon's classification scheme by the author to make it more exhaustive. The typology is presented in Figure 10.2.

Figure 4.2: CAUSES OF STUDENT INDISCIPLINE A TAXONOMY

School-Related Factors		Personal Factors		Home and Community Environment		Governmental and External Bodies	
1.	Poor Teaching	1.	Student doesn't understand the rules	1.	Poor authority figures and relationship within the home	1.	Federal Government policy
2.	Irrelevant curriculum	2.	Student doesn't understand why the rules exist	2.	Crime infested neighbourhood	2.	State Government directives
3.	Inflexible school schedule	3.	Poor Educational background	3.	Student activities after School, e.g. work, other activities that keep him up late at night	3.	External Board examination
4.	Insufficient adaptation and individualization of the school's programmes to a student educational background	4.	Undesirable poor relationships				
	5. Student is		psychologically disturbed				
	6. Personality		conflict between student and teacher				

Source: Adapted from Richard A. Gordon p. 329. A category added by the author to the Gordon's classification scheme.

3.1.4 School Rules and Regulations for Students

Every school has a set of rules and regulations meant to guide students towards good conduct and behaviour in order to maintain general discipline, peace and order necessary for effective teaching and learning. Any action on the part of a student that goes contrary to these school rules and regulations is often considered as an offence and an act of indiscipline which attracts certain disciplinary actions.

Usually, school rules and regulations cover a wide range of areas, such as school uniforms/personal appearance, channel of communication, use and misuse of school

property; school attendance, class and study regulations, student/student relationship, staff/student relationship, day student/boarding regulations, tests/examination/promotions, sports/manual labour, students visiting days/outing (for students living in the boarding house) and general regulations.

The effectiveness of school rules depends on a number of factors. Three of the seven criteria identified by Gorton (1983) are relevant to our discussion. They are:

1. Rules and regulations on student behaviour should be stated in positive form as much as possible, and student responsibility rather than misbehaviour should be stressed. The emphasis on student behaviour should be on that which is desired, not on behaviour which is unacceptable.
2. The policies and procedures governing student behaviour should be written in clear, understandable language and be presented in student, teacher, and parent handbooks which are reviewed from time to time.
3. The consequences of violating a rule or regulation should be made explicit and commensurate with the nature of the violation so that students will have the opportunity to take that information into consideration before they violate a rule or regulation.

These three important guiding principles in drawing up regulation for students are often not adhered to in Nigeria. Nwagwu (1987), for example, provides us with a typical list of the regulations that should govern student behaviour in post-secondary schools. This list, contained in the Handbook on Discipline was produced by the Anambra State Schools Management Board. A look at the regulations will show that they are couched mostly in negative or unacceptable statements instead of being stated mostly in a positive form. The rules and regulations as provided by Nwagwu (1987, pp. 137-8) are as follows:

(a) Staff/Student Relationship:

1. Staff quarters are out of bounds to students unless for acceptable reasons.
2. Any student who feels offended by a staff member should not take the law into his own hands. He should report to the principal or his assistant.
3. Due respect should be shown to teachers.
4. Any indecent approach to a female student by a male staff should be reported to the Principal.

(b) Student/Student Relationship:

1. Use of corporal punishment and other forms of torture is forbidden.

2. Fighting and bullying are prohibited.
3. No case should be reported to parents without first reporting to the Principal.
4. Fagging and servitude are forbidden.
5. Punishments by prefects should be reasonable and just, and must be fulfilled even if a student wants to protest against them.
6. Senior students should show good example and junior students should respect the seniors.
7. There should be no indecent behaviour between male and female students, or among them.

(c) Beginning and End of Term:

1. Boarders must return to school on the opening day before 6 p.m.
2. Boarding fees must be paid in full one week after reopening date and tuition fees not later than one month after reopening.
3. Students must not leave school for vacation or holidays before authorized time and date.

(d) General Rules:

1. No student should leave the school premises until closing except with exit card.
2. Stealing is a serious offence.
3. Loitering during classes is not allowed.
4. Good student behaviour inside and outside school premises is necessary.
5. Proper dressing is important and only the school official uniform should be worn during the term whether inside or outside the school, including at all social gatherings.
6. Students must participate in physical education and sporting activities.
7. Every student should belong to a school club or society approved by the school.

8. School functions can only be organized with permission of school authorities.
9. Proper care must be taken of school property including furniture and equipment. Culprits will pay for damage to these.
10. Students must keep the school clean.
11. Smoking, alcoholic drinks and dangerous drugs are prohibited.
12. Strikes, demonstrations and riots are forbidden.
13. Punctuality is essential.

The emphasis that student behaviour should be on that which is desired, not on behaviour which is unacceptable, is illustrated by statements in a Student Handbook on Elementary Schools *Rights and Responsibilities by the Detroit Public Schools*.

The student responsibilities (rules of conduct) which are similar to those outlined above but stated in positive form are as follows:

What You Can Do

1. Take Part
 - Come to school every day
 - Come to school on time.
 - Go to all classes. Do the classwork
 - Ask your teachers for help.
2. Control Self
 - Obey all school rules
 - Act in a way that will help you and the other students to learn
 - Help care for books, supplies, and all school property.
3. Respect School Workers
 - Be polite to all teachers, principals, aides and the school workers
 - Obey all teachers, principals, aides and other school workers.
4. Respect Other Students,
 - Be fair with other students.
 - Treat other students in a way that will not hurt them. Avoid fights.
 - Speak kindly to other students. Avoid name calling (cited in Gorton, 1983, p. 342).

Furthermore, a look at the rules and regulations in most secondary schools in Nigeria will show that the consequences of violating such rules and regulations are not made explicit.

Consequently, students, teachers, and parents do not know which rules, if violated, will attract what punishment. The result is that similar or identical offences often attract different kinds of punishment from the same or different teachers and school administrators.

In order to avoid this glaring anomaly and to check recklessness in punishing students, the Federal Ministry of Education in 1988 came up with a categorization of the various offences obtainable in the Federal Government Colleges into minor, fairly serious, serious, and major or very serious offences. The Ministry also provided guidelines in the punishment of students for the different categories of offences. The guidelines in tabulated format are provided in figure 10.3.

3.2 Guidelines on Punishment of Students for Offences

Find below a format of guidelines on punishment of students for offences in the Federal Government Colleges as adapted from the publication of the Federal Ministry of Education (Peretomode, 1992)

GUIDELINES ON PUNISHMENTS OF STUDENTS FOR OFFENCES IN FEDERAL GOVERNMENT COLLEGES

CATEGORY OF OFFENCES	DETAIL OF OFFENCES	RECOMMENDED PUNISHMENT	WHETHER RECORDED	SUPERVISION OF PUNISHMENT BY	AUTHORITY FOR PUNISHMENT
(i) MINOR	(a) Unpunctuality; improper dressing; disturbance in class, prep or dormitory; inattention in class; not properly equipped for class; using wrong cutlery at meals; duty not properly carried out; disrespect to a senior; using abusive language; lateness to meals.	(a) Minor detentions (30 minutes of manual labour).	No (minor detention offenders to be listed, record destroyed after work).	(a) Teacher or Prefect or Prep supervisors.	(a) Teacher or Prefect or Prep Supervisor,
	(b) Absence from Minor Detention work.	(b) Double the work.	No	(b) Prefect-on-duty.	(b) Prefect-on-duty.
(ii) FAIRLY SERIOUS	(a) Offences listed in (i) (a) repeated despite warning; neglect of duty; failure to obey instructions; rudeness or disrespect to teachers or disrespect to prefect; breaking light-out rule; fighting (not involving serious injury); telling lies; found in the dormitory during class or prep houses.	(i) Single or double detention (each detention involving one hour of manual labour).	Yes, and number of detention entered on the Terminal report.	(i) Prefect-on-duty supervised by the Master-on-duty.	(i) Teacher or Prefect.
(ii)	(b) Absence from detention work.	Double the work. Yes		Prefect-on-duty supervised by the Master-on-duty	Teacher or Prefect.
(iii) SERIOUS	(a) Offences listed in (2) (a) repeated despite punishment and/or warnings; breaking	(a) Suspension for one, two or three weeks and/or dismissal from	Yes, to be included in Terminal Report.	Principal Vice Principals	Principal

	bounds, serious fighting including injury; minor sexual offence; cutting classes; minor case of theft; smoking; drinking alcohol; bullying; willfully and insubordinately defying authority; cheating in internal exams; bad behaviour outside the college (including improper dressing); inflicting illegal punishments.	the Boarding House.			
(b) Damaging school property. (c) Over-staying exeat. (d) Carrying food out of the Dining Hall or indiscipline in the Dining Hall.		Suspension for one, two or three weeks and/or dismissal from the Boarding House.	Yes, to be included in Terminal Report.	Principal Vice Principals	Principals
(iv) MAJOR OR VERY SERIOUS	Offences listed in (3) (a) repeated despite punishment and/or warning; theft; serious sexual offence (including pregnancy); taking harmful drugs; cheating in a public exam; defying the Principal's authority.	Expulsion from the college.	Yes, to be included on school leaving Certificate.	Principal Advisory Council	Council to advise the Hon. Minister of Education.

Source: Courtesy of the Federal Ministry of Education, Lagos, 1988.

Self Assessment Exercise 4.2:

1. Why is it necessary for teachers and school administrators to understand the causes of students' discipline problems?
2. List the rules and regulations and their corresponding punishment in your school when they are violated. Which punishment do you consider unreasonable or unproportional to offences committed?

3.3 Punishment in Schools

These will be discussed under the following sub-topics.

Punishment and Guiding Principles

Juvenile Delinquency with Case Laws

Stubborn/Violent Children with Case Laws

3.3.1 Punishment and Guiding Principles

Punishments are responses by school officials to students' discipline problems. Such chastisement must be reasonable and lawful in order to avoid possible charges of assault and battery or inhuman and brutal treatment or manslaughter or false-imprisonment, as the case may be. A number of standards have been proposed by psychologists and educationists and a number of common law principles have emerged to guide teachers and other school officials in their disciplinary actions against students.

Gorton (1983, p. 349), for example, suggests that the selection of the type of punishment should take into consideration four basic factors. These are:

- (1) the cause of the behaviour,
- (2) the severity of the offence,
- (3) the habitualness of the offender, that is, the number of times he has committed the offence and
- (4) the personality of the offender certain students may respond to punishment better than others.

O'leary and O'leary (1972) also recommended that punishing a student, the school administrator and the teacher should do well to heed the following:

1. Use punishment sparingly;
2. Make clear to the student why he is being punished;
3. Provide the student with an alternative means of meeting his needs;
4. Reward the student for utilizing the alternative means;

5. Avoid physical punishment if at all possible;
6. Avoid punishing while you are in a very angry or emotional state.

Furthermore, Barrell and Partington (1985) have proposed three standards, called cannons of punishment, by which punishment may generally be judged as appropriate and reasonable. First, the punishment should be retributive an expression of the displeasure of society at the offence or the act of indiscipline for which a person is punished. Secondly, it should serve as a deterrent an example to prevent (or warn), others from committing the offence for which punishment is meted out. Thirdly, it should be reformative an attempt to turn the offender into an acceptable member of the community (p, 445). The emphasis on punishment in school should be geared towards reforming the offending student.

In addition, Remmlein and Others Ware point to four common-law principles that should guide school officials in administering punishment in order to avoid liability or penalty of damages, fine or imprisonment. These principles are:

- (1) that the punishment be not unreasonable;
- (2) nor excessive, in view of the age, sex and strength of the pupil;
- (3) nor excessive in view of the gravity of the offence;
- (4) nor administered maliciously.

Remmlein and Ware emphasised the need to heed these common-law principles when they pointed out that 'even death of a pupil resulting from punishment may be excused in law if the teacher's conduct was within limits set forth in the law'.

Finally, Alexander (1980, p. 320) points out the two standards that courts have advanced to guide a teacher while punishing a child:

- (1) The reasonableness standard, e.g., punishment "must be exerted within bounds of reason and humanity" (Fletcher v. People). It must not be "degrading and unduly severe";
- (2) The good faith standard. The teacher must not have been activated by malice, nor have inflicted the punishment wantonly. Drawing upon the ruling in the case of Fox v. People, Alexander made the point that for an error in a judgement, although the punishment is unnecessarily excessive, if it is not of a nature to cause lasting injury and he acts in good faith, the teacher is not liable (p. 320). It is very important that in punishment, teachers and school administrator must know the rules of their authority and be careful to observe them to the letter (Barrell and Partington, 1985). This is important because in meting out punishment, if care is not taken, the teacher might violate one or more of the fundamental rights of the pupil guaranteed by the constitution.

SPECIFIC PUNISHMENTS

There are different forms of punishment used in schools in Nigeria. The punishment school official give depends on the seriousness of the offence, the class of the student, the sex and age of the student and the tradition in one's school for punishment to be effective, it needs to be applied soon after the offence is committed. Delay in administering punishment tends to reduce the association between the punishment and the violation of the rule (Gorton, 1983, p. 350).

The different types of punishment in Nigerian primary and secondary schools include the following:

- Fines
- Verbal and/or written warning
- Grass cutting
- Detention in class after normal school hours
- Crawling on one's knees

- Kneeling and looking at the sun
- Picking the pin with one leg up
- Standing on the desk with arm up and eyes closed
- Standing on the floor and resting on the wall with arms up and eyes closed
- Picking up litter
- Cleaning of classroom, paths, dormitories or Assembly hall
- Washing and cleaning toilets
- Suspension
- Dismissal or expulsion
- Corporal punishment
- In-School suspension.

A look at the list of specific punishments reveals that most of them (suspension, expulsion, corporal punishment, detention, crawling, kneeling down, "pick the pin", etc.) are punitive responses to student discipline problems. Non-punitive measures to student misbehaviour are persuasion and exhortation, counselling, remediation of learning problems, and changing of the classroom and school environments. The latter could be effected through changing teachers' attitude toward and expectations for the student, teachers' method of teaching, classroom rules and policies, size and composition of the class, school's schedule and the total programme of studies.

The respective State Ministries of Education in Nigeria are aware of the punitive, brutal and rude manner punishment is administered at both the primary and post-primary school levels. This consciousness has made some State Ministries of Education to warn teachers and school heads against excessive punitive disciplinary actions against students. For example, the River State Ministry of Education in a circular letter Ref. ME/S. 31T/VOL 111/44 of 9th May, 1984, captioned, "POWERS OF PRINCIPALS AND HEADMASTERS IN THE ENFORCEMENT OF DISCIPLINE", did just this. The circular was copied to all Zonal Chief Inspectors of

Education, the Secretary (now Director General) School Management Board, principals of secondary schools Chairmen of District Schools Boards and Headmasters of primary schools.

Paragraph 4 of the circular stated that Principals and Headmasters have been vested with the following powers:

1. To suspend an offending student for a maximum of two weeks during which a full report of the offence is made to the Ministry with recommendations for ratification of the action taken, extension of suspension or expulsion from school, depending on the frequency of the offence;
2. To relate punishment to offences committed; for example, failure to perform one's duty may earn the student detention after classes to perform the duty and some more, but the teacher must be present to supervise him in order to produce the desired effect. The age and sex of the offender should be taken into consideration.
3. To prohibit corporal punishment in respect of class work;
4. To sufficiently convince an offending student/pupil of his guilt before he is subjected to corporal punishment; which in any case, must NOT be done-out of malice or in a temper. On no account should young and inexperienced teachers be allowed to use the cane. All cases of insubordination requiring corporal punishment must be referred to the Principal/Headmaster;
5. A maximum of six (6) strokes of the cane may be administered on an offending child, either on his buttocks or palms, depending on the gravity of the offence, by the Principal/Headmaster or his nominee;
6. The so-called "picking the pin" with one leg up; kneeling in the field and looking at the sun; standing on the desk with arm up (and eyes shut) are forbidden in all schools;
7. Mass punishment, in which an entire class is punished for the offence of one (often unidentified) is not justified. The moral lesson of justice must be taught or demonstrated even in the administration of punishment.

In paragraph 5, the State Commissioner for Education who signed the circular warned Principals and Headmasters (and teachers) to be extra vigilant and careful in enforcing these delegated disciplinary powers as any one found guilty of tyrannical conduct will himself/herself be severely disciplined.

3.3.2 Juvenile Delinquency with Case Laws

A juvenile is a young person. A delinquent is a young offender. A juvenile court is where children are tried. The maximum age of juveniles varies from country to country. However, most countries the demarcating class is those below the age of eighteen (18).

According to the Encyclopaedia International (1980, p. 87) juvenile delinquency are those acts of the young which the juvenile court considers dangerous to the young person, to his family, or to the community. To Chauhan (1978, p. 493), a delinquent act is "behaviour that violates norms of the society, and when officially known, it evokes a judgment by the courts that such norms have been violated".

The type of offences committed by delinquents is related to their age and sex and they include: destruction of public property, stealing, bullying, dishonesty, truancy, smoking, drinking, drug taking, sexual immorality, assault and battery, failure to serve punishment and carry out lawful duties. Juveniles accused or convicted of the offences aforementioned are sent to remand homes or reformatory centres and the underlying principle for their custody is rehabilitation. Below are cases involving juveniles as reported by Peretomode (1992).

**(a) COMMISSIONER OF POLICE
VS
ANTHONY E. ERIOBUNA (alias Emeka Ezenwa - .aged 15 years)
(Magistrate Court Abagana in Anambra State) J. N. Ofomat a Esq.)
Charge No. MNJ/69C/90**

FACTS:

On 14/3/90 at Mmimi village Nawfia within the jurisdiction of court at about 1.30 p.m. the offender broke the louver of the window of the dwelling house of one John Agunabo of Nawfia. Through the window, offender entered the home of John Agunabo. Without the Consent of John Agunabo offender removed one saw valued N27.00 and one shirt valued N58.00.

As he was coming out from the window of the house a passer by one Kachi Okoye saw offender. As accused jumped out of the window, Kachi Okoye ran after him and caught him with the shirt and saw. The offender was taken to the police station. Police recovered the saw and shirt from the offender. At the police station offender made confessional statement under caution. The offender was taken to Senior Police officer who attested the statement. The confessional statement was tendered as Exhibit B. The saw was tendered as Exhibit C. The shirt tendered as Exhibit C.I.

Court

Offender admits all the facts stated by the prosecutor. This court is satisfied that it is the intention of the offender to admit committing the offences charged. This court finds the offence proved.

ALLOCUTUS

Offender pleads thus: I am deceived by somebody, I beg for mercy. Dr. Obi Onujiogu for offender associated himself with the plea for clemency.

SENTENCE

In count 2 the offender is sentenced to six strokes of whip. In count 1 the offender is to be detained for 3 years at Government approved school Hill Top Enugu to learn a trade. The parents are to ensure that the offender is properly looked after in the school.

(b) COMMISSIONER OF POLICE

VS

CHRISTIAN NWOSU JUVENILE

**(Magistrate Court Awka, S. N. Okoye Esq.) Charge No.
MA J11/374c/90**

FACTS:

On 10/10/90 at about 12.30 p.m. the accused pretended that he was cutting orange tree branches behind their compound. From there he entered the farm of Chief A. C. Ndigwe at Umno Village, Awka. Therein he dug out and stole six tubers of yam valued N20.00 (Twenty Naira).

These yams belong to Chief A. C. Ndigwe. A relation of the said A. C. Ndigwe saw the offender in the act and reported it to him (A. C. Ndigwe). The accused was then arrested and brought to the police station.

At the Police station the accused made a Statement under charge and caution. This is the statement a statement signed by the offender and dated 15/10/90 identified by the accused his and admitted and marked Exhibit 'A'. Statement read aloud by the I. P. O. (Investigation Police Officer).

"The yams stolen by the accused were also recovered by the I.P.O. These are the yams" six very small yam tubers admitted and marked Exhibit 'B'. "At the close of police investigation the accused was charged to court for stealing the yams.

FACTS read over to the accused and explained to him in Igbo. He admits the truth of the facts and states that he lied to the police in his statement Exhibit 'A'.

COURT:

I am satisfied from the facts furnished by the prosecution and the plea of the accused that he stole six tubers of yam as charged. The charge is proved and I find the offender guilty.

ALLOCUTUS:

Offender pleads for leniency; states that his parents live in Warri, Bendel State; that he fell into the act of stealing owing to hunger. Godwin Nwosu, the uncle and guardian of the offender in answer to the Court's inquiry states that the offender does not attend any school nor is he learning any trade or occupation; that the offender has refused to go to school even though he was put into one and has also refused to learn the trade of a mechanic which he was attached to someone to learn; that the offender leaves the house in the morning only to return by night; the offender is aged fifteen.

ORDER Upon finding of guilt:

1. The accused is to be administered with seven strokes of the cane.
2. He is hereby committed to the care of his uncle Mr., Godwin Nwosu for the purpose of ensuring that he is adequately given a formal education or trained in a trade of the guardian's parents' choice.
3. The offender and his relation should report to the Court by the end of this month as to his conduct in home and as to developments in his education or learning of trade.

19/1990

(c) **COMMISSIONER OF POLICE**

Vs

OKECHUKWU ONWUBIKO A JUVENILE

(Magistrate Court A.wka, S.N., Okoye, Fsq.)

Charge No MAW/37Sc/90

Accused present. Inspector V. Aniagor for prosecution. M.C.Y. Ikegbunam for the Juvenile offender. Proceedings in camera.

Father of the offender Mr. Oyeoka Onwubiko upon questioning, informed the court that the offender was his son; that they lived together up to the time of the crime; that the offender was in primary school (Elementary five) until this year when he suddenly refused to continue. All efforts to get him back to school proved abortive; that the offender pilfers at home and often.

The father is willing to continue to sponsor him in school if he is willing to continue. Offender states that he is willing to continue schooling.

ORDER UPON A FINDING OF GUILT

1. The offender has just turned delinquent and abandoned schooling. I hereby order him to be under the care and supervision of his father Mr. Oyeoka Onwubiko and the Welfare Officer for the Awka Local Government Area. The offender is to return to school forthwith and the father should ensure that this is done. The offender and his father should regularly report to the Welfare Officer for Awka Local Government at times to be specified by the said Officer. The father is to regularly furnish the Officer with reports of the conduct of the offender. If the offender should continue to be delinquent the said officer shall report the matter to the court for a proper alternative order to be made.
2. The offender is to be whipped with six strokes of the cane. He is in addition bound to be of good behaviour for two years in the sum of N500.00 (five hundred Naira) and with surety in the like sum. His father should be his surety.

4/10/90.

3.3.3 Stubborn/Violent Children with Case Laws

One of the major problems facing Nigerian schools at all levels is that of gross indiscipline often perpetrated by stubborn and sometimes violent students. These categories of students often resort to wanton destruction of school property and manhandling of staff with the slightest excuse.

The teachers and heads of schools who effect corrective measures on erring students are often target of assault by students. Students ambush school officials and shoot them with catapults or hire thugs to beat them up. Sometimes they do the beating up themselves, and at other times with the collaboration of their parents on school grounds.

For instance, the National Concord (Monday 30 April/July: 1990) in a caption STUDENTS SENTENCED PRINCIPAL TO FLOGGING narrated how the palpable breakdown of discipline in schools has assumed a higher dimension when some secondary school students in Benue State tried and punished their principal for alleged theft".

The students of one of the Government Secondary Schools in Benue State accused their principal of having stolen five microscopes and a bottle of mercury from the school laboratory.

The students were said to have concluded the principal's guilt after their own private investigation. They then attacked and beat up the principal where he was addressing them at the school assembly ground. His 504 car also shared in the 'sentence' as they set to execute judgement smashing it up.

They were not satisfied with the sentence so far as they ran into the house of a teacher said to be the younger brother of the principal, but their rampage was checked by the police who had rushed to the scene.

There is no doubt that some students, teachers and heads of schools pilfer and sell science laboratory and workshop equipment, and even other school property for their personal and monetary gains.

But it is absurd for students to frame up charges and execute jungle justice on a principal teacher who has not been given fair hearing by the appropriate authority: Students involved in such lawlessness could be expelled from the school after following laid down procedures for dismissing students.

(a) JUVENILE CASE

COMMISSIONER OF POLICE V. CHIBUIKE MNANTA

**(In the Oyiibo Magisterial District of Rivers State holden at Oyiibo
before Senior Magistrate D. S. LOLOMARI 2392/2/90
Charge No. OYMC/43c/90)**

FACTS: On 20th February, 1990 at about 9.00 pm one Alozie Etenwa, a student of Government Secondary School, Umuagbai, and a friend of the Accused Father unlawfully armed himself with pen-knife and caused fear in the complainant. After threatening behaviour accused stabbed him with the knife on his left arm and caused him harm. Accused who is also a student of the school with the complainant was arrested and was subsequently charged to court. He pleaded guilty to the charge.

VERDICT: Accused was found guilty on both counts on his own plea. Accused pleads for pardon.

SENTENCE: Accused is to pay a fine of N100.00 on each count or serve 6 months in Remand home on each count. The terms to run consecutively.

**(b) WHERE NO INDIVIDUAL CAN SPECIFICALLY BE PINNED DOWN AS
HAVING STRUCK AND CAUSED THE DEATH OF A STUDENT THEN
NO STUDENT CAN BE HELD LEGALLY ACTIONABLE**

THE STATE vs. EMENIKE NWANKWO & OTHERS

**(In the high Court of the Ohafia Judicial Division holden at OHAFIA,
Before Mr. JUSTICE G.G.T OJIAKO, 2/3/79 Charge No. HOH/lc/79)**

RULING

The six accused persons in this case are jointly tried on a one count information charging them with:

Murder contrary to section 319 of the Criminal Code Cap. 30, Volume 2 Laws of Eastern Nigeria, 1963 in that they, Emenike Nwankwo, Onyebuchi Onyema, Oji Kanu, Samuel Ukpabi, Rex Onu and Okereke Nwosu on the 21st day of June, 1977 at Arochukwu within the Ohafia Judicial Division murdered one Dickson Egeonu.

The accused persons pleaded not guilty to the charge and were represented by two counsels.

The prosecution called five witnesses and established that on the 20th day of June 1977 there was a football match between the Teachers Training College Arochukwu, (T. T. C.) the home team, and Aggrey Memorial Secondary School, Arochukwu (A. M. S. S.) which ended in a serious clash between the students of the two colleges during which stones and sticks were freely thrown by both sides at each other.

This culminated in the death of one Dickson Egeonu, a T. T. C. student on 21/6/77 who was hit by one of the flyingstones. Of the six accused persons four were from A. M. S. S. and defended by Nwanmuo, Esq. learned counsel, while the other two were from T. T. C. and were defended by Ogbuagu Esq., learned counsel.

At the close of the prosecution's case, the two defending counsels made submissions of no case to answer on behalf of their clients submitting among other things that:

- (a) It was not proved that it was the act of the accused persons that caused the death of the deceased.
- (b) That the sum total of the prosecution's case was a bundle of speculations and no witness for the prosecution said how or what caused the injury from which the deceased died.

Replying the Senior State Counsel rightly conceded that the prosecution did not make out a case for the accused persons to be called upon to answer either for murder or for manslaughter. He asked the court to convict the accused persons for affray as there was sufficient evidence to that effect. He relied on Section 179 of the Criminal Procedure Law and on Section 316 (3) of the Criminal Code.

The Senior State Counsel having rightly conceded that the prosecution has not made out a case in the murder charge for the accused persons to be called upon to answer, I hereby discharge each and every one of the six accused persons on the murder charge.

As to the application by the Senior State Counsel that the accused persons be convicted of affray, though I very much condemn all acts of indiscipline more especially among school children and students, I cannot in the face of authorities on the point accede to the application of the Senior State Counsel.

In *Rex v. Nta & Others* 12 WAC/54 and in *Rex v. Noku of Yusa* (1940) 6 W. A.C.A. 203 it was held that on a charge of murder there is power to convict of manslaughter but not of an offence intended to cause grievous harm or a serious assault. A fortiori I cannot see how one can

convicted of affray on a charge of murder. So the accused persons cannot be convicted of an offence under the present information and each of them hereby stands discharged.

Students sometimes resort to fighting, either on campus or on their way home from school. Such fights might result in accidental death. Therefore students need to be constantly warned against such acts. A pupil who dies as a result of fighting may die for nothing as the pupil may not necessarily be guilty of murder or manslaughter. This is exactly what happened in the case of *THE STATE V. NWABUEZE*.

Self Assessment Exercise 4.3:

Explain the term juvenile delinquency.

4.0 CONCLUSION

School rules and regulations are very important, especially in the school system where the child should learn; not only academic work but also morals. The punishment ought to be correct and appropriate to the students' age and sex.

5.0 SUMMARY

In this unit, we have discussed the control of students. We specifically looked at issues of Discipline; the in loco parentis doctrine; problems and causes of indiscipline; school rules and regulations for students; guideline on punishments of students for offences in Federal Government Colleges, punishments and guiding principles; juvenile delinquency and stubborn/violent students.

6.0 TUTOR MARKED ASSIGNMENT

1. State the principles that should guide school officials in administering punishment in order to avoid liability or penalty of damages, fine or imprisonment
2. Why is the in loco parentis doctrine being challenged today?

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UNIT 5: CONTROL AND DISCIPLINE OF TEACHERS

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1.0 INTRODUCTION

The teacher holds the key to nation-building. This is due to the fact that the aspiration of a nation to transform into a great country can only be possible if there are competent and dedicated teachers to impart the appropriate knowledge, attitude and skills.

History of Education in Nigeria shows that teachers occupied the position of great honour and influence in their communities. They epitomized integrity, knowledge, leadership, moral rectitude and selfless service. But over the years, things appeared to have changed for the worse.

In order to bring back the lost glory, government through the Teachers Registration Council has defined the minimum standards expected of professional teachers in terms of their thoughts, words and actions.

United Nations Educational Scientific and Cultural Organisations (UNESCO)/ International Labour Organisation (ILO) issued a document on the status of teachers in 1984. Some of the recommendations are on professionalization, discipline, rights and responsibilities of a teacher.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- list and explain different types of disciplinary measures that a Schools Management Board can take against an erring teacher or principal;

- enumerate the acts, commission or omission adjudged to be misconduct;
- highlight the objectives of the Teachers Code of Conduct;
- state some of the recommendations of UNESCO and ILO on the status of teachers;
- state those who can report misconduct and where they would report to.

3.0 MAIN CONTENT

3.1 Types of Disciplinary Measures against Teachers

There are a number of disciplinary measures that can be taken against a teacher for breach of discipline usually described as misconduct. There are many aspects to misconduct. The nature of the disciplinary action to be taken depends on the gravity of the infraction. Disciplinary measures range from warning, interdiction, suspension, demotion, revocation of certificate, termination, outright dismissal and compulsory retirement. These categories of disciplinary measures are properly highlighted and described in Section 10 of A Handbook on the Federal Ministry of Education (1990, pp. 46-47) as follows:

(i) Warning:

As soon as the work or conduct of a teacher or officer is considered unsatisfactory, he is queried and given the opportunity to defend himself. If it is considered that he has exculpated himself, a written warning may be issued to him to desist from his misconduct. Depending on the number of warnings an officer has been given, he may lose his promotion to the next higher grade or may even be demoted or retired from service.

(ii) Interdiction:

If a criminal charge has been laid against an officer and it is considered that in the public interest he should cease to exercise the powers and functions of his office instantly, he may be interdicted. When an officer is interdicted, he ceases to report for duty and receives such proportion of the emoluments of his office, being not less than half, as will be determined.

(iii) Suspension:

Suspension is applied where a prima facie case (the nature of which is serious) has been established against an officer, and it is considered necessary in the public interest that he should forthwith be prohibited from carrying on his duties.

An officer on suspension ceases to receive his salary pending the time his case is finally investigated. If he is not found guilty, he is paid arrears of his salary not paid during the suspension.

(iv) Termination:

The appointment of an officer may be terminated, thus removing him from the service for grievous and flagrant misconduct. It may be effected by giving the officer a month's or three months' notice of termination of appointment or payment of a month's salary in lieu thereof.

(v) Dismissal:

This disciplinary action may be resorted to when an officer is guilty of such flagrant infraction that goes to the root of his appointment and severs the nexus between employer and employee. When an officer is dismissed, no notice or salary in lieu thereof is to be given to him, and his dismissal usually takes effect on the date on which he is notified. He thereby loses his gratuity and all pension rights.

(vi) Compulsory Retirement:

An officer may be retired from the service compulsorily as a disciplinary action where it is felt, as a result of misconduct, that he is no longer fit to be in the teaching service. Pension rights are not lost as a result of the retirement.

(vii) Demotion:

A teacher found guilty of misconduct, such as embezzlement of school fees, development fees, examination fees or collection of illegal school fees or development levies may be demoted in rank; reduction in status may also affect his salary in some cases. Demotion may take the form of reduction from the rank of a principal to that of a classroom teacher or that of senior teacher to that of a lower status.

(A) Professional Misconduct

Acts or offences specified as professional misconduct by the various educational institutions are varied but also similar in a number of cases.

(i) Infractions by Teachers

In a broader sense, in the schools, the question of infraction by teachers borders mainly on the following areas:

- (1) Lateness to school and school assemblies;
- (2) Interval absenteeism from school;
- (3) Lateness to classroom for teaching ;
- (4) Failure to prepare lesson notes;

- (5) Failure to attend staff meetings;
- (6) Failure to make use of the blackboard in teaching;
- (7) Examination malpractices (aiding or abetting) ;
- (8) Indulging in behaviours that tend to degrade the personality of a student, e.g., hair cutting as punishment, cutting skirt to size, etc;
- (9) Failure to perform duty as house master not keeping appropriate house records;
- (10) Indecent dressing;
- (11) Contributing to the delinquency of a minor;
- (12) Deliberate negligence of duty;
- (13) Beating or punishing students in disregard to rules and regulations for punishments;
- (14) Stealing school property e.g., stencils, stationery, typewriter, stopwatches, microscope, etc;
- (15) Fighting with colleague or students;
- (16) Rudeness or insubordination to the principal or his representative;
- (17) Corruption or fraudulent practices, e.g., collecting illegal dues from students, embezzlement of school fees, etc;
- (18) Failure to keep records of tests and examinations;
- (19) Failure to mark class register as form teacher;
- (20) Aiding students in destabilizing the peace and unity of the school;
- (21) Forgery of certificates and other personal documents; giving false information;
- (22) Engaging in activities or crimes that will jeopardize or bring disrepute to the teaching profession or to the school;
- (23) Drinking alcohol while on duty or getting intoxicated to school;
- (24) Sleep ing while on duty;
- (25) Smoking while on duty, particularly while teaching;

- (26) Leaking official and confidential documents to unauthorized persons;
- (27) Drug addiction;
- (28) Religious fanaticism;
- (29) Male teacher flogging female students on the buttocks;
- (30) Going home before the normal closing hour;
- (31) Falsification of accounts;
- (32) Forging of transfer certificates or results of students.(Peretomode, 1992)

(ii) Acts Constituting Professional Misconduct

The then Bendel State Post-Primary Education Edict, 1988, Second Schedule, S.6 (a) (9), according to Peretomode (1992) for example, specifies the following acts as amounting to professional misconduct:

- (1) Conviction for a felony or misdemeanour;
- (2) Conviction for an offence contrary to the provisions of the Education Edict or any regulations made under the Education Law;
- (3) In relation to an application for registration as a teacher, knowingly furnishing to the *register of teachers information which is false in a material particular*;
- (4) In relation to an application for employment as a teacher; knowingly making a statement which is false with the intent to defraud and failing to disclose to the School Board any material information within the knowledge of the offender;
- (5) Having carnal knowledge of a child who is attending an institution at which the offending teacher is a member of staff;
- (6) Conduct prejudicial to the maintenance of order and discipline in an institution; and
- (7) Conduct in respect of the staff or children in an institution which is disgraceful or dishonourable.

The Imo State Education (Miscellaneous Provisions) Edict No. 10 of 1998, Sixth Schedule, Section 25 (2) (1) to (10) lists the following ten acts as constituting professional misconduct:

- (1) Immorality with a school pupil;
- (2) Misappropriation of school funds;
- (3) Dishonest conduct in relation to an examination;

- (4) Suppression or falsification of school records or statistics;
- (5) Bribery, corruption or exploitation of children's services for personal ends;
- (6) Teaching the children of his school outside school hours for private income;
- (7) Teaching the children of his or any school outside school hours for private income without official approval by the Schools Management Board;
- (8) Engaging in an illegal school, either as a proprietor, headmaster or teacher;
- (9) Engaging in any commercial activity or trade, including hawking of any ware during school hours;
- (10) Proven act of insubordination to immediate boss and consistent dereliction of duty. (Peretomode, 1992)

TRCN (2005) enumerated Acts, Commission or Omission adjudged to be Misconduct

- (i) Forgery or mutilation of official document
- (ii) Fighting in or within the school premises
- (iii) Assaulting a student or teacher
- (iv) Abuse of a student or a teacher
- (v) Intimidation of Student(s)
- (vi) Harassment (Sexual or otherwise)
- (vii) Habitual late Comer
- (viii) Unauthorized Absenteeism
- (ix) Taking undue advantage of students or teachers
- (x) Illegal or Unauthorized collection of money from students
- (xi) Facilitating, aiding abetting or assessor to exam malpractice
- (xii) Irregular or unauthorized award of marks
- (xiii) Bribery (giving or taking)
- (xiv) Disobedience of lawful order
- (xv) Stealing
- (xvi) Extortion from students
- (xvii) Money for Marks Racket
- (xviii) Sex for Marks Racket
- (xix) Employing Unqualified Teachers
- (xx) Teaching with non-qualifying or unrecognized certificate
- (xxi) Teaching without Registration with TRCN etc

(B) Teachers Right to Fair Hearing during Disciplinary Inquiry

If the allegation of misconduct against a teacher is a serious one that would warrant severe disciplinary action such as demotion, removal of his name from the register of teachers or termination or dismissal, the teacher against whom the allegation is made must be given a hearing. If the principle of fair hearing (substantive and procedural due process) is not adhered to in the proceedings, the court may declare such punishment resulting therefrom as against the principles of natural justice and therefore, null and void. This is why the laid down procedural rules and regulations must be scrupulously followed in the investigation of alleged misconduct against a teacher, which if established, may lead to severe penalty against him.

The right to fair hearing before severe disciplinary action is taken against a teacher is provided for in most State Education Laws or Codes. It is also one of the fundamental rights provided for in Chapter IV, S. 36 of the 1999 Constitution of the Federal Republic of Nigeria. The Section 36 (1&2) of the Constitution states that:

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 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; . Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; contains no provision making the determination of the administering authority final and conclusive.

The origin of the principles of fair hearing or *audi alteram partem* (hear the other side) and the rule of natural justice is traceable to the Bible. As Mr. Justice J. S. Anyanwu stated in his ruling in the case of *J.I.J. Uchegue vs. I. Nwandu and B. Adikwu* (1986), even God Himself observes it. As pointed out by Peretomode (1992), we read in the book of Genesis that when Adam and Eve ate the forbidden fruit in the Garden of Eden, the Almighty God did not proceed to punish them without first hearing from them. Verses 11-13 of the third chapter of Genesis are pertinent:

- (i) And the Lord said, who told thee that thou wast naked? Has thou eaten of the tree, whereof I commanded thee that thou shouldest not eat?
- (ii) And the man said, the woman whom thou gavest to be with me, she gave me of the tree, and I did eat;
- (iii) And the Lord God said unto the woman, what is this that thou hast done? and the woman said, the serpent beguiled me, and I did eat.

God was patient. And after hearing the explanations from Adam and Eve and not being satisfied, He proceeded in the subsequent verses to hand His punishment to them (pp. 6-7 of the ruling). Fair hearing in Nigeria as regards teachers is not only a common law requirement, but also statutory and a constitutional requirement. In the Supreme Court of Nigeria ruling in the case of

Mrs. Yesufu Amuda and Garba and Others vs. The University of Maiduguri (1985), the presiding Justice Andrews Otutu Obaseki, reading the lead judgement, clarified the meaning of fair hearing by stating:

The Courts have always drawn the distinction between hearing a man as a witness in an administrative inquiry and hearing him in defence of his conduct or integrity. Fair hearing implies that:

- (a) A person knows what the allegation against him are;
- (b) What evidence has been given in support of such allegations;
- (c) What statements have been made concerning those allegations;
- (d) Such a person has a fair opportunity to correct and contradict such evidence;
- (e) The body investigating the charge against such a person must not receive evidence behind his back. The court has a duty once it is seized with the determination of the civil rights and obligations of any persons to be guided by the principles of fair hearing.

The point is further enhanced and made more explicit by Justice Oputa also of the Supreme Court, in the case under discussion when he wrote as follows:

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

Often, the terms due process of law, substantial justice, or natural justice are used synonymously with fair hearing. For example, in the case of Professor C.A. Onwumechili and the University of Ife Vs. Miss Olajobi Akintemi and one Other (1984), Justice Uche Omo, who presided and read the lead judgement, pointed out that the three basic requirements of natural justice are:

- (a) the person accused should know the nature of the accusation made against him;
- (b) such a person should be given an opportunity to state his case;
- (c) the tribunal investigating the charge against such a person must act in good faith (p. 505).

In Ajayi and Ors. Vs. Principal, Ijebu-Ode Grammar School (1982), Justice Sofolahan, then the Ijebu-Ode High Court, pointed out that the principle of substantial justice contains two essential elements:

- (a) the rules of audi alteram partem , i. e., both sides must be heard, and
- (b) nemo iudex in causa sua no man shall be judge in his own cause.

In the light of the foregoing analysis, it is only reasonable that no teacher should be punished for an alleged offence without being given the chance to fair trial or fair hearing.

Self Assessment Exercise 5.1:

Identify and briefly discuss the different categories of disciplinary measure an Educational Institution can take against an erring academic staff.

3.4 Teachers Code of Conduct

The Teachers Registration Council of Nigeria (TRCN) Act Section 9 (6) empowers the Council to make rules which are not inconsistent with the Act as to acts which constitute professional misconduct.

3.4.1 Objectives of Teachers Code of Conduct

The objectives of the Teacher's Code of Conduct, among others, are to:

- (a) Re-awaken the sense of self-esteem, dignity, honour, selfless service and moral rectitude in the teacher;
- (b) Protect the teachers age-long position of nobility and leadership in the social, moral and intellectual world;
- (c) Build a strong moral foundation for the actualization of an educational system that can compete favourably in the global community;
- (d) Boost public confidence in the ability of the teaching profession to regulate itself and to bequeath to the nation products that are capable of making maximum contribution towards the development of the nation in particular, and the world in general;
- (e) Provide objective yardstick for the assessment of the teachers conduct and discharge of professional duties;
- (f) Help to guarantee the safety of the professionals and spell out the type of relationship that should exist between the teachers on one hand, and severally their colleagues, students and other persons who would interact with them from time to time.

3.4.2 UNESCO/ILO Position on Status of the Teacher

In 1984, the International Labour Organisation (ILO) and United Nations Educational, Scientific and Cultural Organisation (UNESCO) issued a document titled: The Status of Teacher: An

Instrument for its Improvement The International Recommendation of 196 Joint Commentaries by the ILO and UNESCO.

The document has more than 142 recommendations, covering guiding principles, educational objectives and policies, preparation for the profession, further education for teachers, employment and career, rights and responsibilities of teachers, conditions for effective teaching and learning, teachers salaries and social security, among others. Below are selected recommendations (Rec.) on professionalization, discipline, rights and responsibilities of a teacher:

Recommendations	Issues
	(a) Professionalization:
Recommendation 6: Teaching should be regarded as a profession; it is a form of public service which requires of teachers expert knowledge and specialized skills, acquired and maintained through rigorous and continuing study; it calls also for a sense of personal and corporate responsibility for the education and welfare of the pupils in their charge.	
Recommendation 11: Policy governing entry into preparation for teaching should rest on the need to provide society with an adequate supply of teachers who possess the necessary moral, intellectual and physical qualities and who have the required professional knowledge and skills.	
Recommendation 13: Completion of an approved course in an appropriate teacher-preparation institution should be required of all persons entering the profession.	
Recommendation 21(1): All teachers should be prepared in general, special and pedagogical subjects in universities, or else in special institutions for the preparation of teachers.	
Recommendation 23: Education for teachers should normally be full time; special arrangements may be made for older entrants to the profession and persons in other exceptional categories to undertake all or part of their courses on a part-time basis, on condition that the content of such courses and the standard of attainment are on the same level as those of the full-time course.	
Recommendation 28: Teacher preparation institutions should form a focus of development in the education service, both keeping schools abreast of the results of research and methodological progress, and reflecting in their own work the experience of schools and teachers.	
Recommendation 46: Teachers should be adequately protected against arbitrary action affecting their professional standing or careers.	
	(b) Discipline:
Recommendation 47: Disciplinary measures applicable to teachers guilty of breach of professional conduct should be clearly defined. The proceedings and any resulting actions should only be made public if the teacher so requests except where prohibition from teaching is involved or the protection or well-being of the pupils so requires.	
Recommendation 48: The authorities or bodies competent to propose or apply sanctions and penalties should be clearly designated.	

	(c) Rights:
Recommendation 61: The	teaching profession should enjoy academic freedom in the discharge of professional duties. Since teachers are particularly qualified to judge the teaching aids and methods most suitable for their pupils, they should be given the essential role in the choice and the adaptation of teaching material, the selection of textbooks and the application of teaching methods, within the framework of approved programmes, and with the assistance of the educational authorities.
Recommendation 62: Teachers	and their organizations should participate in the development of new courses, textbooks and teaching aids.
Recommendation 63: Any	system of inspection of supervision should be designed to encourage and help teachers in the performance of their professional tasks and should be such as not to diminish the freedom, initiative and responsibility of teachers.
Recommendation 64 : (i)	Where any kind of direct assessment of the teacher's work is required, such assessment should be objective and should be made known to the teachers;
	(ii) Teachers should have a right to appeal against assessments, which they deem to be unjustified.
Recommendation 65: Teachers	should be free to make use of such evaluation techniques as they may deem useful for the appraisal of pupils' progress, but should ensure that no unfairness to individual pupil results.
Recommendation 66: The	authorities should give due weight to the recommendations of teachers regarding the situation of individual pupil for courses and further education of different kinds.
Recommendation 67: Every	possible effort should be made to promote close cooperation between teachers and parents in the interest of pupils, but teachers should be protected against unfair or unwarranted interference by parents in matters which are essentially the teacher's professional responsibility.
Recommendation 69: While	teachers should exercise the utmost care to avoid accidents to pupils, employers of teachers should safeguard them against the risk of having damages assessed against them in the event of injury to pupils occurring at school or in school activities away from the school premises or grounds.
	(d) Responsibilities:
Recommendation 70: Recognizing	that the status of their profession depends to a considerable extent upon teachers themselves, all teachers should seek to achieve the highest possible standards in all their professional work.
Recommendation 71: Professional	standards relating to teacher performance should be defined and maintained with the participation of the teachers organisation.
Recommendation 72: Teachers	and teachers organisations should seek to cooperate fully with authorities in the interests of the pupils, of the education service and of society generally.
Recommendation 73: Codes	of conduct should be established by the teachers organisations, since such codes greatly contribute to ensuring the prestige of the profession and the exercise of professional duties in accordance with

	agreed principles.
Recommendation 74: Teachers	should be prepared to take their part in extra-curricular activities for the benefit of pupils and adults.
Recommendation 75: In	order that teachers may discharge their responsibilities, authorities should establish and regularly use recognized means of consultation with teachers organisations on such matters as educational policy, school organisation, and new developments in the education service.
Recommendation 76: Authorities	and teachers should recognize the importance of the participation of teachers, through their organisations and in other ways, in steps designed to improve the quality of the education service, in educational research, and in the development and dissemination of new improved methods.
Recommendation 77: Authorities	should facilitate the establishment and the work of panels designed, within a school or within a broader framework, to promote the cooperation of teachers of the same subject and should take due account of the opinions and suggestions of such panels.
Recommendation 78: Administrative	and other staff that are responsible for aspects of the education service should seek to establish good relations with teachers and this approach should be equally reciprocated.
Recommendation 79: The	participation of teachers in social and public life should be encouraged in the interest of the teacher's personal development, of the education service and of society as a whole.
Recommendation 80: Teachers	should be free to exercise all civic rights generally enjoyed by citizens and should be eligible for public office.

3.4.3 Teachers Investigating Panel and Teachers Disciplinary Committee

(a) Teachers Investigation Panel (TIP)

The Teachers Registration Council of Nigeria (TRCN) Act in Section 9 established a Teachers Investigation Panel with the following responsibilities:

- (i) Conducting a preliminary investigation into any case where it is alleged that a member has misbehaved in his capacity as a professional teacher; or should for any other reason be the subject of proceedings of the committee, and
- (ii) Deciding whether the case should be referred to the Teachers Disciplinary Committee.

The Panel shall be set up in each state of the Federation and the Federal Capital Territory (FCT). Members of the Panel shall be appointed by TRC after consultation with the state Ministries of Education or the Federal Ministry of Education in the case of the FCT. The Panel shall consist of five members, one of which shall be a legal practitioner.

(b) Teachers Disciplinary Committee (TDC)

The TRC Act Section 9 equally establishes the Teachers Disciplinary Committee. The TDC is a tribunal which is responsible for considering and determining any case referred to it by the TIP. The TDC consists of the Chairman of TRC and ten other members appointed by the Council.

(c) Penalties for Unprofessional Conduct

The TRC Act Section 9 empowers the TDC to punish a member where:

- (i) He is judged by the committee to be guilty of infamous conduct in any professional respect; or
- (ii) He is convicted by any court or committee in Nigeria or elsewhere having power to award imprisonment, or of an offence (whether or not punishable with imprisonment) which in the opinion of the committee is incompatible with the status of a teacher;
- (iii) The committee is satisfied that the name of any person has been fraudulently registered.

For erring members, the TDC may award penalties such as:

- (a) Advice
- (b) Reprimand
- (c) Suspension for months, and
- (d) Deletion of name temporarily or permanently from the Teachers Register.

3.4.4 Obligations of Teachers

(a) Professional Standards:

Teachers should seek to achieve the highest professional standards in all their works and uphold the honour and integrity of the profession.

(b) Professional Commitment:

Teachers should have an enduring absolute commitment to the profession, giving maximum attention and responsibility to the profession, aspiring to make a successful career within the system, and taking pride in the profession

(c) Efficiency:

Teachers should render efficient and cost-effective professional service at all times.

(d) Evaluation of Learners Performance:

Teachers should evaluate periodically the learners performance and render all professional assistance likely to enable learners to identify and excel in their skills.

(e) Precepts:

Teachers should be dedicated and faithful in all professional undertakings being punctual, thorough, conscientious and dependable.

(f) Arbitration:

Teachers should submit themselves to the summons and arbitration of Teachers Investigation Panel and Teachers Disciplinary Committee as and when the need arises.

Rights and Privileges of Registered Teachers

Registered teachers shall enjoy the rights and privileges listed below:

- (a) Legal status as teachers.
- (b) Freedom to attach to their names, titles or prefixes as may be determined by TRC for the identification of registered teachers in Nigeria.
- (c) Freedom to impart their professional skills, knowledge and values within the education systems, subject to regulation by TRC.
- (d) Participation in all TRC activities that are open to members.
- (e) Letters of credence from TRC when required by foreign Teachers Council or other relevant bodies around the world.
- (f) Professional salary scales, allowances and other benefits that may be secured by TRC for registered teachers.

Other Relevant Laws

Apart from the TRC Act, teachers in the pursuit of their professional calling are to familiarise themselves with and abide by the provisions of other relevant laws that relate to the performance of their duties. These laws include:

- (a) United Nations Declaration on Human Rights, 1947
- (b) Corrupt Practices and Other Related Offences Act, 2000
- (c) The Child Rights Law, 2003.

Relationships of Teachers

- with Colleagues

Respect: Teachers should respect both their senior and junior colleagues in all dealings rendering help and assisting them to attain highest professional goals

Symbolic Relationship: The relationship among teachers should at all times be mutually beneficial and aimed at uplifting the profession to the highest level.

Responsibilities of Senior Colleagues: A senior teacher should show self-respect, conduct himself/herself in exemplary manner and strive to bring up junior colleagues professionally.

Responsibilities of Junior Colleagues: Junior teachers should have respect for their seniors in both formal and informal contacts, and show willingness to learn from them.

Loyalty: Teachers should cooperate with one another to achieve professional goals, be honest by demonstrating integrity in all contacts, should respect persons and property, be trustworthy and preserve confidence.

Discrimination: Teachers should relate equally with all colleagues irrespective of religion, culture, race, gender, political inclination, etc.

Defamation of Colleagues: Teachers should not make derogatory remarks on one another or undermine the integrity of colleagues in any circumstance.

Touting: Teachers should not use dubious or unethical means such as deception, misinformation, etc. to take away clients and learners of colleagues.

Canvassing: Teachers should not unduly advertise themselves in order to gain undue advantage over colleagues or to suggest that they possess extraordinary knowledge and skills which they do not actually have.

Teamwork: Teachers should seek assistance from colleagues in tasks beyond their management or professional ability when necessary, and take delight in teamwork.

- with Learners

Child Right and Dignity: Teachers should have respect for the child's right and dignity without prejudice to sex, gender, race, religion, tribe, colour, physical characteristics, place of origin, etc.

Responsibility for Educational Programmes: Teachers are responsible for diagnosing, advising, prescribing, implementing and evaluating educational programmes and instructions and should not delegate these functions to any other persons except in limited cases and with their direct supervision.

Empathy: Teachers should show maximum consideration for the feelings and circumstances of the learners.

Confidentiality: Teachers should not reveal information about the learner given in confidence to them except by law or in the interest of the learner, parents/guardians or in the public interest.

Fair Remuneration: Teachers may not accept pay for services already paid for by the employer.

However, teachers are free to seek payments that are commensurate to their services as obtained in the teaching profession in their environment.

Sexual misconduct and related Abuse of Office: Teachers should not use their position humiliate, threaten, intimidate, harass or blackmail any learner to submit to selfish motives or to engage in sexual misconduct, drug addiction and trafficking, cultism, human trafficking and other related offences.

Examination Malpractice: Teachers should keep all examination records and knowledge at their disposal with absolute secrecy and should not, in any manner whatsoever, aid and abet examination malpractice by any learner.

They are obliged to report all cases of examination malpractice, which come to their knowledge, to the appropriate authorities without delay.

Patronage of Learner Groups: Teachers should not patronize in any way learners associations deemed by law or public morality to be inimical to social and moral order society such as secret cults, gay associations and the like, and should cooperate with relevant authorities to prevent or eradicate them.

Role Model: Teachers should serve as role model to learners showing high degree of decency in speech, mannerism, discipline, appearance and the general performance of their roles.

Corrupt Practice: Teachers should not ask or receive gifts, or gratification for themselves or for others in any kind whatsoever for selfish motive.

Corrupt practice here includes having confidential knowledge of a learner, bribery, and indecent relationship with a learner, etc.

Corporal Punishment: Teachers should not under any circumstance administer any corporal punishment except otherwise permitted by the school authority.

Discipline: Teachers should, at all times, ensure that learners behave in a civil and disciplined manner.

Ideological Influence: Teachers should not use their positions to spread their political, religious, or other ideologies among learners.

- with Parents / Guardian

Right to Information: Teachers should provide parents/guardians with all relevant information about activities, progress and problems concerning their children/wards and when required.

Regular Communication: Teachers should communicate regularly with parents/ guardians regarding the affairs of their children or wards. They should respect the confidence of both parents, children/wards who may bring personal matters to their notice.

Respect for Parents/Guardians: Teachers should show courtesy and respect to parents/guardians and offer maximum cooperation in dealing with issues concerning their children or wards.

Favouritism: Teachers should resist taking gifts, favours, and hospitality from parents and guardians, which are likely to influence them to show favour to their children/wards in the performance of their duties.

Association with Parents/Guardians: Teachers should encourage and actively participate in parent/teachers association (PTA), which is likely to impart positively on the learner and general educational programmes.

- with Employers

Professional Independence: Teachers should not enter into any contract that may undermine the exercise of their full professional competencies and judgements without undue interference.

Areas of Competence: Teachers should seek to perform only tasks that are within their professional competencies.

Respect of Contract: Teachers should strive to fulfill contractual obligations and to render their services only in accordance with the terms of the contract or the law.

Obligation to Union Agreement: Teachers are obliged to respect agreement entered between their union and the employers

- within the Society

Role of Teachers in the Society: Teachers in the society should be embodiment of exemplary citizenship, integrity, and industry and participate actively in the development of both their immediate and wider communities.

Advice to Government/Stakeholders: Teachers have the responsibility where possible to advise government and stakeholders on the provision of appropriate educational infrastructures, programmes and funding.

Obedience to Law: Teachers should comply with all the laws of the land and moral codes of the society that promote good governance, transparency and accountability in office.

Tolerance: Teachers should accommodate the diverse cultures, religions, other ideologies and practices of the society and promote good inter-human relations.

Personal Habit: Teachers should cultivate personal habits that are capable of portraying the profession to be of very high standards and avoid indecent behaviours and social vices such as

as drunkenness, smoking in the public, indecent dressing, breach of public peace, dishonesty, fraud, etc.

General

- **Liability to Teachers:** Teachers are bound to be liable for any acts or omissions that run contrary to professional standards or falls short of commonly held values, practices and norms.
- **Constructive Criticism:** Teachers should criticize their colleagues, constituted authorities or public affairs in the country, only constructively and with a high sense of responsibility.
- **Open mindedness:** Teachers should be open minded to their colleagues, learners, the general public and help to bring to their attention all information that may be essential for their professional growth, development and general welfare.
- **Incentive for good behaviour:** Teachers who distinguish themselves in the discharge of their professional duties may have the opportunity of receiving recognition from Teachers Registration Council of Nigeria in form of merit awards and other benefits.
- **Interpretation of Teachers Code of Conduct:** In the case of any conflict arising from the interpretation of this Code of Conduct, such a case should be brought to the Council for clarification.

Role of Teachers as Administrative/Academic Leaders

Inspiration: Teachers should be able to inspire subordinates by exemplary character or behaviour and show unalloyed commitment to the demands of their offices.

Motivation: Teachers should give necessary incentives to subordinates to empower them to advance and excel in their professional careers.

Personality: Teachers should exhibit charisma, foresight, justice, empathy, self-respect, selflessness, honesty, consistency, moral-uprightness, etc. in their services.

Objectivity: Teachers should not do anything that would bring down the dignity of the profession. They should exhibit fairness without fear or favour in the discharge of their professional duties.

Democratic Behaviour: Teachers should practice group decision-making process in their organisations or groups.

Academic Development: For the academic heads, teachers should keep abreast of developments in theory and practice of education around the world and actively participate in research and development within the profession and motivate subordinates to do same.

Ensuring all-round development of Learners: Teachers should ensure all round development of learners, through a good mix of curricula and co-curricula activities.

3.4.5 Discipline, Punishment and Issues in Reporting

The Council has published a Teachers Code of Conduct (TCC) to define the minimum ethical standards expected of professional teachers. The TCC is given free of charge to teachers at the point of registration. Teachers, who for any reasons did not get a copy, might of necessity get a copy from the nearest TRCN office. It forecloses the possibility that any teacher will claim ignorance of what constitutes virtues or vices in the discharge of his professional duty. With the establishment of the Code, the Council will exercise its disciplinary functions on erring teachers.

- Disciplinary Action, Sanctions and Punishments

On the conviction of a teacher against any of the category of offences stated above, the Teachers Disciplinary Committee (The Tribunal) can give directives for:

- (i) Advice;
- (ii) Reprimand;
- (iii) Suspension of registration (for months);
- (iv) Cancellation of registration;
- (v) Deletion of name temporarily or permanently from the Teachers Register;
- (vi) Criminal prosecution in accordance with the relevant laws of the country.

For the purposes of subsection (1) (b) of this section, a person shall not be treated as convicted as therein mentioned, unless the conviction stands at a time when no appeal or further appeal pending or may (without extension of time) be brought in connection with the conviction.

When the committee gives a direction under subsection (1) of section 10, the committee shall cause notice of the direction to be served on the person to whom it relates.

The person to whom such a direction relates may, at any time within twenty eight days from the date of service on him of notice of the direction, appeal against the direction to the Court of Appeal; and the committee may appear as respondent to the appeal and, for the purposes of enabling directions to be given as to the costs of the appeal and of proceedings before the committee, the committee shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.

A direction of the committee under subsection (1) of section 10 shall take effect:

- where no appeal under this section is brought against the direction within the time limit for such an appeal, on the expiration of that time; or
- where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or

- where such an appeal is brought and it is not withdrawn or struck out as aforesaid, if when the appeal is dismissed, and shall not take effect except in accordance with the foregoing provisions of this subsection.

A person whose name is removed from the register in pursuance of a direction of the committee under section 10, shall not be entitled to be registered again except in pursuance of a direction in that behalf given by the committee on the application of that person; and a direction under this subsection by that person until the expiration of such period from the date of the direction (and he has duly made such an application, from the date of his last application) as may be specified in the direction.

- Duty to Report

Section 11 (1) of the Act provides as follows: It shall be the duty of the head of an educational institution to report any misconduct by a registered member to the panel.

- Who can Report

- (i) Student
- (ii) Teacher
- (iii) Head of Institution
- (iv) Parents
- (v) Any Stakeholder
- (vi) General Public

- Penalty for Not Reporting

A person in breach of the provisions of subsection (1) of the section 11 shall be guilty of an offence and liable on conviction to a fine of N1,000 or to imprisonment for a term of twelve months or both.

- Where to Report

- (i) Head of any Academic Institution
- (ii) State Ministry of Education
- (iii) Federal Ministry of Education
- (iv) Nigeria Union of Teachers
- (v) All State Offices of the Teachers Registration Council of Nigeria
- (vi) Zonal Offices of the Teachers Registration Council of Nigeria
- (vii) Headquarters of Teachers Registration Council of Nigeria
- (viii) Official Website of the Teachers Registration Council of Nigeria www.trcn.gov.ng.
- (ix) Hotline of Teachers Registration Council of Nigeria (+234-9-5233159)
- (x) By e-mail: info@trcn.gov.ng.
- (xi) By post to TRCN Headquarters.

Registrar/Chief Executive
Teachers Registration Council of Nigeria
Headquarters, Plot 567, Aminu Kano Crescent,
Wuse 2, P.M.B. 526, Garki Abuja.
Tel: +234-9-5231439, 5233110.
Fax: +234-9-5233098.

3.4.6 Case Laws as cited by Peretomode (1992)

Case No. 1: Irregular Dismissal Right to Fair Hearing Right to Unionism of Teachers
Summary Dismissal does not mean Dismissal without
Due Process of Law

CHIEF C. O. B. ECHE *Plaintiff*

&

1. STATE EDUCATION COMMISSION
(ANAMBRA STATE)

2. ATTORNEY-GENERAL OF ANAMBRA STATE *Defendant*

AND BETWEEN

MRS. ANN CHIGBO *Plaintiff*

&

1. ANAMBRA STATE LOCAL GOVERNMENT
COMMISSION

2. ATTORNEY-GENERAL OF ANAMBRA STATE *Defendant*

(High Court of Anambra State, Enugu, Enugu Judicial Division Holden at Enugu Chief
Judge, Justice E. O. Araka 10/5/83, Suit No. E/70/82)

INTRODUCTION:

The cause of action in these two cases arose out of the same transaction and involves the same points of law. Though the two cases had not been consolidated, it was agreed by counsel on all sides that the addresses in the two cases be heard together so that in effect only one judgement would be written and delivered in respect of the two cases; and that the judgement will be the judgement of the Court in respect of these two cases and in respect of all the 21 remaining cases instituted in the Court by the teachers over whom disciplinary actions had been taken in consequence of the events leading to the cause of action. The reliefs claimed in these two cases as well as the reliefs claimed in the remaining 21 cases are the same. The only difference is that in some of the cases, the 1st defendant is the Local Government Service Commission. The 2nd defendant is the Attorney-General of the State in all the cases. He is more or less a nominal defendant.

In Anambra State, the Local Government Service Commission is the body charged with the responsibility for the management of primary schools, whilst the State Education Commission is

the body charged with the responsibility for the management of post-primary schools. This is precisely the reason why the first suit in which Chief C.O.E. Eche is the plaintiff has been taken as the test case with regard to the post-primary school teachers; whilst the suit in which Mrs. Ann Chigbo is the plaintiff has been taken as the test case with regard to the primary school teachers.

Amongst the seven relief claims in each of these cases, are as follows:

1. A declaration that the purported dismissal of the plaintiff from public service of Anambra State by the 2nd defendant, is irregular, illegal, ultra-vires, null and void and of no effect whatsoever.
2. A declaration that the purported dismissal of the plaintiff from the public service of Anambra State and/or the service of the 1st defendant is irregular, unconstitutional, contrary to the procedure governing the plaintiff's service and of the principles of natural justice and is null and void and of no effect.
3. A declaration that the plaintiff is still in the public service of Anambra State and/or in service of the 1st defendant.
4. An order setting aside the 1st defendant's decision dismissing the plaintiff from the public service of Anambra State and/or its service.
5. An injunction restraining the 1st defendant, its servants and agents and all officers and agents of the Government of Anambra State from interfering with the plaintiff in the exercise of his profession as a teacher/principal and/or employee in the Public Service of Anambra State or refusing to accord the plaintiff the status of a teacher and/or Principal in the Public Service of Anambra State.

THE FACTS:

The facts of these cases are not in the least in dispute. It is generally agreed that the plaintiffs who are teachers in Anambra State and members of the Nigeria Union of Teachers (NUT), embarked on an industrial action as from the 1st day of February, 1982. The defence was that the strike was illegal as the teachers did not comply with the provisions of the Trade Dispute Act, 1976 as amended by the Trade Disputes Act, 1977. It was also agreed that on the 15th February, 1982, His Excellency, the Governor of Anambra State held a press conference in which it was stated that the Governor was directing that certain disciplinary actions be taken against some of the striking teachers. It was further admitted that Chief Eche's dismissal was notified to him through a letter from the State Education Commission dated 17th February, 1982 and which was tendered in evidence. It was also agreed that Mrs. Ann Chigbo's dismissal was notified to her through a letter from the Local Government Service Commission dated 16th February, 1982. The defence is that the dismissals were in order as the teachers had taken part in an illegal strike and absented themselves from duty, and by Article 41 of the Teachers Service Manual, 1974 which govern the conditions of service of all teachers, both in primary and post-primary schools.

A teacher who absents himself from duty without permission renders himself liable to be dismissed from service without formality.

THE ISSUE:

The crucial issue for determination in this matter is the legality or illegality of the strike action and the legal consequences thereof. Also to be determined is the validity of the letters of dismissal and the disciplinary actions taken against the teachers, and whether principles of natural justice should be observed by both the State Education Commission and the Local Government Service Commission.

HELD:

1. After an extensive review of the evidence before him and all of the provisions of the relevant subsections of section 13 (1) of the Trade Disputes Act, 1967-1977 to be complied with by the workers, the learned judge held that the teachers strike, strictly speaking, cannot by any stretch of the imagination be held to be illegal. He added: Secondly, can it be said that the purpose of the strike was not lawful or that the involved the use of unlawful means? I do not think so. The purpose of the strike directed towards improving the conditions of the teachers, and there was no evidence that it involved the use of any unlawful means (p. 13).
2. The second issue (dismissal from service) is very important to us. The learned judge on pages 15-18 made the following important observation. He noted that it has been forcefully submitted that a teacher who absents himself from duty without permission can be dismissed summarily and without being given an opportunity of being heard. But the honourable judge pointed out that the very wording of the said Article 41 shows clearly that a teacher who absents himself from duty cannot be dismissed summarily without being given an opportunity of showing in the first place that he had permission or not to absent himself from duty. It is only when the teacher is unable to justify his absence from duty that Article 41 of the Teacher Service Manual can be applied.

The judge continued when he said that it must be stated that the words without permission do not necessarily mean that each time a teacher absents himself from duty he must obtain physical permission from the authority before absenting himself from duty. The words without permission can literally be interpreted to mean without just cause or excuse. He made the following analogy:

If, for example, a teacher on his way to school happened to be knocked down by a reckless motorist and is carried straight to the hospital in an unconscious condition, and he remained there for some weeks, he would not be said to have absented himself from duty without permission. This is so because the teacher could not have obtained permission from anyone to be absent from duty so as to be knocked down on the road by a reckless motorist. And he need not be carried first to school to obtain permission to be absent from the school before being carried to the hospital. In such a case, the teacher had just cause or excuse in absenting himself from duty.

Therefore, when the Teachers Service Manual uses the words, without permission, it presupposes that the teacher must be given an opportunity of being heard before he could be dismissed. He must be given opportunity to justify his absence from school. In this context, the words without formality mean no more than without notice. The teacher must be given an opportunity of explaining himself. If the teacher was entitled to be given some months notice before dismissal, he could be dismissed without any notice once it has been established that he had absented himself from duty without permission or without just cause or excuse. But there cannot be any question of the teacher being dismissed without being given first an opportunity of showing whether he had permission or not to absent himself, or whether his absence from duty was without cause or excuse. It is after he had failed to do so that the question of his dismissal summarily would arise, i.e., without notice. It offends the rules of natural justice (impartiality and fairness) for any authority to take any disciplinary action against any person without first giving that person opportunity of being heard.

ORDERS:

In Chief Eche's case, claims 1 and 2 were upheld for him. Other claims sought were dismissed largely because he had given notice to retire from service as from February, 1983. And in Mrs. Ann Chigbo's case, the five claims (as outlined at the beginning of the case) out of the six were granted. That is, the judge declared the purported dismissal of her from the Public Service of Anambra State as irregular, illegal and null and void and of no effect and restrained the defendant, its servants and agents and all officers and servants of government of Anambra State from interfering with the plaintiff in the exercise of her profession as a teacher and Headmistress special class within Enugu Local Government Area.

Case No. 2 To Have Carnal Knowledge of a Pupil is Professional Misconduct

MR. BONIFACE NJOKU

v. MR. OKECHUKWU IDIKA NWANKWO

(Magistrate Court, Ezzamgbo Before Magistrate H. O. Umezuo ke) Judgement delivered on Wednesday, 28th April, 1977 Suit No. Em/32/77.

Mr. Okechukwu Nwankwo, a teacher in Community Secondary School, Ezeagu, was alleged to have had carnal knowledge of a girl in his school by name Cecilia Njoku. Mr. Nwankwo was caught having sexual intercourse with Miss Njoku. The news of their sexual intercourse spread through the whole village so much so that Miss Njoku and his family became objects of caricature. Miss Njoku and her family hardly raised their heads in public.

Under this circumstance, Mr. Njoku had no alternative but to institute court action against Mr. Nwankwo. Mr. Njoku was pleaded with by the principal and the State Education Board, to withdraw the case, but all appeals did not dissuade him.

The plaintiff sought that the court should:

1. Declare Mr. Nwankwo morally unqualified to be a teacher for engaging in professional misconduct;
2. Order for the immediate dismissal of Mr. Nwankwo from the teaching profession; and
3. Ask Mr. Nwankwo to pay him N5,000.00 (five thousand naira) damages for bringing his family name to disrepute.

RULING:

The court rules:

1. That since Miss Njoku admitted before the court that the defendant did not force her into sex, the point of recommending the defendant for dismissal cannot arise. However, the defendant should be transferred from the school to another school to avert any unforeseen dangerous action from the parents of Miss Njoku.
2. That Mr. Nwankwo (the defendant) has engaged in professional misconduct, and is therefore recommended by the court for six months without pay. The principal should also report from time to time to the appropriate educational authorities as to the conduct of the defendant.
3. In as much as Miss Njoku is above 14, and since the case of non-consent was not raised in the case by Miss Njoku, the law cannot guarantee the plaintiff of any damages. However, the issue of damages would have applied if Miss Njoku was forced into sexual intercourse by the defendant.

**Case No. 3: Professional Misconduct Claim to possession of
Qualification which one does not have Forgery of
TC II Certificate A Criminal Offence**

MRS. GRACE OMONIGHO UFUA
Vs
TEACHING SERVICE BOARD, BENDEL STATE
(High Court, Benin City, Justice J. A. Obi, 30/6/87). Suit No. B /320/86

This was a case of fraud bordering on forgery of a TC II Certificate preferred by the Defendant Teaching Service Board, Bendel State against one Mrs. Grace Omonig ho Ufua, a former tutor at Niger College, Benin City, which led to her dismissal from the Teaching Service of Bendel State.

FACTS:

The Teaching Service Board, terminated the appointment of Mrs. Grace Omonig ho Ufua when the Board discovered through series of interviews and personal invitation of the plaintiff to produce the original copies of her purported TC II Certificate which she claimed she obtained in 1978. It was discovered that she has fraudulently procured the position and emoluments paid to her. In this regard, the defendant (Bendel Teaching Service Board) apart from putting the plaintiff to the strictest proof that she holds the Teachers Grade II Certificate of any kind, called

evidence to show that the plaintiff failed the Teachers Grade II Certificate examination in 1978 and thereby gave notice to produce the original of the said certificate she alleged ly got from the Auchi Teachers College, Auchi.

Mrs. Ufua Grace challenged the legality of the action of the Teaching Service Board, Benin City in terminating her appointment whereas she possessed a TC II Certificate obtained from Auchi Teachers College in 1978. She further argued that she did not forge her TC II Certificate and as a result she wanted a court declaration that her dismissal by the defendant as per letter reference No. SOR/Vol.11/1/163 dated 16th June 1983 is wrongful, illegal, unconstitutional, null and void and of no effect. A declaration that the plaintiff is still in the service of the Bendel State Teaching Service Board and entitled to her full salaries and allowances with effect from the date of the purported dismissal. In the alter native, the plaintiff claims N100,000.00 (one hundred thousand naira) being general and special damages for wrongful dismissal. Ufua was a teacher in the first instance by virtue of her Modern III qualification.

In his judgement, the High Court judge, Justice J. A. Obi declared that Mrs. Grace Omoni Ufua was fraudulent in procur ing the original of her TC II with which she got herself promoted quite unjustly. He added, I cannot conceive of any more serious professional misconduct than the shameless and altogether baseless representation that she possesses educational qualification which she does not. Her claim to TC II was totally rejected. By her fraud and/or false representation, Ufua, said the judge, has lost both moral and legal justification for continued retention in office.

Ufua s action failed and was according ly dismissed in its entirety, with costs assessed at N250.00.

**Case No. 4: Fraud Allegation of a Bursar Stealing Salaries
meant for Teachers and other School Wo rkers**

BENDEL STATE TEACHING SERVICE COMMISSION

v. **SOLOMON EMUEKOR (M) SCHOOL BURSAR**
(Magistrate Court, Ughelli: J. O. Agarin, 23/3/82) Charge No. MU/38C/81

COUNT:

This is a two-count charge against the accused. The 1st count charges him with conspir ing with person or persons unknown to commit a felony to wit: stealing and thereby committed an offence punishable under Section 516 of the Criminal Code.

The 2nd count charges him for that he at Uwherun town on 18/11/90 stole N5,675.33 property of the Bendel State Teaching Service Commission, Benin City and thereby committed an offence punishable under Section 390 (5) of the Criminal Code.

Eleven witnesses gave evidence for the prosecution. To Ughelli police who were in-charge of the investigation, the accused made a cautionary statement marked Exhibit E where he denied stealing the money and alleged that he was robbed by some men including the driver of the

vehicle where PW1 found him and driver PW10. The case was transferred to State CID Benin where PW9 Sgt. Ebogbedi who took up the investigation alleged accused made a confessional statement but the defence fought back vehemently and alleged that the so-called confessional statement was obtained under duress. I then held a trial within the trial to determine the admissibility or otherwise of the statement. At the end of the trial within the trial, I rejected the confessional statement and refused to admit it in evidence. The trial then continued until the prosecution closed their case. At the close of the prosecution's case Akpedeye for the accused made a no case submission and called on me to discharge the accused at this stage.

I see that after the so-called confessional statement is thrown overboard as there is no evidence left throughout the length and breadth of the case pointing to the fact that the accused stole a money.

The law requires that in a state like this, trial court should discharge an accused straight away.

As for the conspiracy charge, there is no evidence of any agreement between accused and anyone to agree to do a thing which it is unlawful and there is no evidence from which I can infer a conspiracy in this case. In the result, I hold that the prosecution has not succeeded to make a case for the accused to answer on any of the two counts of the charge.

I hereby discharge the accused under Section 286 of the Criminal Penal Law (CPL) on each of the counts.

**Case No. 5: Professional Misconduct Removal of Teacher's
Name from the Register of Teachers Fair
Hearing Right to be represented by a Counsel**

F. G. INYANG

Vs

TEACHERS DISCIPLINARY COUNCIL

(Enugu Appellate Jurisdiction, 12/4/62; Mbanefo, C. J.)

On the strength of the finding of the Teachers Disciplinary Council, the Minister of Education removed the appellant's name from the register of teachers. The appellant appealed to the High Court on the ground that he was denied the right of assistance by counsel of his choice.

HELD:

- (1) That the appellant is entitled under Section 51 (2) of the Education Law of Eastern Nigeria to have legal assistance.
- (2) That Section 51 (2) of the law is ambiguous.
- (3) That where there is an ambiguity in a penal statute it should be construed in a manner favourable to the accused person.

This is an appeal under Section 54 of the Education Law of Eastern Nigeria by a teacher against a decision of the Teachers Disciplinary Council finding him guilty of professional misconduct.

Acting upon the said finding of the Council, the Minister of Education ordered the appellant's name to be removed from the register of teachers.

Section 54 (1) of the law gives a teacher whose name has been removed the right to appeal to the High Court.

The main ground argued is that the appellant was denied the right of assistance by counsel of his choice. In support of this ground, the appellant relies on Section 51 (2) of the law. The subsection reads:

The Council may permit any person upon whose allegations an enquiry has been instituted to be assisted by a legal practitioner in establishing the truth of his allegation, and shall permit the teacher whose conduct is the subject matter of the enquiry to be similarly assisted in meeting the charges against him.

Appellant's counsel maintains that the section gives the appellant an unqualified right to have legal assistance if he wishes. For the respondent, it was submitted that the appellant would have that right only if the person initiating the allegation also has legal assistance. Respondent's counsel says that by the use of the words similarly assisted, it is intended that the appellant should not be denied the right of assistance similar to that allowed to the complainant if the complainant is legally assisted. The whole subsection is unhappily worded and ambiguous. In a previous case in this court, *Ebenezer Chikwere Mpi v. The Secretary to Teachers Disciplinary Council, Ministry of Education*; Appeal No. E/26A/1960, Palmer, J. held that the section gave the appellant an unqualified right to have legal assistance and for that he relies on the words "shall appear immediately before permit" in the subsection. When the decision was brought to the notice of the Acting Senior Crown Counsel appearing for the respondent, she said that she had not seen it before and that if she had seen it she would not have opposed the ground. She then withdrew her objection on the ground and agreed to the appeal being allowed on that ground. It may be said that where there is ambiguity in a Penal Statute, it should be construed in a manner favourable to the accused person. It may, however, be said that to give effect to the word similarly, there must have been something in existence which the contemplated action must resemble. The word is ambiguous and has taunted the whole subsection with its ambiguity. I am told that the section is being amended by rewording it in such a way as to bring out clearly the true intention of the legislature. As the subsection is capable of the interpretation put on it by Palmer, J., I do not intend to depart from it especially as the fact has been conceded to the respondent.

As the appeal succeeds on this ground, it is not necessary for me to deal with the other grounds raised by appellant's counsel.

The appeal is allowed and the order of Removal is hereby reversed.
(*Eastern State Law Reports, 1962*)

**Case No. 6: Organised Fraud Syndicate Ghost Worker
in School Vouchers Impersonation
Stealing Conspiracy Felony and Crime**

COMMISSIONER OF POLICE

Vs

LEONIDAS GBOSIDOM (M) 30 YEARS

GODREY UGORJI (M) 35 YEARS

TOBAH S. TOBAH (M) 27 YEARS

NWABUEZE PHILEMON (M) -

SYLVANUS JACOB (M) 31 YEARS

PRECIOUS KAMANU (M) 25 YEARS

(Magistrate Court, Omoku, E. IGONIKO, 8/7/85) Charge No. MCO/195C/85

JUDGEMENT:

The accused persons stand charged with conspiracy and stealing; contrary to Section 516 as amended by Edict No. 5 of 1974 of Rivers State and Section 390 of the Criminal Code Laws of Eastern Nigeria 1963, applicable to the Rivers State, in the 1st and 2nd count; while in the count, 4th and 5th accused persons are charged for personating as tutors in Community Secondary School, Omoku contrary to Section 108 (2) of the Criminal Code Laws of Eastern Nigeria 1963 applicable to the Rivers State. A resume of the entire story now as follows:

According to the station officer, Nigerian Police Omoku, Mr. I. Aikhulie, he received a vital information sometimes on the 21st May, 1985 that there exists a fraudulent syndicate at the Community Secondary School, Osiakpu where ghost names received salaries for no work done. The information was to the effect that the said fraud involves the sum of N3,370.50, property of the Rivers State Government. Certain names were supplied in the fraudulent syndicate. Thereon information, he arrested the 4th accused person, Mr. Philemon Nwabueze, an NYSC candidate assigned to the Girls Secondary School, Kregani. He was able to give him useful information as to the fraud. He thus recovered two bank (UBA) cheque books, the explanation being that with the connivance of Tobah S. Tobah, a cheque book was faked lost and a new one was got. With the cheque books he went to UBA Omoku and found out that the real owner of the paper is one Daniel Duru with his photograph pasted on it. When Philemon Nwabueze was taken to the police station, he furnished police with additional facts leading to the arrest of the 1st accused Leonidas considered the principal of the school. He PW1 further told the court that he recovered another UBA cheque book No. 350 and that this came to his possession from Tobah S. Tobah when it was alleged that cheque book No. 147 was lost.

When it was confirmed that Godfrey Ogorji was a member of the syndicate, he was immediately arrested because there was reason to believe that he operated an account at Omoku UBA under the name of Dickson. Within 24 hours the 2nd accused was able to furnish him with a Savings Account Book No. 383, which Godfrey told him he recovered from the wife of the 5th accused person. It was admitted as Exhibit C. On Exhibit C while the savings account bears the photograph of 5th accused person, the name is reflected as Sylvanus Duru Dickson whereas his

real name is Sylvanus Jacob, a staff of Community Secondary School, Osiakpu whereas he is not a tutor there. P.W. concluded that it was Leonidas Gbosidom who recommended the ghost names to the UBA Manager Omoku to open an account. Dr. John Ihieirikwa the CIE identified the 1st and 3rd accused persons to his knowledge as staff of CSS, Osiakpu and when he heard the report he summoned all of them to his office, Ahoada who conceded of gross irregularities in the school staff. He said he did not query the Principal of the school on the incident but alerted the Audit Department, Ahoada and the State Schools Boards. On his signature at the payment vouchers, he swore he had no alternatives than to sign these as if they had been vetted by his able E. O. accounts, Mr. Ordu, more so as all the requisite particulars were all attached to these.

Conceding an official aspect of the School, PW2 swore he did not see the 4th and 5th accused persons during his visit nor did he ever have knowledge of such a fraudulent syndicate in Osiakpu. PW3 Echem Samuel told court that he based his payment on the approved nominal roll, and approved by the CIE. He tendered Exhibit L-L2 as paid vouchers for February and March and April and swore that he had no idea of their posting letters. However, PW4 Mr. Ordu told the court that he countersigned the payment vouchers after checking these as correct and that the posting letters were attached. According to his story, the said vouchers were given through Mr. Tobah S. Tobah. He concluded that at the time of dispatching the vouchers to Sub-treasury Omoku, the posting letters were all attached. Since the posting papers for the three irregular names are absent from the Exhibit L-12, the impression is that these got lost between Ahoada and Omoku Sub-treasury. Those involved in the exercise stand obvious. Sergeant Adediro Idebi conducted the investigation into this case and tendered the statement of all the accused persons, D.W. Leonidas Gbosidom swore that 2nd and 3rd accused persons led the three men, Daniel Duru, Sylvanus Dickson and Precious Kamanu to his office with their appointment letters. He told them to make photocopies of their posting papers and handed this aspect of salary payment vouchers to Messrs Godfrey Ugorji and Tobah S. Tobah. He conceded signing the vouchers after due processes by DW.2 and 3. When he noted that these fake men were not putting in services in the school he sent in queries, and advised the Bank Manager, UBA not to pay them. He concluded he acted expressly on the posting letters, though all of them had disappeared.

D.W. 2 Godfrey Ugorji denied the charge and swore he did aid Tobah S. Tobah in preparing the vouchers and tendered a voucher he sent to the Principal which he did not despatch to Ahoada. He made frantic efforts to tender a letter not addressed to him but which was purported to be delivered by him to P.W.2 by the Principal. From his file at my disposal and his reaction to questions and evidence on Oath, he is clearly a tutor of questionable character. A situation where tutors seize letters on despatch smells of gross indiscipline and irresponsibility. His file fortifies this observation. He knows more and perhaps machinated dynamo on which the fraudulent syndicate revolved at Osiakpu. He led the 4th and 5th accused to D.W.1, the Principal's office, where they narrated their mission, prepared the school payment vouchers, despatched same to Ahoada as well as received cheques from the Sub-treasury Omoku. Though he denied the charge, the story of Philemon Nwabueze and Sylvanus Dickson are enough corroborative evidence that he masterminded the sad spectacle at Osiakpu. His records on file do not qualify him for the position he holds at Osiakpu. D.W.4 Philemon Nwabueze conceded the offence. His story shows surprising ignorance of elementary bank routines, or else he was pretending. Equally, unreasonably is the story of Sylvanus Dickson, who could appear a

seasoned cheat with less experience as a trained teacher, he at least should realise that services rendered. He allowed himself to be used by Tobah S. Tobah to cheat the Government.

Section 516 of the Criminal Code Laws provides for the offence of conspiracy the hallmark of which is common intention. As applied to this case, it is clear that accused persons conspired to cheat the State Government through officials of the Ministry of Education at C.S.S. Osiakpu. In the second ground design 4th and 5th accused at the accord of the 3rd accused person got posting papers, presented to Leonidas Gbosidom who allowed himself to be swayed by his accounts clerks, 2nd and 3rd accused persons. The only snag is the absence of proof that Leonidas Ugorji made material gains from the entire transaction.

Section 383 of the Criminal Code Laws provides for the definition of stealing while Section 390 of the same law provides the penalty for the offence. Elements of stealing are reflected in articles 2027- 2032 Brett and Mactean Criminal Laws. Applied to this case, I am satisfied that, at the time of opening the Savings and Current Accounts at Omoku UBA, the 4th and 5th accused persons were not legitimately employed in the services of the State Schools Board or Ministry of Education. The Savings Accounts personnel received from UBA fortifies these observations.

Section 108 (2) of the Criminal Code Laws provides for the offence of personation. This is basically the rationale for the payments made in the Sub-treasury and UBA premises Omoku. Sad enough, the accused is an NYSC candidate, if he had exercised enough patience; he would have seen the tree from the wood. When youths of Nwabueze's status use cheap means to get riches, evil days are on. Sylvanus Jacob knew exactly what he was doing when he became errand boy to Tobah S. Tobah. It was a deliberate effort to reap where he had not sown.

When educated illiterates like Nwabueze and Sylvanus go by false names in cheque books, vouchers and Savings Accounts, then the question of guilt is proved beyond all reasonable doubt. It is trite law that evidence of an accused person incriminating another accused requires corroboration. This requirement with respect has been satisfied by the prosecution and D.W. 4 and 5 against Tobah S. Tobah. He did not rebut these. On the other hand, the 1st accused acted rather on official basis. I place him on the same level with P.W.2. Whatever were his errors are purely administrative.

The incriminating statement of Sylvanus Jacob against Ugorji has not been adequately corroborated as required in law. It would thus be in the interest of the Ministry of Education and Schools Management Board to transfer the staff affected by this case from Community Secondary School, Osiakpu as it would appear there has been demonstrable bad faith amongst them. The facts so revealed in these proceedings would not augur well for their work.

Since there is no evidence before me that 1st and 2nd accused gained materially from the entire transaction, and whereas evidence has been supported by documents that 3rd to 5th accused persons made unjust gains from the State Government for rendering no services, I hereby find 3rd, 4th and 5th accused persons guilty as per the charge, while 1st and 2nd accused persons are discharged and acquitted.

SENTENCE:

A situation where people go on changing names to suit circumstances is deplorable and should require severe visitation by the courts. Accordingly, the accused persons are sentenced as follows:

1st count: Each of the accused is fined N220.00 or 12 months imprisonment with Hard Labour.

2nd count: Each accused is fined N230.00 or 12 months imprisonment with Hard Labour.

3rd count: 4th and 5th accused each to serve 12 months with Hard Labour.

Self Assessment Exercise 5.2:

Enumerate the recommendations of the UNESCO/ILO on the status of teachers that are related to professionalisation, discipline, rights and responsibilities of a teacher.

4.0 CONCLUSION

The minimum ethical standards expected of professional teachers have been carefully articulated in the Teachers Code of Conduct. It is therefore expected that teachers will avail themselves opportunities to own a copy. Ignorance will not be accepted as an excuse.

5.0 SUMMARY

In this unit, you have learnt the types of disciplinary measures against teachers; acts constituting professional misconduct. Issues in Teachers Code of Conduct such as the objectives of Teachers Code of Conduct, UNESCO/ILO recommendations on professionalization, discipline, rights and responsibilities of a teacher; Teachers Investigating Panel and Teachers Disciplinary Committee; who can report a teacher's misconduct; penalty for not reporting and where to report the misconduct.

6.0 TUTOR MARKED ASSIGNMENT

- (a) What are the acts, commission or omission adjudged to be misconduct in the education industry?
- (b) State the objectives of the Teachers Code of Conduct.

7.0 REFERENCES AND FURTHER READINGS

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MODULE III : SOME LEGAL ISSUES IN SCHOOL ADMINISTRATION

- Unit 1: Legal Basis for Teachers Registration
- Unit 2: Negligence and Student Personnel Administration
- Unit 3: Tort and Educational Administration
- Unit 4: Defamation and School Communication
- Unit 5: School Record keeping

UNIT 1 LEGAL BASIS FOR TEACHERS REGISTRATION

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Vision, Mission and Functions of the Teachers Registration Council of Nigeria (TRCN)
 - 3.1.1 Vision
 - 3.1.2 Mission
 - 3.1.3 Functions
 - 3.2 Responsibilities, Programmes and Activities of TRCN
 - 3.2.1 Implications of TRCN Responsibilities
 - 3.2.2 Programmes and Activities of TRCN
 - 3.2.3 Strategic Partners of TRCN
 - 3.3 Registration of Teachers
 - 3.3.1 Mandatory Registration Prior to Practice
 - 3.3.2 Qualification for Registration, Mode and Documents of Registration and Institutions in Nigeria offering Approved Professional Training in Education
 - 3.3.3 Expiration and Cancellation of Registration and Expiration and Renewal of Licence
 - 3.4 Benefits of Registration
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References and Further Readings

1.0 INTRODUCTION

For long, the teaching profession was unregulated and appeared to be an all-comers affair. Little attention was paid to critical issues such as entry standards into the profession, the scope and quality of teacher education programmes, continuous professional development of practicing teachers, professional conduct, the welfare and dignity of teachers.

Today, the government has given the teaching profession the greatest empowerment ever to match the performance and social worth of the counterparts in the other professions like law, medicine, engineering and pharmacy.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the vision and mission of the Teachers Registration Council of Nigeria (TRCN);
- explain the responsibilities, programmes and activities of TRCN;
- list the qualification, mode and documents for registration;
- discuss the requirements for the renewal of the licence;
- mention the circumstances that can make a teacher's registration expire;
- mention the circumstances in which the council may initiate action to cancel the registration of a teacher.

3.0 MAIN CONTENT

3.1 Vision, Mission and Functions of the Teachers Registration Council of Nigeria (TRCN)

Teaching is one of the oldest professions in the world. Indeed, it is the mother of all professions because practitioners in other professions are taught by the teacher. Teaching, therefore occupies a critical and fundamental position in the development of any nation. It acts as a catalyst for change for the transformation of society to the desired ends.

For any vocation to be legally recognized as a profession, its practices must be regulated and controlled by a body. Professions such as law, medicine, engineering, pharmacy, are respectively, regulated and controlled by the Council of Legal Education (COLE), Medical and Dental Council of Nigeria (MDCN), Council for the Regulation of Engineering in Nigeria (COREN) and Pharmacists Council of Nigeria (PCN). Consequently, the establishment of the Teachers Registration Council of Nigeria is to give the teaching profession legal recognition and empower it to guarantee qualitative practice. (Ciwar, 2005)

The Council was established by the Teachers Registration Council of Nigeria Decree (Act) 31 of 1993. Several decades of agitation by professional teachers and other stakeholders for the establishment of a regulatory agency led to the enactment of the Act. You will recall that this Act 31 was discussed in Module 1, Unit 2 under educational parastatals, boards and commissions. The Council finally became operational by June 2000.

The Council opened offices in 34 states and went a step further to commence the acquisition and commissioning of zonal offices, two in each geopolitical zone making a total of twelve for country.

(i) Vision

The vision of the Teachers Registration Council of Nigeria (TRCN) is to control and regulate teacher education, training and practice at all levels and sectors of the Nigerian

education system in order to match teacher quality, discipline, professionalism, reward and dignity with international standards.

(ii) Mission

The mission is to promote excellence in education through effective registration and licensing of teachers; and to promote professionalism through accreditation, monitoring and supervision of teacher training programmes, mandatory continuing professional development and maintenance of discipline among teachers at all levels of the education system.

(iii) Functions

The Teachers Registration Council was established by the Act No. 31 of 1993. The Act charges the Council with the following functions, among others:

- (i) Determining who are teachers for the purpose of this Act;
- (ii) Determining what standards of knowledge and skills are to be attained by persons seeking to become registered as teachers under this Act and raising those standards from time to time as circumstances may permit;
- (iii) Securing, in accordance with the provisions of this Act, the establishment and maintenance of a register of teachers and the publication from time to time of the lists of those persons.
- (iv) Regulating and controlling the teaching profession in all its aspects and ramifications.
- (v) Classifying from time to time members of the teaching profession according to their levels of training and qualification;
- (vi) Performing through the Council established under this Act, the functions conferred on it by this Act.

Self Assessment Exercise 1.1:

What are the vision and mission of the Teachers Registration Council of Nigeria (TRCN)?

3.2 Responsibilities, Programmes and Activities of TRCN

The Act that established the Council Section 1 (1) charged it with the following responsibilities:

- (i) Determining who are teachers for the purpose of this Act;

- (ii) Determining what standards of knowledge and skill are to be attained by persons seeking to become registered as teachers under this Act and raising those standards from time to time as circumstances may permit;
- (iii) Securing in accordance with the provisions of this Act the establishment and maintenance of a register of teachers and the publication from time to time of the lists of those persons;
- (iv) Regulating and controlling the teaching profession in all its aspects and ramifications;
- (v) Classifying, from time to time, members of the teaching profession according to their level of training and qualification;
- (vi) Performing through the Council established under this Act the functions conferred on it by this Act.

3.2.1 Implications of TRCN Responsibilities

The TRCN Act has far-reaching implications for teaching profession. This reality can be appreciated by the fact that the content of the TRCN Act is one and the same with the contents of the Acts that established the Councils that regulate and control the professions of Law, Medicine, Engineering, Pharmacy, etc. It suffices therefore to state that teachers will henceforth undergo all those necessary intellectual, professional, moral, social, and even psychological rigours characteristic of the other noble professions and which have set them far apart from quacks and lay people.

Also, as it is applicable to the other professions, no category of teachers is exempted from regulation and control no matter how highly placed. It is obvious that all medical doctors, lawyers, engineers, pharmacists, etc. at all levels of our national life, both in the public and private sectors submit to the provisions of the Acts regulating their respective professions. In the same way, all persons who perform jobs that rightly and legally constitute teaching as well as those who administer teaching and learning in the Nigerian education system must be trained teachers, registered and regulated.

3.2.2 Programmes and Activities of TRCN

In accordance with the TRCN legal provisions and conventions common to the professional regulatory agencies, the Council is systematically implementing the following programmes and activities:

- (i) Registration and licensing of qualified teachers;
- (ii) Accreditation, monitoring and supervision of the courses and programmes of teacher training institutions in Nigeria to ensure that they meet national and international minimum standards. The institutions include: the Colleges of Education, Faculties and

Institutes of Education in Nigerian Universities; Schools of Education in the Polytechnics, and the National Teachers Institute;

- (iii) Organization of Internship Schemes for fresh Education graduates to equip them with the necessary professional skills before licensing them for full professional practice;
- (iv) Conduct of professional examinations and interviews to determine teachers suitable for registration. This clearly shows that the existing practice of registering teachers upon presentation of certificates alone is a grace that will expire soonest. All those unable to take advantage of the grace must have to write and pass challenging examinations before they can be registered;
- (v) Execution of Mandatory Continuing Professional Education (MCPE) to guarantee that teachers keep abreast of developments in the theory and practice of the profession;
- (vi) Organize Annual Conference of Registered Teachers which is the first of its kind in Nigeria and will unite all teachers irrespective of social class or the level of education system to which they belong;
- (vii) Publish a register of qualified and licensed teacher in Nigeria which will be a public document displayed and obtainable from the Local Government through State to the Federal offices. The register will also be on the world wide web (www) for the consumption of the international community;
- (viii) Enforce ethical conduct among teachers and actually prosecute erring ones using the Teachers Tribunal which has powers under law to met out punishments;
- (ix) Prosecute in the law court all unqualified persons performing the job of teachers in contravention of the TRCN Act;
- (x) Act as the voice of the voiceless teachers and continuously initiate/actualize public policies, and practices that will reposition the teaching profession as first among equals.

3.2.3 Strategic Partners of TRCN

In strategizing to accomplish these programmes and activities, the Council regularly consults the following stakeholders, among others:

- (i) Honourable Minister of Education;
- (ii) Federal Ministry of Education and its parastatals and agencies;
- (iii) National Council on Education, which is the highest decision making body on Education in Nigeria;
- (iv) Executive Governors of the various States of the country;

- (v) Honourable Commissioners for Education of the States;
- (vi) State Ministries of Education and their parastatals (SPEB, SEMB, TESCOM);
- (vii) Senate and House of Representatives Committees on Education in the National Assembly;
- (viii) Vice Chancellors of Universities, Rectors of Polytechnics and Provosts of Colleges of Education;
- (ix) Deans of Faculties and Directors of Institutes of Education in the Universities;
- (x) Nigerian Academy of Education;
- (xi) Teachers Unions and Associations: NUT, COEASU, ANCOPSS, STAN, COPSHON, etc.
- (xii) Associations of Proprietors of Private Schools;
- (xiii) The media and a wide range of other stakeholders.

Self Assessment Exercise 1.2:

What are the responsibilities of TRCN?

3.3 Registration of Teachers

The Council was established by Decree (now Act) 31 of 1993. Several decades of agitation by professional teachers and other stakeholders for the establishment of a regulatory agency led to the enactment of the Act. Registration matters are discussed hereunder.

3.3.1 Mandatory Registration Prior to Practice

As obtains in the other noble professions, the law makes it an offence for anyone to engage in teaching without registration. This is clearly spelt out in Section 17 (2) of the TRCN Act which states that:

If on or after the commencement of the Act, any person not being a registered member of the profession practices as a registered member of the profession or in expectation of reward, or takes or uses any name, title, addition or description implying that he is in practice as a registered member of the profession, he shall be guilty of an offence.

The Act further states that employers and other officials who aid and abet the employment of unqualified/unregistered teachers are themselves guilty of the same offence and shall receive the same punishment. This is made clear in Section 17 (6) of the Act as follows:

Where an offence under this Section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary, or other similar officer of the body corporate or any person purporting to act in such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The Act stipulates that the punishment shall be a fine of N5,000 (five thousand naira) or two year jail term or both.

This provision empowers TRCN to arrest offenders and drag them to the court of law for prosecution and punishment. Since the Act came into force in 1993, all unqualified teachers currently in the education system are doing so in violation of the law.

However, TRCN has provided a reprieve and period of grace to allow adequate sensitization of teachers and the general public to take place first before imposing sanctions. It is not interested in jailing and punishing anyone but that the people should wholeheartedly come to appreciate that laws are made to be obeyed. It wants the people to realize that the country desperately needs a qualitative teaching if it must restore fallen standards of education and reinvigorate nation-building.

It wants the public to remember that what is good for the goose is also good for the gander. Not only the Medical, Legal, Engineering, Pharmacists, etc. Council, but also the general public would detest and deal with any person found doing the job of a medical doctor, lawyer, engineer, or pharmacist, without being qualified and registered. The public should extend the same respect, goodwill, and sanity to the teaching profession, most especially because education affects the life of every human being.

Meanwhile, the National Council on Education at its 50th Session at Yenagoa, Bayelsa State 2003 has fixed the year 2006 as deadline to unqualified teachers already in the education system. Those with Teachers Grade Two are to upgrade to the PGDE, PDE or TTC before the expiration of the deadline.

The Council also directed a halt to the recruitment of unqualified teachers henceforth. The National Universities Commission, National Board for Technical Education and the National Commission for Colleges of Education on their part, since 2004, despatched appropriate directives to the Vice Chancellors, Rectors, and Provosts respectively, making it clear that the teachers irrespective of Faculties/Schools/Colleges are affected by the TRCN Act and should comply with the necessary professionalization guidelines emanating from TRCN.

It is therefore expected that teachers at all levels of the education system, both within the public and private sectors, will take advantage of these vital information and periods of grace to count themselves on the side of the teaching profession rather than on the side of disobedience to law and constituted authority.

3.3.2 Qualification for Registration, Mode and Documents of Registration and Institutions in Nigeria offering Approved Professional Training in Education

(a) Qualification for Registration:

To be registered as a professional teacher, a person must possess a teaching qualification not lower in standards than the NIGERIA CERTIFICATE IN EDUCATION (NCE). This is the minimum standard stipulated by the National Policy on Education. Holders of Teachers Grade Two are however being currently registered under the period of grace granted by TRCN. The certificate was to be deregistered by January 1st 2007.

This grace was given in consideration of the thousands of teachers in this category already in the education system, just to give the ones serious to be in the teaching profession the opportunity to upgrade and thereby minimize casualties when TRCN shall introduce severe sanctions.

The other acceptable qualifications are: Degrees in Education (B.Sc. Ed; B.Ed; M.Ed; Ph.D). Those with Degrees/Diplomas in non-Education fields must possess Post Graduate Diploma in Education (PGDE), Professional Diploma in Education (PDE) or Technical Teachers Certificate (TTC).

For the avoidance of doubt, ordinary diplomas in Education, Pivotal Teachers Certificate, and similar qualifications not mentioned above are NOT registrable. Teacher training institutions who offer such qualifications and want it to be recognized must apply formally to TRCN for the programme to be subjected to minimum national standards and thereafter made registrable.

(b) Conditions for Registration:

The TRCN Act in Section 6 (1) to (3) gives other conditions for registration of an individual as a teacher. The individual must:

- (i) Pass a qualifying examination accepted by Council and complete the practical teaching prescribed by the Council under the Act;
- (ii) Not being a Nigerian, hold a qualification granted outside Nigeria which, for the time being, is recognized by the Council and is by law entitled to practice the profession in the country in which the qualification was granted provided that the other country accords Nigerian professional teachers the same reciprocal treatment and satisfy the Council that he had sufficient practical experience as a teacher;
- (iii) Be of good character;

- (iv) Attain the age of twenty one years;
- (v) Not have been convicted in Nigeria or elsewhere of an offence involving fraud or dishonesty.

Individuals who meet these criteria are qualified/expected to register, whether they are functioning as classroom teachers, researchers, administrators in educational institutions, ministries and agencies, unemployed, businessmen/women, or engaged in any other public or private sector careers. Such registration will confer on them the professional identity, dignity and accomplishment of being a teacher. This is henceforth compulsory for those who wish remain in the education system (teachers and administrators alike) while for those that read Education but now in other careers, it is still something to be proud of, to identify with the field to which they rightfully belong.

The policy is being put in place that only professional teachers can be appointed to headship or leadership positions in educational institutions. The Commission for Colleges of Education has taken the lead to enforce this policy in the appointment of Provosts of Colleges of Education. The policy will therefore pervade the entire education system very soon. The country cannot continue to allow the non-professional individuals to guide and direct the qualified and licensed professionals. Consequently, administrators in the system are to take registration as seriously as do the classroom teachers. Qualified teachers currently unemployed or in other sectors also ought to note that certificate of professional registration will be required right at employment interviews, if at any time, they decide to rejoin the education system.

(c) Mode of Registration

It is the responsibility of individual qualified teachers to register himself or herself. However, for administrative convenience, TRCN encourages employers and associations of teachers to work out a collective registration approach. For instance, in most states of the federation, Nigeria Union of Teachers (NUT) in collaboration with the Ministries of Education, State Primary Education Boards, Secondary Education Management Boards, Teaching Service Commissions and other stakeholders agreed to deduct the registration fees of their teachers at source (that is, to check-off the fees from teachers salaries) and pay same to TRCN.

In turn, TRCN sent forms en bloc to cover the teachers involved. This was done from the initial stage to enable massive registration. Most Colleges of Education, Faculties/ Institutes of Education in Nigerian Universities, and proprietors of private schools followed the same approach. In some other states, the NUT, Zonal Education Authorities, Principals of Secondary School and Heads of Primary Schools adopted a similar strategy. In essence, it is up to teachers and their employers to determine the fastest means to employ. But the non-existence or failure of such arrangement cannot be an excuse for any qualified teacher who TRCN may future arrest and prosecute for teaching without registration. Teachers should therefore see professional registration as a personal obligation that is not transferrable.

Applicants are to pay appropriate fees at any of the following designated Banks:

1. United Bank for Africa (UBA) Plc.
2. Omega Bank Plc.
3. Bank of the North Plc.
4. First Bank of Nigeria Plc.
5. Zenith International Bank Plc.
6. Wema Bank Plc.
7. Hallmark Bank Plc.
8. Afr ibank Niger ia Plc.
9. Any other bank that may be approved by the Council from time to time.

The bank teller s should then be presented at any of the Registration Centres listed below, where forms will be issued and returned after completion:

- (i) Office of Honourable Commissioner, State Ministries of Education and FCT Education Secretariat;
- (ii) Office of the Executive Chairman, State Primary Education Boards;
- (iii) Office of the Chairman, State Teaching Service Commissions or Boards/ Executive Secretary, State Secondary Education Management Boards;
- (iv) Office of Deans/Directors of Faculties/Institutes of Education of Nigerian Universities;
- (v) Office of the Provost, College of Education;
- (vi) Association of Proprietors of Private Primary and Secondary Schools;
- (vii) TRCN State and Zonal Offices;
- (xi) TRCN Headquarters;
- (xii) Other places that may be designated by TRCN from time to time.

(d) Registration Documents

In addition to filling the registration forms, the following documents must be attached to the completed forms for submission:

- (i) 3 current passport photographs (with names and address at the back);
- (ii) Photocopies of all relevant certificates of qualification;
- (iii) Photocopy of birth certificate or a statutory declaration of age;
- (iv) Photocopy of evidence of change of name (where applicable);

- (v) Original bank tellers indicating fees paid.

Acknowledgement cards will be issued to candidates who submit their completed forms as stated above. Thereafter, duly registered teachers will be issued with the following documents:

- (i) Certificate of Registration;
- (ii) Licence to practice;
- (iii) Teachers Code of Conduct.

(e) Institutions in Nigeria offering approved Professional Training in Education

The institutions currently are:

- (i) National Teachers Institute (NTI);
- (ii) Colleges and Universities of Education;
- (iii) Institutes of Education in the Universities;
- (iv) Faculties of Education in the Universities;
- (v) Schools or Departments of Education in the Polytechnics;
- (vi) Any other institution that may be approved by government from time to time;
- (vii) Foreign countries with recognized educational training.

TRCN Act in Sections 7 and 9 assigned the Council very serious responsibilities to ensure that the Education graduates of these institutions are of very high quality. Consequently, Section states as follows:

- (1) The Council may approve an institution for the purposes of this Act, and may for those purposes
 - (a) any course of training at any approved institution which is intended for persons who are seeking to become or are already teachers and which the Council considers designed to confer on persons completing it sufficient knowledge and skills for admission as professional teachers;
 - (b) any qualification which, as a result of an examination taken in conjunction with a course of training approved by the Council under this Section, is granted to candidates reaching a standard at the examination indicating in the opinion of the members of the Council that the candidates have sufficient knowledge and skill to practice the profession.
- (2) The Council may, if it thinks fit, withdraw any approval given under this Section in respect of any course, qualification, or institution.

The Act, in Section 8, further directs that:

- (1) It shall be the duty of members of the Council to keep themselves informed of the nature of:
 - (a) The instruction given at approved institutions to persons attending approved courses of training; and
 - (b) The examination as a result of which approved qualifications are granted; and for the purpose of performing that duty, the Council may appoint, either from among its own members or otherwise, persons to visit approved institutions, or to observe such examinations.
- (2) It shall be the duty of a person appointed under subsection (1) of this Section to report to the Council on
 - (a) The sufficiency of the instructions given to persons attending approved courses of training at institutions visited by him;
 - (b) The adequacy of examinations attended by him; and
 - (c) Any other matters relating to the institution or examinations, on which the Council may, either generally or in a particular case, request him to report.

The foregoing and other provisions absolutely erase any doubt that TRCN has power to accredit, monitor, supervise, approve and disapprove the courses and programmes of any teacher training institution. This power is not also peculiar to TRCN. Other professional regulatory bodies such as Medical and Dental Council of Nigeria, Council for Regulation of Engineering in Nigeria, Council of Legal Education, etc. have the provisions in their respective Acts and exercise the same. For instance, notwithstanding the accreditation exercises of the agencies such as the National Universities Commission (NUC), National Board for Technical Education (NBTE), etc. They still independently or collaboratively with the agencies undertake their own accreditation, monitoring and supervision. Their decisions concerning the quality of professional programmes are usually final and respected by the agencies (NUC, NBTE, etc.) controlling the institutions. They do not register candidates of programmes they disapprove and it amounts to illegality to allow such candidates to practice. This is exactly the case of TRCN. However, in appreciation of the very close ties between TRCN and the agencies controlling the teacher training institutions, TRCN will be adopting a most collaborative approach as and when feasible towards the performance of this onerous responsibility.

3.3.3 Expiration and Cancellation of Registration and Expiration and Renewal of Licence

A teacher's registration expires in the following circumstances:

- (i) If professional registration is not confirmed after three years;
- (ii) By requesting the Teachers Registration Council of Nigeria in writing to remove his/her name from the register;

(iii) On the death of the registered member.

Once registration has expired, a teacher who wishes to become registered again may do so. However, re-instatement may be at Council's discretion.

(a) Cancellation of Registration

There are circumstances in which the Council may initiate action to cancel the registration of a teacher. These include where:

- (i) registration has been granted in error as a result of misinformation or fraud by the applicant;
- (ii) a teacher is convicted of gross professional misconduct by the Teachers Tribunal; and
- (iii) a teacher has been convicted in a court of law for a criminal offence.

All teachers with cancelled registrations will have their names published and circulated to their employers.

(b) Expiration and Renewal of Licence

A practising license is valid for only a period of one year from the date of issue. To get the licence renewed, a teacher is required to:

- (i) Earn at least 50% of the credit units specified for the three years for Mandatory Continuing Professional Education. This involves attendance of Annual Conference of Registered Teachers, trainings, and workshops. The Council will organize some of the trainings and workshops while the ones conducted by other reputable bodies will also be recognized for the calculation of the MCPE credits. The Council has published a Manual on MCPE which registered teachers are encouraged to obtain for their proper guidance regarding;
- (ii) Pay annual subscription (fees) for the three years;
- (iii) Meet other requirements that the Council may prescribe from time to time.

Self Assessment Exercise 1.3:

List the documents that are required for registration.

3.4 Benefits of Registration

Professionalism is the most primary and fundamental need of any vocation that wishes to deliver qualitative services to society and have its members well respected and remunerated. It ensures

that only those that are appropriately trained and inducted perform the job. It guarantees that ethics are imbibed, the rules of the game exist and are obeyed by all, clients get value for the money and efforts, public interest is protected, priority is given to nation-building, and above all that the professionals are regarded with dignity and awe. The professions of Law, Medicine, Engineering, Pharmacy, Accountants, etc. realised these secrets early enough and fully exploited them. That is why most people today would like to belong to those professions. Hereunder are the ways the registration and professionalism of teaching may be beneficial to teachers and to society at large:

(a) Job Security

Only teachers registered with the Council will henceforth be employed or remain/ make progress in the education system.

(b) The Teachers Salary Structure (TSS)

The Council collaboration with other stakeholders have worked out the Teachers Salary Structure now recommended by the National Council on Education and is receiving attention by the Federal Government.

It carries unique benefits and allowances which will be enjoyed by only teachers registered with the Council.

(c) Ethical Rejuvenation in the Profession

Moral order is the foundation of every social organization. The operations of the Teachers Code of Conduct, Teachers Investigation Panel and Teachers Tribunal will facilitate moral uprightness and re-endow the profession with the ability to impart the much cherished moral education on the learners for which teachers of old were known.

(d) Higher Status of Teachers in Nigeria

Higher status and public recognition are the ultimate implications of a vocation that has duly registered and regulated members.

(e) Fulfillment of Legal Professional Requirements

It is a mark of patriotism to act at all times, in conformity with the laws of the country. Teachers who register are simply complying with the provisions of the TRCN Act, which is now a law in force in Nigeria. Practitioners of other professions comply with similar provision. Nigerian graduates also have to comply with the National Youth Service Corps Act. Therefore, obedience to legitimate laws should be seen as a way of life.

(f) Reduction in Brain Drain

Improvements in the teaching profession will help to check the brain drain phenomenon in the vocation. Top class teachers can also be definitely be attracted into the profession.

(g) Rise in Educational Standards

Since teachers are the key determinants of educational standards, the improvement in the condition of teachers will translate into high educational standard in the country. Council will encourage research, effective classroom practice and professional network through high quality information technology, seminars and workshops.

(h) International Recognition

A rise in the standard of education will help Nigerian teachers regain their lost glory and enhance the respect and esteem for the products of our educational institutions as accorded graduates of similar institutions worldwide.

(i) Professional Identity

Registered teachers automatically become members of recognized profession. Therefore, they will be legally entitled to affix the title, Teacher (TR), before their names.

(j) Standard of Entry

Registration will protect the standard of entry into the profession and ensure that it is open to only teachers who have the requisite qualifications and aptitudes.

(k) Professional Development

Registration will facilitate the extension of the best professional development programmes to the teachers. This will come largely from the programmes worked out in collaboration with sister agencies and development partners for registered teachers.

The Council will further encourage the employers to play their own role towards the in-service training of their teachers.

(l) Provision of Authentic Data

Provision of information on the actual number, qualification and other vital variables of teachers in the country will serve as a database for education planning purposes.

A National Register of all professional teachers in the country will also be published regularly.

Self Assessment Exercise 1.4:

What are the benefits of being registered as a teacher?

4.0 CONCLUSION

The TRCN Act is the greatest gift bequeathed to the Nigerian teachers by government. The fact that government has recognized and put into law that only the trained individual can teach is a source of joy and pride to teachers and parents in this country who have been groaning under the weight of poor quality education, examination malpractices, cultism and sundry vices; most of which are the impact of the invasion of the education system by person neither trained nor genuinely interested in teaching as a career.

5.0 SUMMARY

In this unit, you learnt about the key mandates of the Council, its vision, mission and functions, registration procedures, benefits to be derived by registered professional teachers.

Also of importance are the circumstances that can lead to: (i) cancellation of registration; (ii) expiration of registration; (iii) expiration and renewal of licence. The benefits of being registered were itemized and discussed.

6.0 TUTOR MARKED ASSIGNMENT

1. What are the benefits of being registered as a teacher?
2. What circumstances can lead to:
 - (i) expiration of registration;
 - (ii) cancellation of registration;
 - (iii) expiration and renewal of licence.

7.0 REFERENCES AND FURTHER READINGS

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UNIT 2 NEGLIGENCE AND STUDENT PERSONNEL ADMINISTRATION

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1.0 INTRODUCTION

A school is a potentially hazardous setting. A critical examination of the various activities which students engage in under the auspices of the school will make this fact more apparent. Except school personnel realize this fact in their supervision of activities and record keeping in the school, the high duty of care required of them may be taken for granted, with all of its attendant legal implications/consequences.

Teachers need to be concerned with the safety whatever area or duty they are assigned to work or supervise. Thus, school employees need to be concerned with adequate supervision on gymnasium, play fields or playgrounds, science laboratory, vocational and technology workshops, home-economics workshops, field-trips, and diligently keeping records of students and their activities. Generally, it is advisable for teachers to strictly follow approved practices or guidelines in the supervision of activities because they may provide the defense in law against action of negligence.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the concept of negligence in school administration;
- explain the elements of negligence;
- discuss the defenses in negligence action;
- give reasons why schools should keep records of students and their activities
- list and explain relevant records to be kept in schools
- cite case laws of negligence.

3.0 MAIN CONTENT

3.1 Concept of Negligence and School Administration

The term negligence in tort is a relatively complex concept. Although it is roughly equivalent to carelessness, it is no doubt something more than a careless conduct; it is a form of legal accountability and is defined as failure or breach of a legal duty to exercise due care when there is a foreseeable risk of harm or damage to others. Negligence may be acts of commission or omission. Ordinarily, a person is not liable for injury caused to another by an unavoidable accident. For instance, in *Johnson v. Svoboda* (1978), a school bus driver was found not to be negligent in respect of the death of a five-year-old child who had dropped off the school bus, crossed the street in front of the bus and then ran back under the rear wheels of the bus while chasing a blowing piece of paper. The bus driver was attentive, watched the child cross the street originally, but had not seen the child return.

A primary test to determine if there has been negligence is the test of foreseeability. *Remick and Ware* (1972) point out that when a reasonably prudent man (a hypothetical person, with normal intelligence, normal perception and memory, and such superior skill and knowledge as the actor has or holds himself out as having) could have foreseen the harmful consequences of his act the actor in disregarding the foreseeable consequences, is liable for negligent conduct. When this general rule is applied to school law or teacher-student relationship, we may say that if a reasonably prudent teacher could have foreseen that a student might be injured by some act of his own or another's the teacher is liable if he disregards these foreseeable consequences.

Furthermore, a teacher or principal/head master may be held liable for accidents arising from the maintenance of a nuisance (a dangerous attractive premise, e. g., a pool of water, an unprotected hole or pit) on campus or defective equipment, unless the accident is directly caused by negligence of the plaintiff or a student. It is in the light of this that *Barrell and Partington* (1985) advise teachers and school employees in their own interest to report immediately any defect in buildings or equipment which may give rise to an accident to the responsible authority. Once a case of defect is reported, reasonable steps should be taken by the school authority to prevent any use of that facility which might lead to a mishap. Failure to report or take these steps might raise the question of the school official's negligence.

In Nigeria, there is a number of reported incidents in the school system that amounts to negligence on the part of the teachers and/or school heads. For instance, in the *National Concord* of Wednesday, November, 8, 1989, was the front page caption "Pupil, 13, Guns Down Classmates". The report by one Lanre Sorunke has it that a tragedy struck at a primary school at Erin Village in Ogun State when a 13-year-old primary four pupil shot dead his classmate, one Murtala Musibau.

The deceased was said to have been engaged in a hot argument over an undisclosed issue with the other pupil when the incident happened. It was said that the handgun used in committing the crime belonged to the class teacher and it was kept at a corner in the classroom. The report said the class teacher engaged in hunting expedition after school hours.

A principal who fails to provide for an adequate arrangement for the supervision of the school's activities, e.g., morning assembly, closing, extracurricular activities and so forth, may be held liable for tort of negligence if tragedy occurs. For example, in *Omafidon Osunbor and Others v. Pius Edogun and Others* (1981), both parties were students of Okhuaihe Grammar School, Okhuaihe, in Bendel State. There occurred a free-for-all fight between the class V boys and girls concerning the control by Form V boys over Form IV girls. The fight took place on the school premises after school. The girls trooped to the police station, Abudu, and the boys were arrested and charged for assault and battery. Until the principal was invited to give evidence, he had no knowledge of the incident, even though he lived on the premises. This case typified lack of "high duty care" on the part of the principal, thereby jeopardizing the children's right to the protection of life and property. The court, however, discharged the defendants and warned them to be of good behaviour. The principal, no doubt, must have learnt a lesson (Eyike, 1984). Reasonable supervision does not necessarily require constant unremitting scrutiny (*Fagan v. Summers*, 1972).

The importance of adequate care in the administration of schools cannot be overemphasized. In matters of pupil supervision and safety, teachers cannot be too careful. There is no known case of a teacher being liable for careful behaviour; there are many cases holding teachers liable for careless behaviour" (Hazard, 1971, p. 407).

Releasing students before the normal closing time may constitute negligence on the part of the school authority, if a pupil sustains injury on his way home (*Barnes v. Hampshire County Council*, 1969). Similarly, a school district and personnel may be held liable for the death on school playground if the appropriate or required supervision was not provided at the time of the incident (*Dailey v. Los Angeles Unified School District*, 1970). A liability problem can arise for a teacher, particularly when injury occurs in connection with sending students on errands:

- (a) within a school premises if the facts establish that the teacher could have foreseen that the pupil would encounter danger of harm;
- (b) off the school grounds on any errand that was for anything other than an educational purpose (Hazard, 1971).

Hazard also points to other occasions where teachers and school administrators subject themselves to liability. These include:

- (1) giving medical attention when a teacher or school administrator should recognize that the injury is a serious one and appreciates that he does not know how to administer proper treatment and due care would have required that he summoned, as quickly as possible, the emergency attention that is necessary;
- (2) requesting student aid which they should recognize is beyond the experience and physical capacity of the child (causing the child to sustain injury);
- (3) sending pupils home during school day;
- (4) keeping pupils after school,
- (5) non-supervision during (i) recess, (ii) at dismissal and during movement between classes and during lunch periods before and after school.

Furthermore, a principal is liable where he assumed additional responsibility (for certain activities, either before the start or end of school day) and did not perform it reasonably if a student sustains injury (Titus v. Lindberg). Moreover, a student cannot be found guilty of contributory negligence for injury in a lecture hall/classroom if he/she could not reasonably anticipate that he/she was in danger of physical harm (Viveiros v. State 1973).

Proper supervision should not only be restricted to on-campus activities but also off-campus activities or field trips sponsored by the school in which children are taken to unfamiliar places. The case by Morris v. Douglas County School (1965) illustrates the importance of supervisor precautions by teachers.

According to Reutter and Hamilton, in this case a suit was brought for damages because of injuries sustained by a six-year-old child at a beach while on a school outing. A large log was lying on the beach. Four children climbed on the log, and the teacher posed them there for pictures. Suddenly, a large wave came onto the beach, causing the log to roll over. As it rolled a child fell under it on the seaward side and was injured. The trial court found the teacher negligent in failing to exercise proper supervision at the time of the incident, and this judgement was upheld on appeal.

Self Assessment Exercise 2.1:

What do you understand by tort of negligence?

3.2 Elements of Negligence

In order for an action of negligence to succeed, the plaintiff is required to prove the existence of four ingredients. The four prerequisites are summarized thus:

1. The defendant owed a legal duty to protect the plaintiff against harm (i.e., the duty of care);
2. The defendant failed to exercise an appropriate duty of care (i.e., a breach of that duty);
3. The plaintiff suffered actual loss or injury physical or mental or both (consequential damage); and
4. The defendant's negligence (act of omission or commission) was 'the proximate or legal cause of the plaintiff's injury.

An important aspect of the tort of negligence is the concept of "your neighbour" in law. According to Rogers (1979), this law requires an individual to take reasonable care to avoid acts or omissions which he can reasonably foresee is likely to injure his neighbour. "Neighbour" here refers to "persons who are so closely and directly affected by your act that you ought reasonably to have them in contemplation as being so affected when you are directing your mind to the acts or omissions which are called in question" (p. 68).

Alexander (1980), in alluding to the principle of "your neighbour" in law as it applies to school setting, made the observation that generally, the law holds that a person is not liable for an omission to act affirmatively when another person is in danger where there is no definite relationship between the parties, e.g., passersby and victims of auto wrecks. In the same vein, while a teacher has no more of a duty than anyone else to be a "good Samaritan" to the general public, he does have an obligation or duty to help if a student under his jurisdiction when injured at school. Because of the teacher-student relationship, "a teacher may be liable for an omission to act as well as an affirmative act" (pp. 690-697).

Thus, in education law, the teacher and the students are considered as "good neighbours". The special relationship between the teacher and student imposes a duty upon a teacher to aid or protect a student in danger. Hazard (1972) points out that this special relationship carries with it special privileges and special responsibilities. He illustrates this special relationship succinctly thus:

The same conduct toward children may be proper for a teacher but legally improper for others. For example, teachers may direct and control pupils in and out of school, but ordinary citizens may not. The special relationship carries with it "special responsibilities and duties which may impose liability on teachers beyond that imposed on others. What might constitute reasonable care by the general public may not be reasonable for the teacher.

Teachers, for example, may be obliged to intervene in school playground fights and might be charged with negligence for failure to act if a child were injured thereby. The ordinary citizen would have no legal duty to intervene (p. 407).

Self Assessment Exercise 2.2:

List and discuss the elements of negligence.

3.3 Proof of Negligence

In order for negligence to be actionable or for a plaintiff to recover damages in a law suit, the plaintiff must prove, or have the burden of proving, the four elements of negligence. Two major aids available in meeting this burden of proof are:

- (a) *the doctrine of "negligence per se and*
- (b) *the doctrine of "res ipsa loquitur .*

The doctrine of "negligence per se" permits the plaintiff to use the defendant's unexcused violation of a criminal statute as a proof that the defendant committed a negligence. Since the statute establishes a standard of behaviour for a society, a violation of it constitutes failure to live up to the standard of the ordinary reasonable person and therefore is negligence (Hoerber and others, 1985). For instance, in an accident case, in *Wolf v. Moughon* (1978), the plaintiffs filed a suit against defendant (Carol Moughon) for damages for negligence, alleging negligence per se in failing to keep her vehicle on the right side of the road in violation of a state statute. The plaintiffs won the case.

The second aid of proof, *res ipsa loquitur* (the facts speak for themselves), is used occasionally where there is no clear or direct evidence of the defendant's failure to exercise due care. However, negligence can be presumed on the grounds that the defendant had sole control of the cause of mishap. For example, P is in a boarding house in a secondary school. While he was sleeping at night he was injured by a large piece of ceiling which fell from above. In the absence of any other evidence, the court may infer that the harm resulted from the school's negligence in permitting the ceiling to become defective. The school however, is permitted to introduce evidence to contradict the inference of negligence (Smith and Others, 1934). Thus, the doctrine of *res ipsa loquitur* is merely a rule of evidence in law suit and does not guarantee a verdict in favour of the plaintiff.

Self Assessment Exercise 2.3:

Explain the doctrine of:

- (a) negligence per se, and
- (b) *res ipsa loquitur*.

3.4 Defences in Negligence Action

There are a number of defences open to the defendant in cases involving the tort of negligence. These include the defence of:

1. Pure accident

2. General and approved practice
3. Intervening variables/causes
4. Contributory negligence
5. Comparative negligence
6. Assumption of risk, and
7. Immunity.

Of these defences, the most popular are pure accident, contributory negligence, comparative negligence and assumption of risk.

Pure Accident

In case of what the law calls unavoidable or pure accidents, no legal fault lies. Consequently, pure accidents, if proven in a court of law, are a complete bar to the award of damages. For example, in *Schultz v. Scheney School District* (1962), a pupil in the defendant's school bus, was injured when the driver lost control of the bus after being stung by a bee. In the trial court, the plaintiff alleged that the actions of the defendant's driver constituted negligence. The defendant disagreed, said that the accident was "unavoidable". There was no contention that the driver was operating the bus in a negligent manner before the bee stung him. The court held that the defendant was not negligent as a matter of law and that the accident and injuries were unavoidable in the exercise of due care. A verdict was returned for the defendant.

A contrasting case which involved an accident that occurred in the course of a lecture on safety was reported in Reutter and Hamilton (1976, p. 285). In that case *Lilienthal v. San Leandro Unified School District*, a teacher had taken his class out on a lawn to review a safety test. One of the boys picked up a home-made knife on the way out of the classroom, and as the boys were seated in a semi-circle, around the teacher, started flipping the knife into the ground. This action continued for quite a while until eventually the knife struck a student's drawing board, was deflected, and destroyed the eye of one of the pupils. The court indicated that there was sufficient evidence from which a jury might infer that the teacher knew or should have known that knife throwing was going on and that he was inattentive and careless in failing to observe and stop it before the injury occurred.

The verdict in the above case implies that lack of proper supervision may constitute negligence. Theoretically, it is presumed that adequate supervision of students would prevent injuries from reasonably foreseeable dangers and the more dangerous the situation, the more careful the supervision must be. This does not mean that the mere absence of a teacher from a room or field of activity is a basis for liability. One test is whether the presence of the school official would have been likely to prevent the accident which occurred in his absence. Another critical factor is the length of the teacher's absence (Reutter and Hamilton, 1976). Since "prevention is better than cure", it is safer for school officials to promptly report on time to their assigned supervisory activities.

General and Approved Practice

A defendant charged with negligence can clear himself if he shows that he has acted in accordance with general and approved practice in the circumstance. This means that it must be approved by those qualified to judge, but also as the last resort by the court itself with the aid of expert evidence (Rogers, 1979). Barrell and Partington (1985) reported two related and equally interesting cases in this area of defence.

In the first case, *Butt v. Cambridgeshire and Isle of Ely County Council* (1970), the author reported that in July 1964, an experienced teacher was taking a class of nine-and ten-year girls who were each given scissors to cut out illustrations during a Geography lesson. Whilst the teacher was attending to one girl, another pupil waved her scissors about so that the pointed end destroyed the sight of the plaintiff's eye. There were other thirty seven children. The plaintiff was awarded damages, with the judge holding that it was incumbent on the education authority to ensure that the waving about of scissors was rendered impossible by proper supervision. If personal attention was to be given to one child, it must be given either out of class or after the class had been told to drop their scissors.

This judgement was unanimously reversed in the Court of Appeal.

If every little child got into a difficulty, asked Lord Denning, the Master of the Rolls, was she to be told to come back afterwards? That did not seem practical. Nor was it practical to make sure that the rest of the class put their scissors down. Was the whole class to stop still if one girl needed supervision? It was a very unfortunate accident, but there was no justification for finding either the education authority or the teacher at fault.

The judge had the evidence of experienced teachers that there was no fault in the system of using pointed scissors (at that level).

In the second case, *Black v. Kent County Council* (1983), the Court of Appeal took quite a different view involving the use of scissors. In this case a seven-year-old was allowed to choose in class between sharp and blunt-ended scissors; he chose the former and jabbed himself in the eye when his chair was jogged.

The Master of Rolls, Sir John Donaldson, held that there was no countervailing reason why sharp-ended scissors were necessary for the pupil's task, and accepted as guidance the DES book *Safety at school which said it was sensible to provide round-edged scissors for children aged up to eight or nine*. The teachers were guilty of an error of judgement and the appeal was dismissed.

The lesson from these two cases is that what amounts to negligence in one situation may not be so in another because the age of the plaintiff must be taken into account. In general, a higher duty of care is required when an activity involves children.

Intervening Cause

In order that a negligent actor shall be liable for another's injury, there must be a proximate legal cause—a connection between the negligent act and the resultant harm. If the defendant is unable to prove that his act was not the proximate cause of the plaintiff's injury but other intervening factors, he may not be liable for the tort of negligence. For instance, in *Albers v. Independent School District, No. 302 of Lewis City* (1972), the supreme court of Idaho held that intervening causative factors may absolve a school from liability.

Contributory Negligence

This is probably the most common defence to a negligence action. A defendant could normally escape liability if he could show that, despite his negligence, the plaintiff should nevertheless be denied judgement for the reason that he, too, is guilty of an act of carelessness that contributed to his injury (Howell, and others, 1978; Redmond and others, 1979). Thus, contributory negligence refers to failure by the plaintiff to exercise prudence for his own safety and which failure is a contributory factor bringing about the plaintiff's harm. The Restatement of Torts provides a more generally quoted definition of contributory negligence. It defines it as:

Conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection, and which is legally a contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm.

If a plaintiff's negligence contributed to his/her own injury, he/she may not recover any damages. Generally, a pupil's youth and inexperience increases the precaution necessary on the part of the teacher to avoid an unreasonable risk toward the child (Remmlein and Ware, 1972). Alexander (1980, p. 701) succinctly expressed similar idea when he pointed out that since a child is expected to act with the same standard of care as an adult, teachers have more difficulty showing contributory negligence than if the plaintiff were an adult. A child, Alexander noted, is by nature careless and often negligent, and knowing this, a teacher should allow for an additional margin of safety.

In *Hutchinson v. Toews* (1970), the appeal court held that the injured student, the plaintiff, with knowledge of risks involved in the preparation of explosives, was contributorily negligent. In another case, *Minter v. D. and H. contractors* (1983), a child aged nine who was injured when he rode a bicycle into a pile of hardcore, left on the road by the defendants, was found guilty of twenty per cent contributory negligence. The evidence showed that the boy was a 'good rider' of his bicycle.

Comparative Negligence

The drastic and unpalatable effects associated with contributory negligence, particularly in circumstances where the plaintiff is found to be "slightly negligent and the defendant greatly negligent" have led courts to endeavour to prorate damages based on the degree of fault. The result of this

effort is the adoption of comparative negligence rules. A finding of contributory negligence does not totally bar the plaintiff's claim.

In a lawsuit where both the defendant and the plaintiff are negligent, the defence of comparative negligence requires the judge to apportion damages between the plaintiff and defendant according to the fault of each. Thus, for example, if a defendant is found to be 60% at fault and the plaintiff 40%, the plaintiff's damages will be reduced by 40%.

According to Howell and Others (1978 pp. 134. 135), a common form of comparative negligence law is the "50% statute", which provides that a plaintiff can recover proportionate damages if his or her negligence is not greater than the defendant. In other words, if the plaintiff's negligence were found to be greater, to any degree than that of the defendant, he would recover nothing.

The case of *Gonzalez v. Garcia* (1977) provides a good example of a case decided on the principle of comparative negligence. Although the jury returned a verdict for plaintiff, it found him to be 20 per cent responsible for his injuries.

Assumption of Risk

The defence of the assumption of risk against negligence may be defined generally as voluntary exposure to a known risk. A plaintiff's assumption of the risk may be expressed or implied. An assumption of risk is also a complete bar to the plaintiff's recovery of claim. An illustrative case of this defence is reported by Barrell and Partington (1985) in *Smerkinich v. Newport Corporation* (1912).

The case arose from an accident to a man of nineteen who was using an unguarded circular saw. It was alleged that the Education Authority was negligent in failing to provide a guard. In an appeal from the decision of the County Court, it was said that the plaintiff knew the use of the saw and voluntarily took the risk. Observing that there was no evidence of a general practice to protect saws, the judge added, "If he had been a child, the case might have been different but, so far from being a child, he was a lad of nineteen years of age, and had been in the habit of using the saw for two years".

Immunity

This is generally conferred on:

- (1) National and state governments, unless abrogated by statute.
- (2) Public officials performing quasi-judicial or discretionary functions.
- (3) Charitable organizations granted immunity in some states.
- (4) Infants under certain conditions and
- (5) In some cases, insane persons (Alexander, 1980).

Self Assessment Exercise 2.4:

Identify and explain the defences open to a defendant in a case involving the tort of negligence.

The cited cases and their facts as reported by Peretomode (1992) are discussed below.

3.5.1 Fagan v. Summers

REASONABLE SUPERVISION DOES NOT REQUIRE CONSTANT UNREMITTING SCRUTINY

FAGAN v. SUMMERS Supreme Court of Wyoming, 1972. 498 p. 2d 1227.

MCINTYRE, Chief Justice. This case involves suit for damages brought on behalf of seven-year-old George Fagan against a teacher's aid, Mrs. Lloyd Summers, and Park County School District No.1.

During a noon recess a fellow student threw a small rock which hit a larger rock on the ground and then bounced up and struck George Fagan, causing him to lose the sight in his left eye.

The trial court granted summary judgement for both Mrs. Summers and the school district.

The Teacher

Regarding defendant Summers, she has stated by affidavit that she walked past the plaintiff and five or six other boys twice prior to the accident, while they were sitting on the ground near the school building. The boys were laughing and talking and she saw nothing out of the ordinary. After Mrs. Summers strolled by this group of youngsters, she had walked approximately 25 feet (taking about 30 seconds) when she heard an outcry from plaintiff. The accident happened in that interval.

There is no evidence or indication that Mrs. Summer's explanation is not true. Also, it is claimed on behalf of defendants that Mrs. Summers was reliable, conscientious and capable in her work and a good playground supervisor. This does not appear to be challenged in any of the evidence.

There is no requirement for a teacher to have under constant and unrelenting scrutiny at precise spots where every phase of play activities is being pursued; and there is no compulsion that general supervision be continuous and direct at all times and all places.

A teacher cannot anticipate the varied and unexpected acts which occur daily in and about school premises. Where the time between an act of a student and injury to a fellow student is so short that the teacher has no opportunity to prevent injury, it cannot be said that negligence of the teacher is a proximate cause of the injury.

As far as the instant case is concerned, counsel for appellant was asked during oral argument what should have been done by Mrs. Summers which was not done. His answer was to the effect that she could really not have done more than she did do and could probably be dismissed from the suit. We consider counsel's answer frank and honest. In view of it and in view of what

have said about the absence of proximate cause on the part of Mrs. Summers, we hold summary judgement for her was proper.

The District

When counsel for appellant was asked during oral argument what the district should have done which was not done, his answer was that the district should have put the playground in better shape and should have provided more supervisors.

There is evidence that construction of a new school building was taking place. In connection with this construction, the blacktop of the playground had been torn up leaving clods of blacktop and a rough playground. It is shown that this condition remained for approximately two years.

Although plaintiff alleged in his complaint that he had been hit with a piece of torn-up blacktop, counsel for appellant conceded in oral argument, as far as the record is concerned, and plaintiff was hit with a rock. Counsel then advanced the theory that when the blacktop was torn up, it left rocks from beneath exposed.

We realize there are cases which hold a school district liable for injury resulting from a dangerous and defective condition of a playground. We have found no case, however, which holds rocks on the ground to be a dangerous and defective condition. Left on the ground, a rock will hurt no one.

Therefore, if we were to assume the school district was negligent for allowing rocks to be on the playground, we would have to hold the act of a third person who throws one of the rocks injures the plaintiff an intervening cause of the accident.

In the case before us, plaintiff was not injured by negligence, if any, from rock being on playground. The injury was clearly caused by the intervening act of a third person the boy who picked up and threw the rock. Appellant cites no authority for the proposition that such a result was reasonably foreseeable.

It is apparent from all we have said that the proximate cause of George Fagan's injury was the act of his fellow student in throwing a rock. It was not the failure of the Park County School District No. 1 to maintain the playground in a safe condition.

Appellant has made no effort to show that supervision of the playground was inadequate or that the accident would have been prevented if more supervisors had been present.

Summary judgement for Mrs. Summers and for the school district was justified and proper. Affirmed.

3.5.2 Dailey v. Los Angeles Unified School District

NEGLIGENCE-LIABILITY OF SCHOOL DISTRICT AND PERSONNEL FOR DEATH OF STUDENT ON SCHOOL PLAYGROUND-DUTY IS OWED BY SCHOOL OFFICIALS TO STUDENTS ON SCHOOL PLAYGROUNDS

DAILEY v. LOS ANGELES UNIFIED SCHOOL DISTRICT Supreme Court of California, 1970 2 Cal. 3d 741, 87 Cal. Rept. 376, 470 P. 2d 360

SULLIVAN, JUSTICE. During the noon recess on May 12, 1965, Michael Dailey, a 16-year-old high school student, was killed on the playground of Gardena High School. His parents brought this wrongful death action against the Los Angeles Unified School District which operated Gardena High School and against two teachers employed by the district. The case was tried by a jury. Plaintiffs sought to establish that defendants' negligence in failing to provide adequate supervision was the proximate cause of Michael's death. After both sides had rested, the trial court granted a motion for a directed verdict in favour of all defendants. Plaintiffs appeal from the judgement enforced on that verdict.

The sole issue in this case is whether the motion for a directed verdict was properly granted.**

***We proceed to consider the evidence in the record. With these principles in mind we proceed to consider the evidence in the record which is most favourable to plaintiffs and must be accepted as true.

On the day of his death, Michael and three of his friends ate lunch in an outdoor area designated for that purpose. After they finished eating, they proceeded to the boys' gymnasium where their next class was scheduled. When they reached the gym area, Michael and one of his friends began to "slap fight" or "slap box", a form of boxing employing open hands rather than clenched fists and in which the object, at least initially, is to demonstrate speed and agility rather than to inflict physical injury on the opponent. They continued boxing for 5 to 10 minutes and a crowd of approximately 30 students gathered to watch. Suddenly, after being slapped, Michael fell backwards, fracturing his skull on the asphalt paving. He died that night.

Richard Ragus, who was boys' vice principal at Gardena High School when the incident occurred, testified as to the general plan for student supervision during the noon hour. It appears that all 2,700 students ate lunch during one session. While they were actually eating, students were required to remain in either the indoor cafeteria or the enclosed outdoor area noted above. When they had finished eating, however, they were free to use any part of the campus except the parking lot. Three administrative personnel and two teachers were assigned to supervise students during the lunch period. The area around the gymnasium, however, was the specific responsibility of the physical education department. Defendant Raymond Maggard was the chairman of the physical education department at Gardena High School.

Defendant Robert Daligney was a physical education instructor at Gardena High School. He was "the person in the gym office" during the noon hour on May 12, 1965. Like defendant Maggard, *he recognized that his department had the responsibility to supervise the athletic field and the paved area immediately surrounding the gym. He like Maggard conceded that there was no procedure for determining who was to supervise on particular days or what their duties were in regard to supervision.* Daligney spent the entire noon hour in the office, eating lunch and preparing for afternoon classes. Maggard himself was playing bridge in the dressing room while the slap boxing was going on. Daligney concurred with Maggard that while slap boxing was normal activity for male high school students, it could lead to "something dangerous". He testified that initially friendly slap boxing could escalate into actual fighting and that when he observed students engaging in it he would order them to stop immediately.

Before we can decide whether or not the foregoing evidence is sufficient to support a verdict in plaintiff's favour, we must determine that, if any, duty is owed by those in defendants' position to students on school grounds. While school districts and their employees have never been considered insurers of the physical safety of students; California law has long imposed on school authorities a duty to "supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection". The standard of care imposed upon school personnel in carrying out this duty to supervise is identical to that required in the performance of their other duties.

The fact that Michael Dailey's injuries and death were sustained as a result of boisterous behaviour engaged in by him and a fellow student does not preclude a finding of negligence. *Supervision during recess and lunch periods is required, in part, so that discipline may be maintained and student conduct regulated. Such regulation is necessary precisely because of the commonly known tendency of students to engage in aggressive and impulsive behaviour which exposes them and their peers to the risk of serious physical harm.* Consequently, less rigorous and intrusive methods of supervision may be required. Nevertheless, adolescent high school students are not adults and should not be expected to exhibit that degree of discretion, judgement, and concern for the safety of themselves and others which we associate with full maturity.

We come, then, to the question of whether the evidence in this case was sufficient to support a finding of negligence supervision. There was evidence to the effect that Mr. Maggard, the responsible department head, had failed to develop a comprehensive schedule of supervising assignments and had neglected to instruct his subordinates as to what was expected of them while they were supervising. Instead, it appears that both the time and the manner of supervision were left to the discretion of the individual teacher. Mr. Daligney, the instructor ostensibly on duty at the time of the accident, remained inside an office during the entire lunch period, though all students were outside the gymnasium. He did not devote his full attention to supervision but ate lunch, talked on the phone, and prepared future class assignments. Neither defendant Daligney nor defendant Maggard heard or saw a 10-minute slap-boxing match which attracted a crowd of approximately 30 spectators, although this took place within a few feet of the gymnasium. From this evidence a jury could reasonably conclude that those employees of the defendant school district who were charged with the responsibility of providing supervision

failed to exercise due care in the performance of this duty and that their negligence was the proximate cause of the tragedy which took Michael's life.

The fact that another student's misconduct was the immediate precipitating cause of the injury does not compel a conclusion that negligent supervision was not the proximate cause of Michael's death. Neither the mere involvement of a third party nor that party's wrongful conduct is sufficient in itself to absolve the defendants of liability, once a negligent failure to provide adequate supervision is shown.

In summary, we conclude that there was evidence of sufficient substantiality to support a verdict in favour of these plaintiffs and we are satisfied that the trial court erred in granting the motion for a directed verdict.

3.5.3 Vivieros v. State

A STUDENT CANNOT BE FOUND GUILTY OF CONTRIBUTORY NEGLIGENCE FOR INJURY IN LECTURE HALL IF HE/SHE COULD NOT REASONABLY ANTICIPATE THAT HE/SHE WAS IN DANGER OF PHYSICAL HARM.

VIVEIROS v.
Supreme Court of Hawaii, 1973, 54 Haw. 611, 513 P. 2d 487.
RICHARDSON, Chief Justice.

This appeal arises out of a civil action brought by plaintiffs-appellants against the State of Hawaii under the State Tort Liability Act.

The trial judge found that the State of Hawaii was negligent in failing to provide supervision at a programme by Kailua High School during regular school hours. The trial court further found that the injuries suffered by plaintiff, Jo Ann Viveiros, were as a result of the State's negligent omission. The State has not appealed these findings. General damages of \$15,000.00 and special damages of \$180.84 were awarded. The trial judge determined that defendant was 75% negligent and that the plaintiff Jo Ann Viveiros, was 25% negligent for "failing to leave the scene prior, to her being injured.

The facts reveal that on December 3, 1970 at about 9.30 a.m., a school-sponsored "light show" created by students began in a lecture hall at Kailua High School. At this time, an educational assistant acting as a supervisor represented the only staff member present in the auditorium. Soon after the show started, this supervisor departed to observe a 15 to 20 minute coffee break. Though the show was to be supervised by three or four teachers, due to a mix-up, the hall was left in the hands of the students who were producing the light show.

At approximately 9.30 a.m. plaintiff Jo Ann Viveiros, age 15, along with two friends paid a 25¢ admission fee and entered the darkened hall to observe the performance. They could not find seating, so they stood in the aisle. Although the audience was quiet at the time plaintiff entered, a few minutes later a small group in a corner of the hall became "noisy". A student

charge of the production told the group to keep quiet or "the teachers would come in". Plaintiff was standing about thirty-five feet away from this group and did not feel any concern for safety, although at this point she knew that no teachers were present. Shortly after the announcement, plaintiff and two other students were struck by metal objects apparently thrown by the rowdy group. Plaintiff suffered permanent damage to her left eye.

We subscribe to the rule that a child is only required to use that degree of care appropriate to his age, experience and mental capacity. We must reverse the finding by the trial judge that plaintiff was 25% negligent if we find that conformed to the above standard by remaining in the auditorium after she discovered that the event was unsupervised.

At the time the isolated group of students became boisterous Jo Ann was standing approximately thirty-five feet in front of them. The record revealed that the group was merely vocal. There is no mention made in the record of threats being shouted or evidence that objects were being thrown during the concert. Apparently none of Jo Ann's peers felt endangered, because no one was shown to have left the programme once the group became boisterous. Jo Ann did not fear for her safety possibly because she harboured the reasonable belief that she was in no imminent physical danger.

We agree with the reasoning in *Ridge v. Boulder Creek Union Junior Senior High School District*, 60 Cal. App. 2d 453, 460, 140 P.2d 990,993-994 (1943). In this case, a 17-year old student was found not guilty of contributory negligence for using a power saw without its guard causing injury to himself. The court reasoned that:

Knowledge that danger exists is not knowledge of the amount of danger necessary to charge a person with negligence in assuming the risk caused by such danger. The doing of an act with appreciation of the amount of danger in addition to mere appreciation of the danger is necessary in order to say as matter of law that a person is negligent.

Since Jo Ann could not reasonably anticipate that she was in danger of physical harm nor appreciate the amount of danger, we must find that the trial judge erred in finding her 25% negligent. In our view, plaintiff conducted herself as a reasonable person would have under the same conditions.

3.5.4 Wolf vs. Monghon

CASE OF NEGLIGENCE PER SE

WOLF v. MOUGHON 562 S.W.2d 936 (Tex. Civ. App. 1978)

The defendant, Carol Moughon, was driving her car east on street X at approximately 7 a.m. The plaintiff, Mary Wolf, with her daughter Shannon (also a plaintiff) was driving west on street X. The streets were wet. As the defendant's car came around a curve, it went up over the right curb

and out of control, then came back over the curb into the street and into the left lane of where it collided with plaintiff's vehicle. The defendant testified she was driving between 25 and 30 m.p.h. before the accident. She also testified that she had her brakes repaired two days before and that when she drove the car from the repair shop she noticed the vehicle would pull right each time she applied the brakes. She was returning the car to the repair shop when the accident occurred. The defendant could not definitely say whether or not she had applied the brakes as she came around the curve on X street.

Plaintiffs filed suit against Carol Moughon for damages for negligence alleging negligence per se in failing to keep her vehicle on the right side of the road in violation of a state statute. The defendant alleged unavoidable accident and a sudden emergency. The jury failed to find negligence and judgment was entered for the defendant. Plaintiffs moved for judgment and for a new trial. The trial judge overruled both motions and plaintiffs appealed.

In his judgment, the Justice of the Appeal Court stated that since the defendant failed to introduce evidence showing that the violation of the statute in question was due to a permissible excuse (that the faulty braking system caused her to lose control of the vehicle immediately prior to the accident, and that she was confronted with an emergency not due to her own misconduct), the trial court erred in refusing to enter judgment for the plaintiffs. The judgment of the trial court is reversed.

3.5.5 Schult v. Scheney School District

NEGLIGENCE ACTION -THE DEFENCE OF AN UNAVOIDABLE ACCIDENT

SCHULTZ v. SCHENEY SCHOOL DISTRICT Supreme Court of Washington, 371 P. 2d 69 (1962)

Vicki Schultz, plaintiff, a passenger on defendant's school bus, was injured when the driver lost control of the bus after being stung by a bee. In the trial court the Superior Court of Spokane County, Washington plaintiff alleged that the actions of defendant's driver constituted negligence. Defendant disagreed, contending that the accident was "unavoidable".

At the trial, plaintiff asked the court to rule that the driver's conduct in this situation constituted negligence as a matter of law. The trial court refused to do so, and left the question of negligence to the jury.

Also, during the trial, the defendant asked the court to instruct the jury as to the circumstances under which an accident might be unavoidable. The court did so. (While the instruction does not appear in the record, an unavoidable accident is usually defined as one which occurred "without fault on the part of either party".)

The jury returned a verdict for defendant. Plaintiff then appealed to the Supreme Court of Washington, claiming that the above rulings of the trial court were erroneous.

Rosellini, Justice: The evidence showed that the plaintiff fell or was thrown from her seat in the defendant's school bus when it was driven off the highway into a ditch. This occurred because the attention of the driver was diverted momentarily from the road when a bee flew in through the window and stung him on the neck. He ducked his head and tried with his left hand to extricate the bee from under his collar. While he was thus engaged the bus veered to the left a distance of about 75 feet.

At this point the driver raised his head and perceived what had happened. He endeavoured to turn the bus back onto the road, but because of the soft condition of the shoulder, he was unable to do so and the bus went down into shallow ditch, tilting first to the left and then to the right before it could be stopped. It was this motion of the bus that caused plaintiff to fall into the aisle.

There was no contention that the driver was operating the bus in a negligent manner before the bee stung him. But the plaintiff urged in the trial court, and now urges here, that the evidence showed that he was negligent as a matter of law in failing to keep the bus under control after that incident. The testimony was that only a few seconds passed between the moment of the bee sting and the moment the driver discovered that the bus had veered across the highway. He testified that the sting startled him and that the bee continued to buzz under his collar after it had stung him.

We think the trial court correctly decided that it was for the jury to determine whether his action in lowering his head and endeavouring with one hand to remove the bee was instinctive, or whether reasonable care required him to maintain control of the bus in spite of this painful distraction.

The defendant, by his answer denied negligence and affirmatively alleged that the accident was unavoidable.

The plaintiff does not quarrel with the instruction as a correct statement of the law, but contends first that it was inapplicable in this case because the defendant was negligent as a matter of law, and second that such an instruction should never be given because it is misleading and superfluous.

For the reason previously stated in this opinion there is no merit to the first of these contentions. As to the second, it is well established in this jurisdiction (here, meaning "this state") that an instruction on unavoidable accident is proper when the evidence shows or justifies an inference that an unavoidable accident has occurred, as that term has been defined.

In this case, the defendant was not negligent as a matter of law. He affirmatively alleged and introduced evidence that the accident was unavoidable. The jury could find the defendant liable if it found that the accident was the result of the driver's negligence, or it could find, as it did, that the driver lost control of his vehicle momentarily because of his instinctive reaction to a sudden and unexpected attack of the bee, and that his acts under the circumstances were not negligent. Implicit in this finding is a determination that the accident was unavoidable in the exercise of due care. The instruction was proper under the evidence.

The judgement is affirmed. (Justices Finley, Donworth, and Ott. concur.)

3.5.6 Albers v. Independent School District

INTERVENING CAUSATIVE FACTOR MAY ABSOLVE SCHOOL FROM LIABILITY

ALBERS v INDEPENDENT SCHOOL DISTRICT No. 302 of Lewis City Supreme Court of Idaho, 1971, 94 Idaho 342, 487 P. 2d 936.

McFADDEN, Justice. This action was instituted by appellant Ray Albers, the father of Morris Albers, a minor, to recover damages from Independent School District No. 302 of Lewis County, respondent, for personal injuries suffered by his son Morris. A motion for summary judgment was made by the school district, which the trial court granted. We affirm this judgement.

The record discloses that on December 23, 1967, during the Christmas holiday, Morris Albers with five other boys, drove to the high school gymnasium of the district with the intention of playing an informal basketball game. Upon arrival they found the entrance locked; however, the custodian was working on the premises and was persuaded, perhaps reluctantly, to open the door and let the youths use the basketball court. The custodian went about his cleaning duties and admitting the boys.

Morris undertook to clean the playing surface of the gymnasium, by sweeping the court with a wide dust mop or broom for five or ten minutes, while his friends changed clothes. The boys then engaged in warming-up activities, shooting baskets, using two worn leather basketballs which they found lying about, the equipment room of the gymnasium being locked.

At the time Morris was wearing standard basketball shoes and slacks. He was a member of the high school basketball team, an accomplished high school athlete, and participated in several other team sports. At least one of the other five boys was a teammate of his on the basketball team.

After warming up the boys split into two teams and played a "half-court" basketball game. Morris' deposition reflects that "it was a real clean game" from the standpoint of fouls and close calls. Sometime into their play a shot came off the backboard and headed out towards (the) out of bounds line on "the east side of the gymnasium." Morris and an opposing player ran for the loose ball. As Morris reached to pick it up the two boys collided, Morris hitting his head against his opponent's hip. Morris fell to the floor on his back in a semi-conscious state. Morris suffered a fracture in the cervical area of his spine necessitating surgical correction and prolonged hospitalization.

Generally, schools owe a duty to supervise the activities of their students, whether they be engaged in curricular activities or non-required but school sponsored extra-curricular activities. Further, a school must exercise ordinary care to keep its premises and facilities in reasonable safe condition for the use of minors who foreseeably will make use of the premises and facilities.

On the claim that the school district breached its duty to supervise the boys' game, the record lacks any evidence as to how the presence of a coach or teacher would have prevented the collision of the boys chasing the rebounding basketball. Physical contact in such a situation in an athletic contest is foreseeable and expected. The general rule is that participants in an athletic contest accept the normal physical contact of the particular sport. Nothing in the record would justify an exception to the rule here.

Regarding the allegation that the school district was negligent in allowing the youths to play on a dirty playing surface, the deposition of Morris Albers and his statements quoted above show there was no breach of any such duty. He had personally cleaned the floor and stated he saw no water spots or anything of that nature on the floor.

The summary judgment of the trial court is affirmed. Costs to respondent.

3.5.7 Hutchison v. Toews

INJURED STUDENT WITH KNOWLEDGE OF RISK INVOLVED IS CONTRIBUTORILY NEGLIGENT

HUTCHISON Vs TOEWS

**Court of Appeals of Oregon, Department 2, 1970.
4 Or. App. 19,476 P. 2d 811.**

LANGTRX, Judge. Plaintiff appeals from a judgment of involuntary non-suit, entered on motion of both defendants at the conclusion of the plaintiff's case.

Plaintiff and his friend, Phillip Brown, both 15 years old, attempted to shoot a home-made pipe cannon which exploded, injuring plaintiff's hands. They had made the explosive charge by mixing potassium chlorate and powdered sugar.

Brown as plaintiff's witness testified that he and the plaintiff had badgered defendant Toews, the chemistry teacher at Phoenix High School, for potassium chlorate to use in fireworks experimentation. He said they had asked Mr. Toews for the material about a dozen times. Plaintiff said five or six times. Finally, Mr. Toews had given them some powdered potassium chlorate, which they put in a baby food jar. A day or two later when Mr. Toews left the separate chemical storage room unattended while he stepped into the adjoining Chemistry classroom. Brown took, without Mr. Toews' knowledge or permission, some crystalline potassium chlorate also stored there. Brown positively identified this crystalline potassium chlorate as the substance used in the explosion. He was the one who mixed the ingredients. The plaintiff equivocated, first indicating that the powdered substance was what was used but on cross-examination he said, "It looked like crystal." Brown waited approximately two years after the accident before he revealed to anyone that he had taken the crystalline substance and that it had caused the explosion. Plaintiff did not reveal that he knew the crystalline substance had been taken until Mr. Brown's disclosure of the true facts. The injury occurred in November, 1965. Plaintiff commenced his action for damages against defendant Toews only in June, 1966 and filed an amended complaint

in August; 1967. In these complaints, plaintiff alleged that defendant Toews "supplied" the potassium chlorate to him.

The boys had purchased from a mail order firm in Michigan a pamphlet which gave 100 formulas for explosives. Together, they built the cannon and conducted their experiments. They admitted that they had looked at the warnings in the pamphlet. They had shown the pamphlet to defendant Toews, and he had cautioned them, and told them they should have supervision. Defendant Toews had declined their invitation to supervise them because of another commitment. Among other things, the pamphlet warned, "Some of the formulas listed in the booklet are very dangerous to make. Therefore, it is strongly suggested that the making of fireworks be left in the hands of the experienced."

They had previously experimented with home-made gunpowder in the cannon and in doing so had used up all of their fuses. When they mixed and placed the charge of potassium chlorate and powdered sugar in the cannon, they put the head of a paper match into the fuse hole and tried to light the paper end of the match in order to have time to take cover before the explosion. When Brown tried to light the paper match, wind impeded him. On Brown's request, plaintiff held his hands around the fuse hole to shield it from the wind. The charge exploded, and the closed pipe end "peeled like a banana," Plaintiff's hands were severely injured. The evidence is lengthy but it is replete with statements from both of the boys that they knew the experiment conducted was dangerous, Plaintiff testified on cross-examination that he knew "That you might get burned if you held onto it or if you stood too close to it when it did shoot, that it might fly up or hit you in the face."

Plaintiff testified he knew that the pamphlet said the formula was very powerful. In the case at bar, the only reasonable conclusion from the evidence was that plaintiff had knowledge of the risk involved, and that he was contributorily negligent as a matter of law.

Affirmed.

3.5.8 George v. Breisig

TO BE HELD RESPONSIBLE FOR NEGLIGENCE, THE INDIVIDUAL'S NEGLIGENCE ACT MUST BE THE PROXIMATE CAUSE OF THE INJURY SUSTAINED

GEORGE v. BREISIG
Supreme Court of Kansas, 477 P. 2d 983 (1970).

Breisig, the defendant, operated an automobile repair shop in Wichita. In early November of 1967, Roberts took his old mobile into Breisig's garage for repairs. On November 13, Roberts asked if the car was ready, and Breisig said he hoped the repairs would be completed by the end of the day. If they were, Breisig said, he would park the car in the parking lot of his shop. Roberts would pick it up that evening.

About 7.00 p.m. Breisig finished the work and parked the car in the lot, leaving the keys in the ignition. Soon thereafter two teenage boys (students) stole the car and drove it around town. They picked up two friends during the evening and left the car on a Wichita street overnight. The next day one of the friends, Williams, returned to the car and, while driving negligently, struck George, the plaintiff, who suffered serious injuries.

George brought this action against Breisig, claiming that leaving the keys in the unattended automobile constituted an act of negligence, particularly in view of the fact that the general neighbourhood was deteriorating and that car thefts in the area were high. Breisig denied that "his conduct constituted negligence; he further contended that even if it did, this negligence was not the proximate cause of plaintiff's injuries.

The trial court, agreeing with this contention, ruled that Williams' act of driving the stolen negligently was an independent, intervening act for which Breisig had no liability. Accordingly, the court granted Breisig's motion for a directed verdict and plaintiff appealed.

Schroeder, Justice: ...The appellant concedes the instant case is one of first impression in Kansas, ... but (nevertheless) relies upon general rules in tort law. The rule with which we are here concerned is stated in *Steele v. Rapp*, 183 Kan., 371, as follows:

The rule that the causal connection between the actor's negligence and an injury is broken by the intervention of a new, independent and efficient intervening cause, so that the actor is without liability, is subject to the qualification that if the intervening cause was foreseen or might reasonably have been foreseen by the first actor, his negligence may be considered the proximate cause, notwithstanding the intervening cause.

It is well established that before one can be held responsible for his negligent act the actor's negligence must be the proximate cause of the injury sustained.

Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. In every instance, before an act is said to be negligent, there must exist a duty to the individual complaining, and the observance of which would have averted or avoided the injury.

Breisig may have owed a duty to Roberts, who owned the automobile in question, not to leave his automobile on the premises unattended, unlocked, with the keys in the ignition. But Breisig's conduct was not a wrong and did not result in a breach of duty owing to the appellant because it may have been a breach of duty owing to Roberts.

In view of the great weight of authority in other jurisdictions holding that as a matter of law the duty of one who leaves his keys in an unattended vehicle does not extend to a plaintiff injured in an accident with the converter of the car, and in the absence of further evidence that in this case the duty should be so extended, we hold that the trial court did not err in granting its judgment notwithstanding the verdict.

Under the foregoing authorities, which we find to be persuasive, the act of Breisig in leaving Roberts' automobile on his property unattended, unlocked and with the keys in the ignition, did not constitute a violation of any duty owed by Breisig to the appellant as a matter of law. The fact that the appellant was injured as a result of the negligent driving by a thief or his successor was not a reasonably foreseeable consequence of Breisig's conduct. Breisig's duty simply did not extend to the appellant.

Assuming it was negligent for Breisig to leave the keys in Roberts' car on his property unlocked and unattended, the issue is not whether it was foreseeable that Roberts' vehicle would be stolen as the appellant urges in his brief; rather, the inquiry is whether the independent intervening act of negligence committed by Williams, the successor in possession to the thieves, in driving the stolen vehicle (a day after the theft) was reasonably foreseeable.

Under the weight of authority such an independent intervening act of negligence is not foreseeable as a matter of law, thereby rendering Breisig's act of negligence to be a remote cause and the intervening act of negligence of Williams to be the direct and proximate cause of injury sustained by the appellant.

4.0 CONCLUSION

In all school activities, the teachers ought to exercise care and diligence in order to avoid incidents of negligence.

5.0 SUMMARY

In this unit, you learnt that the school setting has the potentials of dangers around concept negligence and school administration. Elements and proof of negligence and defences in negligence were also discussed. Some case laws of negligence were reviewed and discussed to show the consequences of negligence.

6.0 TUTOR MARKED ASSIGNMENT

1. What are the elements a plaintiff (a student's parent or guardian) must prove in an action of negligence against a teacher or a school head?
2. Explain the following:
 - (a) Reasonable man
 - (b) Duty of care
 - (c) Proximate cause
 - (d) Immunity.

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UNIT 3: TORT AND EDUCATIONAL ADMINISTRATION

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1.0 INTRODUCTION

The law of tort is of great importance because it is designed to protect individual and organisations such as educational establishments, from civil wrongs other than breach of contract. An understanding and knowledge of tortious liability is particularly important in education law and to teachers and other education officials, because most of the cases resulting from school activities belong to the category of civil action.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define the meaning of tort;
- distinguish tort from crime and contract;
- explain the principle of vicarious liability;
- classify tort;
- cite relevant case laws in tort.

3.0 MAIN CONTENT

3.1 Concept of Tort

The law of tort is of great importance because it is designed to protect individuals and organisations such as educational establishments from civil wrongs other than breach of contract.

3.1.1 Meaning and Nature of Tort

A tort, in law, refers to "a civil wrong", other than breach of contract, and crime for which an injured person can bring civil actions in court to recover damages against those who committed them. The civil wrong must, however, be legal rather than moral. Tort is distinguishable from crime and contract.

3.1.2 Tort and Crime Distinguished

A crime and a tort are similar, and unless care is exercised, one might be confused with the other. A tort is a civil wrong an interference with private rights. In a civil action, the injured party sues (initiates and maintains the civil action) the wrongdoer (tortfeasor) in a civil court for the purpose of obtaining compensation in the form of monetary damages for the injury suffered. Crime, on the other hand, is an offence against the sovereign authority. It may involve harm to a person or the property of another or may be only a violation of statutory prohibition (Smith and others, 1984). In a criminal case, it is the government (local, state or federal) that prosecutes, not to compensate the injured person but rather to punish the offender in order to protect the public from further wrongful acts. Usually, the punishment takes the form of a fine or imprisonment or both.

It is quite possible for the same act committed by a person to constitute both a tort (civil wrong) and a crime. As Frank (1975, p. 184) points out, in this case the wrongdoer will be punished and in addition will have to pay damages. An accused in tort may be brought in such a case, irrespective of whether a criminal prosecution has also been initiated. Smith and others (1984) provide us with a good example of the same act constituting both a tort and a crime unjustifiably confining another person within fixed boundaries is the tort of false imprisonment and a crime of kidnapping".

3.1.3 Tort Distinguished from Contract

A tort is a civil wrong independent of a contract. A contract is a legally binding agreement, i.e. an agreement imposing rights and obligations on the parties and enforced by the courts of law. Redmond and others (1979) point out that the right to sue in a contract depends not on plaintiffs being injured, but on the existence of a contract between himself and the defendant. The rights and duties involved in the agreement are devised by the parties concerned and not fixed by the law. They added that "a person who is not a party to a contract cannot sue for breach of it, even if he/she suffers injury as a direct result" (p. 184). Finally, Rogers (1979) observes that

while tort aims principally at the prevention or compensation of harms, the "core" of contract is the idea of enforcing certain promises.

3.1.4 Vicarious Liability

One basic rule in tort law is that "he who acts through another, acts for himself. That is to say, that a person may be liable for a civil wrong not only when he himself committed it, but also when he has authorized another person to commit it on his behalf (Frank. 1975). As Redfern and his colleagues put it, "a person who authorizes the commission of a tort by another is liable in damages just as if he himself had committed the tort" (p. 197). Liability so arising is referred to as vicarious liability. Thus, this rule generally arises from a contract of service between employer (Master) and the employee (servant).

The principle of vicarious liability implies that it is the Master's responsibility for torts committed by his servants. A master is responsible in this way not only where he expressly authorized a servant to commit a civil wrong, but also where he has not given express authority to the servant but the servant committed the wrong (civil or criminal) in the course of his employment. This is why in most school law cases involving wrongs committed by a teacher or a principal or headmaster, the wrongdoer and the appropriate schools board, and sometimes including the Ministry of Education, are often joined in the suit as co-defendants.

A number of education law cases embodying the principle of Vicarious liability has been decided by courts in Nigeria. Two of such cases are *Nwankwo v. Ajaegbu*, and *Magdaline Dappa v. Nte*.

In *Magdaline Dappa v. Nte* (1985), Magdaline, a girl from Opobo, was a student of Opobo Secondary School -a Rivers State Government-owned School and controlled by the State Ministry of Education. While in School, Magdaline got married and became pregnant shortly before her W.A.E.C. Examination. Going by the Ministry of Education's regulation, she was prevented by a teacher Mr. Nte, from writing her examination. She later took an action against Mr. Nte. The presiding High Court judge, in dismissing the case, held that both the school teacher and the principal were agents of the Rivers State Ministry of Education and therefore the right person to sue for claims was the Rivers State Government (Ministry of Education) and not the teacher or principal.

It should be pointed out here that it is not always that any employee can hide under the cloak of "his employer's responsibility for torts committed by his employee". If a teacher does something which he is not employed to do at all or specifically prohibited to do, he is not acting in the course of his employment. In such a situation, his employer may not be held responsible for his tortious acts. In other words, unless the wrong done falls within the course of the servant's employment, the master is not liable. For instance, most state education laws prohibit teachers from administering corporal punishment on students, except the principal or his delegatee. If a teacher, unauthorized, administers the cane, thus causing serious injury to a student, and if sued, he may wholly be responsible for the damages. Besides, his employers (the Schools Board) may as well discipline him appropriately for violating the Board's regulation forbidding teachers to administer corporal punishment.

It is often difficult to decide whether a conduct is or is not within the course of scope of employment. Rogers (1979), referring to the case of *Mash V. Moores* (1949), attempted to define what constitutes "Scope of employment". He wrote:

A wrong falls within the scope of employment if it is expressly or impliedly authorized by the master or is an unauthorized manner of doing something which is authorized or is necessarily incidental to something which the servant is employed to do.

The definition provided by Rogers implies that the question of what acts fall within a person's scope of employment is ultimately one of facts to be decided in the light of general principles and the facts of the case.

Another case that has to do with the question of the scope of employment (and vicarious liability) in education in Nigeria is that of *Elizabeth Aliri v. John Ekeogu*; the Director of Schools, Imo State; and the Imo State Schools Management Board (1987). One of the issues in this case was whether the first applicant/defendant, Mr. John Ekeogu, acting in the execution of his duty as a teacher when he sent the respondent/applicant (Elizabeth Aliri) and co-pupils in his class to watch the beating of a thief by irate public who had taken the law into their own hands. The pupils were there when the bell rang for them to resume classes. All of them, including Elizabeth, began to run back to the school. As they were doing so the teacher, Ekeogu, took a cane and began to flog the pupils. In the process he landed the cane on the left eye of Elizabeth, injuring or causing permanent disfigurement to her left eye.

Among others, the judge in his considered opinion held that the applicant (John Ekeogu) acted outside his official duty as teacher when he sent Elizabeth Aliri and other pupils out of his class to watch the commission of assault on a thief at a palm produce depot.

3.2 Classes of Tort

One generally accepted method of classifying civil wrongs recognized as torts is according to the nature of the wrongdoer's conduct. Using this classification scheme, two main classes of tort have emerged, namely, intentional and unintentional torts.

Intentional Torts

Intentional tort, as the name implied, entails proceeding intentionally to act in a way which invades the rights of another. According to Alexander (1980), it may result from intended whether accomplished by enmity, antagonism, maliciousness or no more than a good-natured, practical joke" (p. 690). Alexander added that if one does not know with substantial certainty the result of his act and injury results, then it is not an intentional tort but negligence instead.

Intentional interference can take various forms:

- (a) trespass to the person,
- (b) infliction of mental or emotional stress,
- (c) defamation,

- (d) invasion of privacy,
- (e) intentional harm to property. (Peretomode, 1992)

Trespass to the Person

Trespass, in its old or biblical use, simply means a "wrong". The Bible, for instance, in Matthew 6:9-12 (The Lord's Prayer), states "And forgive us our trespasses (wrongs or sins) as we forgive them that trespass (sin or wrong) against us". In its original legal meaning, trespass also implies no more than a "wrong". When the term is used, it means not only direct interference with a person, but also with goods or land of another, although in common speech today, the word trespass usually refers to unauthorized entry into someone else's land.

Trespass is an ancient legal concept, and some forms of trespass to the person are still both crimes and torts, assault and battery, for example. Trespass to the person comprises three main forms, namely: (a) assault (b) battery and (c) false imprisonment. Of these three types, battery is the only one involving physical contact with the injured person's body.

Assault: This is an intentional tort committed without any form of physical "touching" place. In a strictly legal sense, an assault is an overt act or attempt, offer or threat to apply force or do violence to another in such a manner as to cause him to be in apprehension of an immediate danger or bodily injury. It must be established that the defendant who made the threat to use force had the apparent present ability to execute his threat. Examples of assaults include waving a dagger threatening to cut someone through whilst within arm's length; it may not be an assault if the parties are some hundred metres apart, pointing an unloaded gun at a person, which the complainant reasonably believed to be loaded and thought he might pull the trigger and was therefore apprehensive of imminent harm. Apprehension is measured from the point of view of a reasonable person.

An essential element of assault is that the person in danger of immediate bodily harm has knowledge of the danger and is apprehensive of its imminent threat to his safety. For example, X aims a loaded gun at Y's back but is subdued by Z before Y becomes aware of the danger; therefore X has not committed an assault upon Y (Smith and others, 1984).

Battery: This refers to the actual physical contact that usually, but not always, follows assault. It has been defined as the intentional touching of another person without consent or legal justification. The harm may range from permanent disfigurement to merely removing a person's hat without permission or grabbing a plate of food from one's hand in anger (Hoerber and others, 1982). Smith and his colleagues point out that bodily contact may be accomplished by the use of objects, such as A throwing a rock at B with the intention of hitting him. If the rock hits B or any other person, A has committed battery. Battery is often combined with assault in tort actions and is a crime as well as a tort.

Rogers (1980) provides us with a number of interesting events to illustrate and clarify the similarities and differences between assault and battery. He wrote:

To throw water at a person is an assault but if any drops fall

upon him it is a battery; riding a horse or bicycle at a person is an assault but riding it against him is a battery. Pulling away a chair as a practical joke, from one who is about to sit on it is probably an assault until he reaches the floor. When he comes in contact with the floor, it is a battery. An assault will still have been committed even if the actual blow directed at the person has been intercepted or prevented by a third person, (If the blow actually lands on the person, battery has been committed) (P. 52).

Furthermore; William Prosser points out that it is battery to injure a man in his sleep, even though he does not discover the injury until later, while it is an assault to shoot at him while he is awake, and frighten but miss him. Alexander (1980, p. 690) states that if a wrongdoer "swings a bottle intending to strike the plaintiff, and the plaintiff sees the movement and is apprehensive for his own safety, there is assault and if the attack is consummated and the blow is actually landed. Both assault and battery are present".

In school law, most cases that have to do with trespass to the person come, under assault and battery. Teachers are often accused and sometimes found guilty of assault and battery for administering corporal punishment that is immoderate, leading to inflicting some permanent injury to the student, or cruel, 'brutal, excessive or administered in anger. This is why teachers and principals should be reasonable in the chastisement of students. The advice is that a teacher should not administer the cane in anger, otherwise he may cause serious harm to the student; this should lead to litigation and the teacher may be found guilty of the offence of assault and battery.

The case of *Nwankwo v. Ajaegbu* is a very good case of trespass to the person of a teacher subjected to assault and battery committed in brutal and humiliating manner. The case of *Elizabeth Aliri v. John Ekeogu and 2 others*, in which the first defendant, Mr. Ekeogu, a teacher, caned a pupil occasioning injury to her eye, was considered one of assault and battery. Similarly, in *Fadahunsi Kokori v. A. I. Ukhure and State Board of Education, Benin City*, the first defendant, a teacher, injured a student making him lose one of his eyes in the process of administering corporal punishment. The teacher was charged for tort liability. The court ruled in favour of the student and he was awarded N20,000 as damages. '

Besides the cases cited in Nigeria, there are several of such cases of assault and battery against teachers in the United States. For instance, in an old but very interesting case, *Gardner v. ...* (1853), cited in Kern Alexander (1980, p. 691), the court said that a teacher was not justified in beating a student so severely as to wear out two whips, dealing two blows on the head with a fist and kicking the student in the face, because he misspelled a word and refused to try. Furthermore, a teacher who allegedly struck a fifteen-year-old student several times on the face while ordering students back to their seats at a football game was found to have used unreasonable force. That court therefore found the teacher guilty of violating a city ordinance prohibiting fighting in a public place (*City of Macomb v. Gould*, 104 Ill, 1969). Similarly, *Frank v. Orleans Parish School Board* (1967), a physical education teacher charged of assault and battery because of extreme conduct, was found guilty of using unreasonable force. In trying

to remove the pupil from the basketball court, the teacher shook the boy several times, lifted and dropped him on the floor and the pupil broke an arm.

In Britain, teachers have also been charged with and found guilty of assault and battery in process of administering punishment (unreasonable punishment) on pupils. Barrell and Partington (1985) reported several of such cases, two of which are presented below. In 1964, the Principal (Male) of a Grammar School and the Senior Mistress pleaded guilty for assaulting two girl pupils, aged 17 and 18, and were fined. The punishment was administered after the girls had been caught kissing and cuddling a sixth form boy and another youth in the School's green room. The two members of staff spanked the girls on their bare buttocks with a hairbrush. Two days later one girl had 72 and the other 33 square inches of bruising. In her defence the Senior Mistress pleaded that she had to take orders from the Headmaster, otherwise she would undermine his authority. This plea was rejected by the Court.

In the second case, a boy died after being beaten by a school-master with a thick stick and a skipping rope secretly in the night for two and half hours. The Lord Chief Justice said:

If it (corporal punishment) be administered for the gratification of passion or rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's power of endurance, or with an instrument unsuited to the purpose and calculated to produce danger of life or limb; in all such cases and if evil consequences ensue, the person inflicting it is answerable to the law and if death ensue it will be manslaughter.

In this case, "the jury did convict of manslaughter. The fact that the father had authorized punishment was irrelevant as he did not, and no "one can authorize excessive punishment".

Criteria used to Identify Excessive Punishment

The lessons learned from the cases on charges of assault and battery against teachers resulting from the unreasonable administration of corporal punishment cited in Nigeria, the United States and Great Britain, should guide school heads and teachers toward a more reasonable and prudent administration of punishment on students. What constitutes excessive punishment is a matter for the courts to decide. However, criteria often used by the courts include:

- (1) Proper and suitable weapon;
- (2) Part of the person to which it is applied;
- (3) Manner and extent of chastisement;
- (4) Age of the pupil;
- (5) Sex of the pupil;
- (6) Nature and gravity of the offence;
- (7) Temper and deportment of the teacher at the time of administering the punishment (Cooper v. Junkin, 1853); and
- (8) History of pupil's previous conduct (Alexander 1980, p. 692).

Self Assessment Exercise 3.1:

- (a) Define tort.
- (b) Distinguish between tort and crime.
- (c) Distinguish between tort and contract.

3.3 Defences to Assault and Battery

In an action for assault and/or battery, there are two most common defences available to the defendant, namely: (a) "Consent" and (b) "Privilege" (Peretomode, 1992).

3.3.1 Consent

The Latin phrase *volenti non fit injuria*, implies that consent negates legal injury. The plaintiff's consent may be expressed in words or implied from conduct. Obviously, a person who engages in athletic competitions such as Soccer, Boxing, Wrestling, Basketball, Baseball, etc. is assumed to consent to the physical contact normally associated with the sport. Closely related to the plea of consent is inevitable accident, such as physical collision, that is often associated with sports.

3.3.2 Privilege

In certain circumstances, a person's intentional touching of another without consent may be excused or socially justified. The most common privilege asserted is self-defence, which allows one to use reasonable force to prevent personal harm, such as in self-defence or in the removal of an intruder from one's home (Howell and others, 1978; Smith and others, 1984). The degree of force must be no more than is reasonably necessary in the circumstances. In other words, the privilege is limited to the use of force which reasonably appears to be necessary to protect against the threatened injury. A landowner, for example, has no right to shoot someone (e.g. student or teacher) who is simply trespassing upon his property (Howell and others, p. 133). Deadly force may be used, however, only when the defendant has reason to believe that he or she is threatened with a death or serious physical harm.

False Imprisonment

False imprisonment, also sometimes referred to as false arrest, is the third form of trespass to the person and is connected with the right to freedom of movement. It is another form of intentional tort. The tort of false imprisonment is defined generally as intentionally causing the confinement of another without consent or legal justification. It is the total deprivation of the freedom of movement of another for any period, however short, without lawful justification. The general rule is that an unauthorized person cannot detain or physically restrain the movements of another. Restraint, according to Redmond and others (1979, p. 207), may be "physical" (e.g., a locked room), or "practical" (e.g., where X is surrounded by threatening persons), or force or threat of force directed at one's person or to a member of one's immediate family or to one's property, or refusal to release a person from confinement when there is a duty to do so.

In order to avoid liability in a case of false imprisonment, the defendant must prove that he had reasonable grounds to believe the plaintiff committed a crime or suspected that the plaintiff was about to commit an arrestable offence. Secondly, he may avoid liability by proving the plaintiff consented to have his movement restricted by the defendant.

If false imprisonment refers to the total restraint of another's freedom of movement by force or show of authority, then ordinarily detention as a form of punishment in schools is a form of false imprisonment. However, cases resulting from detention of students in schools are rare. This could be due to the fact that this type of tort "is not applicable to the situation where a teacher confines a pupil in his classroom since a teacher is charged with the responsibility of overseeing pupils' activities in the school setting and is authorized to confine a pupil, if necessary, in order to discipline him or her" (Alexander, 1980, p. 693). Remember that the general rule governing false imprisonment is that "an unauthorized person cannot detain or physically restrain the movement of another".

However, to avoid litigation and possibly being found guilty of false imprisonment, teachers should be aware of any rules and regulations of his schools' board with regard to the use of detention as a method of disciplining students. Where detention is permitted as a form of punishment, it must be proper and reasonable because unreasonable detention may lead to a suit and claims of damages for false imprisonment (see *Hurt and Or. v. the Governors of Halleybury College and Others* (188) 4 T.L.R. 623). By reasonableness we mean that any time detention is to be used, such factors as "the age of the child, the nature of the offence, the distance and quality of the travel facilities between the school and home, traffic and other dangers, and the child's ability to undertake the journey in question alone", must be taken into consideration (Barrell and Partinton, 1985).

When we say that cases resulting from detention of students in schools are rare, it does not mean they are non-existent. For example, Aneke (1987, p. 38) provides us with an instance of a successful case of false imprisonment against a teacher who detained a pupil. According to him, a teacher, many years ago, was demanding fees from his pupils and when the mother of one of his pupils came to take home her child, the teacher refused and detained the child, demanding that the fees be first paid. The mother brought an action in false imprisonment on behalf of her child. The court held that the fact that the child did not know anything, and could not have known of the imprisonment, was immaterial, and thus awarded damages against the teacher.

Infliction of Mental Distress

The tort of mental distress has to do with interference with the mind. It is defined as intentionally or recklessly causing severe mental suffering in another by means of extreme or outrageous conduct or language. While it is difficult to prove mental suffering resulting from outrageous language, courts have held that where an act is malicious, there may be recovery for mental anguish, even though no physical injury results. However, cases involving actions for mental anguish and suffering are easier to prove if the emotional distress has produced some visible identifiable physical harm (Alexander, 1980).

Sometimes, board members, supervisors, teachers or school heads resort to unguarded verbal abuse of a student before a whole class or school assembly. In some cases such reckless abuse involves outrageous language. If such "insults" result in the student developing hatred for and refusing any form of schooling, the parents can charge the teacher to court for the tort of mental anguish to their child or ward. And if it can be established that the teacher's reckless verbal abuse or language is responsible for the child's refusal to undertake any form of normal schooling, the teacher may be found guilty of this tort by the courts of law.

The importance of a knowledge of the tort of mental distress to teacher and education officials is to enable them understand that it is not only corporal punishment or physical abuse of a student that has legal implications, but also verbal abuse of a pupil involving outrageous language. Teacher, therefore, should be mindful of the language they use when scolding students.

The principle of mental anguish is vividly illustrated by the case of *Johnson v. Sampson* (1926). In that case, two school board members (on an investigation) took a female student to a separate room for questioning. They accused the student of unchastity and threatened her with reform school if she did not confess. The girl denied the charge. She was so upset that she alleged great mental anguish and nervous shock which seriously and permanently impaired her health, in a suit brought by her guardian for assault and for slander. The girl convinced the court that she was right. The court pointed out that the board members had exceeded their right to use privilege as a defence and as a result had made themselves liable as individuals. The court said:

If the accusation was false and without justification, there was an invasion of the plaintiff's legal right to be secure in her reputation for Virtue, and if, in consequence thereof, she was injured in the manner alleged, there may be a recovery; and an action for slander is not her only remedy.

Hoeber and his colleagues also reported on two cases relating to the tort of mental distress. They pointed out that a person had been held liable for falsely telling a woman that her husband was seriously injured and was in hospital, thus causing the woman to suffer emotional trauma and physical injury. The persons involved in this case could be teachers. Finally, they opined that a defendant who inflicts a serious beating on another person may be liable to a member of that person's family who is present and suffers emotional distress.

Self Assessment Exercise 3.2:

- (a) Briefly explain the principle of vicarious liability.
- (b) Why is it important for teachers, school administrators and education officials to have some knowledge of this rule?

3.4 Case Laws

Some of the cited case laws and their facts on tort by Peretomode (1992) are as discussed below:

3.4.1 Nwankwo vs. Ajaegbu

TRESPASS TO THE PERSON ASSAULT COMMITTED IN BRUTAL AND HUMILIATING MANNER AND THE APPLICATION OF THE PRINCIPLE OF VICARIOUS LIABILITY

NWANKWO Vs. AJAEGBU
High Court, Civil Division, Imo State
(Ukattah, J.) 6/11/78.

Source: The Law Reports of Nigeria (1978) 2 LRN, pp. 230 236.

Damages Exemplary damages Trespass to the person Assault committed in brutal and humiliating manner.

FACTS: *The plaintiff has claimed N10,000 from the defendant as general damages for assault and battery.*

The plaintiff is a school teacher of elementary 5E at the Constitution Crescent Primary School, Aba. On Thursday, 24th October, 1974, the plaintiff had directed his class pupils to undertake general cleaning of their classroom after school hours on Friday, 25th October, 1974. On Monday, 28th October, 1974, the plaintiff received a report from the class prefect of elementary 5E, Thomas Okorie that Clement Ajaegbu, a son of the defendant and a pupil of the plaintiff, had not taken part in the classroom cleaning. He had been taken away by Monday, the defendant's driver, in the defendant's car when his classmates were carrying out the assignment given to them by the plaintiff.

As a result of what he was told about Clement, the plaintiff took Clement to the headmaster of the school, Mr. T.E. Owangwa. Thomas Okorie, the class prefect, went with the plaintiff to Clement to the headmaster's office. Before the headmaster, Clement admitted that he did not take part in the classroom cleaning along with his classmates. He also asserted that the defendant had instructed his driver Monday to beat up the plaintiff should the plaintiff punish him for not taking part in the classroom cleaning as directed by the plaintiff.

The headmaster, as a result of what he heard sent Clement to invite the defendant to see him. Sometime later (in that day) the defendant, his wife, Monday and Clement (the son) and his wife went to the headmaster's office. But Monday and Ije, another son of the defendant who was also a pupil of the school went towards the plaintiff's classroom and slapped the plaintiff who was then sitting on a chair in the classroom. Monday held the plaintiff and dragged him to the veranda of the classroom to the full view of school children who were playing outside and fellow teachers. The assault by Monday on the plaintiff continued on the veranda while the defendant and his wife were standing in front of the headmaster's office and were watching Monday beating up the plaintiff.

The headmaster of the school was alerted; he went to the scene and tried to stop the assault but failed. He then ordered Mr. C.B. Edom, another teacher, to carry Monday to the headmaster's office. The headmaster and his assistant went and invited the Secretary of the Divisional School Management Board, Mrs. Emeruem, to drive to the school. In the presence of the plaintiff, defendant, the defendant's wife and Monday, Mrs. Emeruem was told all that had happened. Mrs. Emeruem wanted to end the matter by asking Monday to apologise to the plaintiff but the defendant ordered Monday not to do so. When Monday did not apologise, Mrs. Emeruem left in anger. She later wrote a letter to the defendant and his wife. The defendant replied in a letter dated 31st October, 1974.

The plaintiff sustained serious injuries by the assault and on the same day, 28th October, 1974, the plaintiff was treated at the Aba General Hospital. The matter was reported to the Aba Police. The police conducted their investigation, but could not arrest the driver as he could not be traced and thus did not bring criminal proceedings against the defendant or the driver. The plaintiff sued the defendant for damages for assault and battery committed by the driver in the course of his employment.

HELD:

1. The action was not caught by the rule that where the plaintiff's case disclosed felony the action should be stayed until there had been prosecution for the felony, because the plaintiff had reported the assault to the police whose duty it was to prosecute, and the fact that the defendant and his driver had not been prosecuted was not the plaintiff's fault.
2. The plaintiff was assaulted in a brutal and humiliating manner, in front of his pupils, while the defendant stood by and watched the assault by his employee and did nothing to prevent or stop it; accordingly, the court should take the aggravating circumstances into account in assessing the award of damages.

Accordingly, the defendant was asked to pay to the plaintiff the sum of N6,500.00 as general damages for assault and battery.

Judgement for the plaintiff with costs.

One important point of interest made by the judge in this case, besides the legal lesson to be learned from it, is his observation that:

In these days when society is very much concerned with the falling standard of discipline in schools, it would be very unbecoming of any parent or guardian to give his child or ward the impression that a teacher is a person whose orders may not be obeyed or that he is a person who can be attacked, insulted, assaulted, disgraced or humiliated at will and without adverse consequences (p. 238).

3.4.2 Magdaline Dapa vs. NTE

STUDENT REFUSED TO WRITE WAEC EXAMINATIONS DULY REGISTERED FOR ON GROUND OF PREGNANCY

MAGDALINE DAPPA Vs. NTE
(Bori High Court. Presiding Judge: Mr Justice Ichokwu)
March 12th, 1985.

FACTS: *A girl from Opobo called Magdaline Dappa was a student of Opobo Secondary School. The school is controlled by the Ministry of Education.*

While Magdaline was in school, she was married and being cared for by Mr. Dappa but she was still using her parents name as her surname. Magdaline became pregnant shortly before her WAEC Examination, and by the Ministry's regulation, she was refused writing her WAEC Examination.

She later took an action against the school master, Mr. Nte, who prevented her from writing the examinations.

RULING:

1. Since the evidence showed that all the monies paid on Magdaline, was paid by her husband, Mr. Dappa, it was Mr. Dappa who was entitled to a court action as monies spent on Magdaline belonged to him and not her.
2. In the record of the school, Magdaline bore the name of her guardian. The court therefore considered that there was a contract between the school and the girl's parent. Since the girl Magdaline was not a party to the contract, she could not sue on it.
3. Concerning monies spent on education, the court held that neither Magdaline nor her parents could recover it since Magdaline has received tuition before her dismissal. The same applied to money spent on food and textbooks.
4. That both the school, teacher and principal are agents of the Rivers State Ministry of Education. This fact was known to Magdaline, her husband and parents and therefore the right person to sue for claims was the government and not the school master or principal.
5. By the various education law of the former Eastern Nigeria and the River State, schools are invested with the authority to impose discipline on students. In view of all the above the court therefore dismissed the case.

3.4.3 Elizabeth Aliri vs. John Ekeogu & Ors

CORPORAL PUNISHMENT ASSAULT AND BATTERY AND NEGLIGENCE: A TEACHER WHO COMMITS A FELONIOUS ACT CANNOT TAKE COVER UNDER THE PUBLIC OFFICERS PROTECTION LAW

**ELIZABETH ALIRI (Suing by her friend) BENADETH ALIRI
(Plaintiff/Respondent)**

Vs.

- 1. JOHN EKEOGU Defendant /Applicant**
- 2. THE DIRECTOR OF SCHOOLS**
- IMO STATE Defendant**
- 3. THE STATE SCHOOLS MGT BOARD "**

Owerri (J. Ogu Ujoaawu) 16/11/89 Suit No. HOW/200/87.

FACTS: *The plaintiff/respondent was a primary five pupil of Community Primary School, Ohekelem, Imo State and the applicant/defendant teacher at the said school and the teacher of the plaintiff/respondent. On 2nd December, 1985, a thief was caught in a palm produce depot near Community Primary School Ohekelem where the applicant was a teacher and the respondent was one of his class pupils. The thief was being beaten up by irate members of the public.*

The applicant instructed his class pupils including the plaintiff (i.e., the respondent) to go and see how thieves are treated so as to learn a lesson therefrom". The class pupils obeyed and went to the said depot. Soon after the bell rang for the pupil to resume classes. All of them including the respondent began to run back to the school. As they were doing so, the applicant picked up a cane and began to flog the pupils. In the process landed the cane on the left eye of the respondent injuring the left eye. He abandoned her while she was crying out in pain and anguish. A pupil, Naozi Nweke, acted as a good Samaritan and took the respondent home on motorbike for treatment of her injured left eye. The respondent lost the eye in spite of treatment given to her. The applicant/defendant admitted the above facts.

In her writ of summons filed on 20/7/87 (about 18 months, 2 weeks and 4 days after the occurred) the respondent claimed against the applicant 2nd and 3rd defendants jointly and severally the sum of N100,000.00 (One Hundred Thousand Naira) being special and general damages for assault and battery and negligence, in that on the 2nd day of December, 1985, the 1st defendant who is a servant of, and under the control and employment of the 2nd defendants, as a teacher at the Community Primary School, Ohekelem, Ngor Okpala within jurisdiction which resulted in the loss of her left eye.

The 1st defendant/applicant filed a motion on notice on 12th April, 1988, praying the Honourable Court for an order dismissing the plaintiff/respondent's suit on the grounds of law to wit:

That the action instituted by the plaintiff/respondent against the 1st defendant/applicant is a nullity as it is statutorily time-barred under

Section 2 of the Public Officers Protection Law Cap 108, Laws of Eastern Nigeria, 1963 as applicable to Imo State.

The applicant who is a public servant by virtue of his being employed as a teacher with the Imo State Schools Management Board was seeking to be protected in his actions by the Public Officers Protection Law 106 Section 2 which provides as follows:

- (2) Where any action prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall have effect:
- (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within 3 months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof.

The Issue or Question:

Was the applicant acting in the execution of his duty as a teacher when he sent the respondent and co-pupils in his class to watch the beating of a thief by irate public who had taken into their own hands?

Was there any lesson for the respondent and other pupils to learn from the mob action of beating a thief? If yes, was the lesson beneficial or detrimental to the fledglings including the respondent who then was eleven years old? The judge in his considered opinion, in answer to the first question stated that the applicant acted outside his official duty as a teacher when he sent respondent and other pupils out from his class to go on their own outside the school compound to watch the commission of assault on a thief at a palm produce depot. To the second question, he stated: my answer is that there was a lesson to learn but that lesson was that the pupils could take the law into their own hands without recourse to appropriate authority. Such a lesson was detrimental to the moral upbringing of the fledglings. This answers the third question.

It is admitted that the applicant caused the respondent grievous harm by injuring or causing permanent disfigurement to her left eye with a cane. Grievous harm is a felony punishable with imprisonment for life under Section 332 (a) of the Criminal Code Cap 30. Assuming that the applicant has authority to flog the respondent such authority does not extend to inflicting grievous harm on the respondent as to cause her permanent injury to her left eye. The applicant acted in excess and outside his authority and engaged in a Criminal act when he hit the left eye of the respondent with a cane causing her permanent injury.

HELD:

For the reasons given and satisfied that the applicant committed a felonious act, the judge held that the applicant though a public officer, cannot take cover under the Public Officers Protection Law Cap 106. Consequently, the judge ordered the applicant, John Ekeogu, to file his statement of defence to his action within 21 days of his ruling. Costs N100.00.

But John Ekeogu appealed instead and the court of appeal confirmed the ruling of the lower court. To better understand the reasoning of the court and the legal issues involved in this case, the judgement of the Court of Appeal is summarized and provided below.

3.4.4 John Ekeogu vs. Elizabeth Aliri

**SCOPE OF EMPLOYMENT CORPORAL PUNISHMENT
ASSAULT, BATTERY AND NEGLIGENCE**

JOHN EKEOGU

Vs. ELIZABETH ALIRI
(Suing by her next friend, BENADETH ALIRI)

(Court of Appeal, Port Harcourt Division, Wednesday, 22nd November, 1989)
CA/E/283/88

This is an appeal by John Ekeogu against the ruling of Ugoagwu J. of the High Court of Owerri Judicial Division in Imo State delivered on 16th November, 1988.

ISSUE: *Whether the appellant's act of flogging the respondent in the manner admitted by the appellant on the statement of claim was an act done in pursuance or execution or intended execution of any law or of any public duty or authority.*

FACTS:

The respondent, as plaintiff in the High Court of Imo State, Owerri sued the appellant as well as the Director of Schools, Imo State and the State Schools Management Board claiming N4,000.00 as special damages for medical bills paid by the respondent's mother and N96,000.00 as general damages for assault, battery and negligence which resulted in the permanent loss of the respondent's left eye.

The respondent filed her statement of claim on 30th October, 1987 wherein she averred that the appellant without any justification hit her left eye with a cane causing her permanent injury. The first defendant, who is the present appellant, filed a motion on notice on 12th April, 1988 under Order 29 Rules 1 and 3 of the High Court Rules of Eastern Nigeria applicable to Imo State praying the court for an order dismissing the suit on grounds of law to wit:

That the action instituted by the plaintiff/respondent against the first defendant/appellant is a nullity as it is statutorily time-barred under

Section 2 of the Public Officers Protection Law Cap 106 Laws of Eastern Nigeria 1963 as applicable to Imo State.

After hearing argument from counsel for both parties, the trial Judge pursuant to Order 29 Rule 3 of the High Court rules aforesaid held that the appellant was not protected by Public Officers Protection Law and ordered that the appellant should file his statement of defence to the action within 21 days from the date of the ruling.

The appellant, dissatisfied with the trial Judge's ruling appealed to the Court of Appeal.

Order 29 Rules 1, 2, & 3 of the High Court of Eastern Nigeria (Civil Procedure), Rules applicable in Imo State state as follows:

1. Where a defendant conceives that he has a good legal or equitable defence to the suit, so that even if the allegation of the plaintiff were admitted or established, yet the plaintiff would not be entitled to any decree against the defendants, he may raise this defence by a motion that the suit be dismissed without any answer upon question of the fact being required from him.
2. For the purpose of such application, the defendant shall be taken as admitting the truth of the plaintiff's allegation and no evidence respecting matters of fact and no discussion of question of fact shall be allowed.
3. The court on hearing the application, shall either discuss the suit or order the defendant to answer to plaintiff's allegations of fact, and shall make such order as to costs as shall be just.

The relevant parts of 2 (a) of the Public Officers Protection Law Cap 106, Laws of Eastern Nigeria, 1963 as applicable in Imo State provides as follows:

Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provision shall have effects:

- (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of
4. On the scope of the Public Officers Protection Law:

Section 2 of the Public Officers Protection Law gives cover to a public officer who acted within the confines of his public duty. Once the public officer steps outside the bounds of his public authority, he is open to prosecution, and protection afforded under the ordinary law that governs those who do not come under the Public Officers Protection

Law. In other words, such Public Officer can be sued outside the limitation period of months:

The Public Officers Protection Law is not a licence for the commission of criminal acts under which a public officer will then seek sanctuary without answering the very grave allegation levelled against him which he is assumed to have admitted as true at the stage of the demurrer.

5. On Scope of the Public Officers Protection Law

For Section 2 (a) of the Public Officers Protection Law to avail any person, two conditions must exist:

- (a) It must be established that the person against whom the action is commenced is public officer, and
- (b) The act done by the person in respect of which the action was commenced must be an act done in pursuance or execution of any law or of any public duty or authority.

On the admitted facts on the statement of claim in this case, it is established that appellant was a public officer but it was clearly admitted for the purpose of demurrer that the act done by the appellant was not done in intended execution of a public duty within the meaning of section 2 of the enactment (*Ademola IV Thomas* (1946) 12 W.A.C.A. 81 at 89 referred to and relied upon). (p. 355, paras C: 5).

6. On the Scope of the Public Officer's Protection Law

In the instant case, the appellant acted outside his authority when he hit the left eye of the respondent with a cane causing her permanent injury and should therefore file his statement of defence to the respondent's action. (*Egbe vs. Adefarasin* (1985) 1 N.W.L.R. (Pt. 3) 549 distinguished) (p. 355, paras A & F), per Kolawole, J.C.A. at page 353, paras E & F.

I am firmly of the view that a public officer is only protected under Section 2(a) of the Public Officers Protection Law in pursuance or execution or intended execution of any law or of any public duty. If a public officer driving his vehicle on the highway, knocks down a pedestrian, he cannot if any action, prosecution or other proceeding is commenced against him, call in aid the provisions of Section 2 (a) of the Public Officers Protection Law Cap. 106 Laws of Eastern Nigeria simply because he is a public officer. Such action for which he seeks protection must be done in pursuance of a public duty. (NWLR 26 26 February, 1990).

3.4.5 Joy Aduwa v. E.A. Okperhie

**ASSAULT AND BATTERY ON STUDENTS AND TEACHERS.
TORT LIABILITY RUDE STUDENT MAKING NOISE WHILE
THE TEACHER IS TEACHING IN THE CLASSROOM
DIFFICULT STUDENT**

**JOY ADUWA vs. E. A.
Okperhie**
High Court of Justice, Benin City (Mr. Justice Josiah Oki)
Suit No. B /76/83

In this suit, Mrs. Joy Aduwa, an ex-student of Anglican Women Teachers College, Benin City, was claiming N35,000.00 being special and general damages from her former Geography teacher, Mr. Anthony Okperhie, for injuries and pains she allegedly suffered when he struck her face with an exercise book in the classroom.

According to the statement of claim and her statement in court, Joy who is married with kids, stated that on February 11, 1983, the defendant without reasonable justification assaulted her in the classroom while he was teaching Geography in the class by striking her, with a eighty-leaf exercise book, on the right eye. She averred that while the defendant was teaching a female youth Corps graduate teaching in the same school came up to the window of the classroom and whispered to her to meet her (the Youth Corper) at the staff room as soon as the Geography class was over. Joy further averred that soon after the Youth Corper left, the girl sitting in front of her enquired from her what the Youth Corper had told her. Joy stated that she was disclosing this to the girl in front, the defendant then asked the girl to stand up and leave the classroom.

Joy also averred that after the defendant had asked the girl sitting in front to leave the classroom, the defendant walked up to her and said that she would soon know whom he was talking to. As the defendant walked up to her, the next thing she knew was that the defendant used the eighty-leaf exercise book in his hand and struck her on the right eye which caused her injuries and pain to the right eye. She claimed that she was later rushed to a private clinic for immediate treatment as the specialist Hospital was on strike. She averred that she spent a total sum of N11, 000.00 for the treatment she received at the private hospital.

In his statement of defence, the defendant, Mr. Okperhie, admitted striking Mrs. Joy Aduwa with an exercise book but said his action was not intended. According to him, sometime between 9.40 a.m. and 10.20 a.m. of 11th day of February, 1983, he was teaching Geography in Joy's class and that while he was writing on the blackboard for the students to copy, he was disturbed by noise from the class and on turning round he noticed Joy and another student Oyomwan Edosomwam, sitting in an uncompromising position and deeply involved in some discussion. He warned them to stop the noise / conversation and ordered them to copy their notes from the blackboard.

The defendant further stated that while he continued writing on the board, he noticed that noise persisted and on turning round he discovered it was the same couple of students whereby

he warned that if the noise persisted he would send them out of the classroom. The plaintiff (Joy) and her partner did not heed the warning and he asked them to leave the classroom.

The defendant averred that while Onomwan Edosomwan immediately left the class, Joy (the plaintiff) looked at him rudely, hissed and still refused to leave her seat. That while he insisted that the plaintiff should leave the class, she started enquiring from him provokingly if he was referring to her.

The defendant stated that he then walked towards the plaintiff instructing her to leave the class, but she refused and challenging ly said that If I say I am not leaving the class, what will you do? Nonsense. The defendant stated that he then hit the plaintiff with an exercise book on her cheek to admonish her whereby she in return hit him and held on tightly to his shirt. He was only able to release her grip with the aid of the students who had intervened. The defendant stated that the plaintiff sustained no injury and was treated for non at the school Dispensary and that the plaintiff was in school till the closing hour the day in question and came to the school every school day thereafter. The defendant further averred that the incident was reported to the school authorities and statements were taken from the parties and their witnesses. He also contended at the trial of the case that the plaintiff had always been a difficult student in school.

Under cross examination, Joy admitted knowledge of a clinic in the school and said she did not go there for treatment. Four witnesses including three of Joy's classmates testified that they did not see any wound on her face immediately after the incident.

In his judgement, Mr. Justice Oki said he did not believe that the strike caused Joy any adding even if it did, it was not proper for her to have by-passed the school clinic to a clinic for treatment of any injury she sustained in the classroom. He added that a parent is deemed at common law to have delegated to the teacher power to discipline a pupil so far as it is necessary for the welfare and discipline of the child, and that Joy's case was not exceptional.

Theo O. Osisi, solicitor for the plaintiff, Mrs. Akomolafe Wison, Principal State Council to the defendant.

3.4.6 Nonso Adimachukwu vs. Ernest Chikwendu & P.N. Udeze

DEFAMATION OF A STUDENT ALLEGATION OF STOLEN SCHOOL FOOTBALL SUSPENSION PROTECTION UNDER THE PUBLIC OFFICERS PROTECTION LAW

NONSO ADIMACHUKWU
(Suing by his Next Friend BONIFACE ADIMACHUKWU)

V.

- 1. ERNEST CHIKWENDU**
- 2. F. N. UDEZE**

(High Court, Nnewi, Justice Chidozie Olike; 1/06/87) Suit No. HN/37/86

FACTS: The plaintiff, Nonso Adirnachukwu, is a minor and is a pupil of Olie-Uru Central School Umudirin, Nnewi and sued, by his next friend Boniface Adimachukwu, the father.

The first defendant is the chairman of Parent-Teacher Association of Umudim-Nkwa Community School, Nnewi. The second defendant is the Chief Zonal Education Officer in charge Nnewi Local Government Area' including Umudim-Nkwa School and Olie-Uni Central School.

On or about the month of November, 1985, at Umudim Nnewi in Nnewi Local Government Area of Anambra State the 1st defendant falsely and maliciously spoke and published the name of the plaintiff to the hearing of Mr. Alphonso Ekemezie, and other numerous by-standers in the following defamatory words: that is to say:"

Nonso Adimachukwu bu onye ori, ozulu football ndi Umudim Nkwa Community School, Nnewi. In English interpretation means:

Nonso Adimachukwu is a thief, he stole a football belonging to Umudim-Nkwa Community School, Nnewi.

In consequence the plaintiff was suspended from the said Olie-Uru Central School for a period of one month as a punishment for purportedly stealing the school's football. By the allegation and suspension, the plaintiff and all members of his family became subject of ridicule and odium.

The before-mentioned defamatory words which caused the suspension and punishment meted to the plaintiff, were later proved to be untrue and without substance during a meeting of the defendant and the plaintiff's family later, when a boy openly confessed of having taken the football without the knowledge, presence and connivance of the plaintiff. Despite the fact that the offensive words of the 1st defendant were proved to be false and untrue to the full knowledge of the defendants, the Defendants or any of them made no efforts whatsoever to correct or remedy, or apologize to the Plaintiff and his family; instead, the 1st Defendant used his influence and powers and, maliciously and unlawfully, collaborated with the 2nd Defendant to effect the said suspension and punishment of the Plaintiff. The football falsely alleged to have been stolen by the Plaintiff, was later recovered from the said boy, who had earlier confessed to having taken it, for replacement at the said Umudim Nkwa Community School. The Plaintiff's Solicitor, Prince Orji Nwafor-Orizu Esq. as a result, wrote a letter dated 6th March, 1986, in which merely demanded an apology for the wrongful action of the Defendants, but the Defendants treated the letter with arrogance and contempt.

Wherefore the Plaintiff claims from the Defendants, in their private capacity, severally and collectively as follows:

The sum of N50,000.00 (Fifty thousand Naira) being damages for malicious persecution and slander an injunction restraining the Defendants or any of them, their agents, privies, servants from further inflicting unlawful, vindictive and malicious harassment of the plaintiff, or as the

court may deem fit in the circumstance. The defendants are likely to continue with their unlawful punishment and harassment of the plaintiff (Dated at Nnewi 16/06/1986).

On 21st July, 1986 the court ordered pleadings giving the parties 14/30 days respectively to file their statements of claim and defence.

The defendants on being served the statement of claim have brought the instant application praying the court for an order dismissing the suit on the ground that the action is statute-barred.

Moving the motion under Order 29 Rule 1 High Court Rules, Mr. Onwugbufo learned counsel, for the defendants referred to paragraph 4 of the claim where the plaintiff admitted that the cause of action arose in November, 1985. The summons he said, was filed on 17th June, 1986 and issued on 24th June, 1986 more than three months after the cause of action arose.

He referred to paragraphs 3 and 6 of the statement of claim to show that the defendants, chairman of Parents Teachers Association of Umudim-Nkwa Community School and the Chief Zonal Education Officer, Nnewi Local Government respectively are public officers and therefore entitled to protection under the Public Officers Protection Law: the limitation period of 3 months in Section 2 of the law should be applied to protect them.

But should the court hold that the first defendant is not a public officer and discharge the second defendant because he is a public officer, the first defendant should also be discharged as the cause of action is joined against the two of them. *Ogunsan v: Iwuagwu & L.C.C* (1968) 2 N.L.R. 124.

He finally submitted that in considering whether or not the statute availed the defendants' nature or bad faith on their part is immaterial and should not be imputed or read into the action section. *Alhajj vs. Egbe* (1986) 1 (part 16) 361 at 370; *Egbe V. Edefarasin* (1985) 1 N.W.L.R. (p) 549. He urged the court to dismiss the action for the reasons given.

Mr. Okoloagu, learned counsel for the plaintiff in reply relied on the seven paragraphed counter affidavit of the plaintiff. He conceded that the 2nd defendant is a public officer but contended that the 2nd defendant is not and tried to distinguish *Ogunsan's* case (*supra*). The plaintiff he said has a cause of action against either or both defendants. If either of them is protected, the plaintiff has the right to pursue his claim against the one not protected by law. They are sued jointly and severally.

He submitted that any protection afforded the 2nd defendant under the law could not avail the first defendant as the action against them is not of the same consequence. He urged the court to hold that the action against the first defendant is proper.

Section 2 (a) of the Public Officers Protection Law provides that:

"2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public

duty or authority, or in respect of any alleged neglect or default in the execution of any such law duty or authority, the following provisions shall have effect.

- (a) the action, prosecution, proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of continuous damage or injury within three months next after the ceasing thereof.

Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison;"

In paragraph 6 of the statement of claim the plaintiff stated as follows:-

The 2nd defendant is the Chief Zonal Education Officer in charge of Nnewi Local Government, including Umudim-Nkwa Community School and Olie-Uru Central School where the Plaintiff and the 1st defendant belong. The 2nd defendant is the last arbiter for all Primary and Secondary Schools in the said Nnewi Local Government at all material times, who would here stopped the punishments and caused the 1st defendant to apologize for the unlawful action meted to the plaintiff, but for his personal interest and participation in the illegal deal. It was the 2nd defendant who unlawfully and illegally confirmed the punishments which the plaintiff suffered having known his actions to be illegal and unlawful, thus liable together with the 1st defendant.

From the foregoing, it is beyond dispute that the 2nd defendant holds a public office and is therefore a public officer. The alleged tort committed by him was in the course of his official duties. He comes within the purview of the law. He is protected. The action against him, having been instituted within three months of the incident is statute-barred.

The first defendant, who is the chairman of Parent-Teacher Association is not a public officer. The statute does not protect him. But, the rule is that where persons have committed the same wrong act (joint wrong doers or joint tortfeasors) and are jointly and severally sued; a judgement obtained of discharge of one of them operates as a discharge against the others Ogunsan's case (supra).

The action against the defendants is one and indivisible cause of action. The claim against them is jointly and severally. See paragraph 22 of the statement of claim.

Applying the above rule, the judgement of the court so far in favour of the 2nd defendant is that the action against him is statute-barred. As the court cannot sever the cause of action against them, the first defendant should take the benefit of what has been pronounced in favour of the 2nd defendant.

In the final result, the action against the defendants is statute-barred and should be dismissed.

It is accordingly dismissed with no order as to costs.

(sgd) Chidozie Olike
JUGDE
1st June, 1987

Self Assessment Exercise 3.3:

- (a) What are the two main classes of tort?
- (b) Explain them.

4.0 CONCLUSION

In order for the school to be a safe place, there is need for a place to seek redress in the face of confrontation. The court has been very useful in that direction. Whether intentional or unintentional act, once it infringes on another person's right, it becomes libelous.

5.0 SUMMARY

In this unit, we have looked into the meaning and nature of tort. We also tried to distinguish tort from crime and contract. Vicarious liability was discussed. The classes of tort intentional and unintentional acts were discussed and the defences to assault and battery were also discussed. Case laws were cited to further show that people have been and will continue to seek redress in the face of affront.

6.0 TUTOR MARKED ASSIGNMENT

1. Define the following terms:

- (a) Battery
- (b) Assault
- (c) False imprisonment
- (d) Infliction of mental distress
- (e) Consent
- (f) Privilege.

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Owerri(J. Ogu Ugoagwu) 16/11/89 Suit No. HOW/200/87

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Suit No. HN/37/86 (unreported) of 1st of June, 1987.

UNIT 4: DEFAMATION AND SCHOOL COMMUNICATIONS

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1.0 INTRODUCTION

One of the fundamental rights in the 1999 Constitution, specifically, Section 34, reads Right to Dignity of Human Persons. However, because of the emphasis on continuous assessment and record-keeping in the new educational dispensation, teachers, school counselors and other school officials are sometimes susceptible to actions of invasion of privacy because of the sensitive, personal information about students which they have to handle or come into contact with everyday in the course of their duties.

Even teachers, despite the fact that they are adults, feel pained when their privacy is invaded. Since people have a right to good name or reputation, it is therefore, expected that all persons should refrain from attacking the reputation of others.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the term defamation of character;
- list and discuss the types of defamation;
- state the elements of defamation;
- enumerate and briefly discuss the defences in action of defamation;
- discuss the term invasion of privacy, and
- cite case laws giving examples regarding defamation.

3.0 MAIN CONTENT

3.1 Concept of Defamation

One of the most important rights of a person, Alexander (1980) has rightly observed, is the "right to a good name or reputation". The law therefore requires all persons to refrain from attacking the reputation of others. Defamation of character is the intentional or negligent unjustified publication of a matter or statement that tends to harm a person's good name or reputation, lower him in the estimation of right-thinking members of society generally or tend to make them hold him in contempt, to ridicule him or to avoid him. It does not involve physical harm.

A thorough knowledge of the tort of defamation should be of interest to the school worker. With emphasis on continuous assessment and record-keeping in the new educational dispensation (6-3-3-4 education system), teachers, school counsellors and other school officials are particularly susceptible to actions of defamation or invasion of privacy because of the sensitive, personal information about students which they have to handle or come into contact with each day in the course of their duties.

Besides, there is the availability of newspapers on school campuses and outside the school. The dealings of school officials may be published in them with a lot of insinuations, or sometimes lies may be written about a particular teacher. In such a situation, the teacher or school executive so affected may institute legal actions against the author of the article and the publisher of newspaper for defamation in a bid to redeem his good name.

Similarly, students and former employees may call on school executives to write reference letters on their behalf to prospective employers or to a higher institution of learning to which they have applied for admission. Such activities must be undertaken with care because they entail a number of legal implications bordering on actions of defamation.

3.1.1 Types of Defamation

Defamation is made up of twin torts, according to the permanence of its nature. The two torts are libel and slander. Libel is a written or printed statement that damages a person's reputation or good name; that is, defamation of character made in some lasting form is libel. Libelous matter may be published in a variety of forms: newspapers, cartoon, statue, motion pictures, pictures, etc.

Slander, on the other hand, is a defamatory statement made orally. It is made in a transient form by spoken words. A defamatory statement made in a sound motion picture, although the words are spoken, is statutorily considered as libel. Of the two torts, written defamation (i.e., libel) is more easily redressed in the law courts than spoken defamation (slander).

3.1.2 Elements of Defamation

To hold a defendant liable in an action of defamation, the plaintiff must prove a number of points. A comprehensive list of these requisites has been provided by Frank (1975, pp, 200-202) as follows:

- (1) The words must be defamatory; that is, the statement must be one capable of lowering the plaintiff's reputation in the eyes of right-thinking members of society. Mere vulgar spoken abuse is not defamatory.
- (2) The words complained of must refer to the plaintiff. This may be easy where he is named; it may be more difficult where a person recognizes himself as a character in some work of fiction.
- (3) The statement must have been published. This means that it must have been communicated to at least one person other than the plaintiff. Any defamatory statement which has been communicated to the plaintiff only (e.g., in a private conversation or personal letter) has not been published and would thus not be actionable. Thus, if a school master took a student into his private office and dressed him down about his character and in the process badly hurt his feelings, and if the student got home and told his father who threatened to sue for slander, such an action may not succeed because the word spoken and complained of were not overheard by a third party (Barrell and Partington, 1985).

A statement made by one spouse to another does not represent publication. If a defamatory statement is made on a post-card sent to the plaintiff publication is presumed, as the courts take it for granted that at least some of the people handling the card in the course of transit will have read it. The same will also apply to telegrams.

- (4) Libel is actionable without the necessity of proving that the plaintiff had suffered any damage. On the other hand, slander is actionable only if the plaintiff has suffered some pecuniary loss (damages) as a result of the defamatory statement, or if the slander falls into one of four special classes mentioned below:
 - (a) Where there has been an imputation that the plaintiff has been guilty of a criminal offence punishable by imprisonment.
 - (b) Where an imputation of unchastity has been made against a girl or woman.
 - (c) Where it has been alleged that the plaintiff is suffering from a contagious or infectious disease (e.g., venereal disease, T.B., AIDS, etc).
 - (d) Where words have been used calculated to disparage the plaintiff in his office, business, or other occupation by imputing dishonest, incompetence, or other unfitness for the work which he is doing.

According to Prosser, one common form of defamation is ridicule. He states:

It is defamatory to publish humorous articles, verses, cartoons or caricatures making fun of the plaintiff to heap ironical praise on his head, to print his picture in juxtaposition with an article on evolution and a photograph of a gorilla, or with an optical illusion of an obscure and ludicrous deformity. Humour, for humour's sake, may not be defamatory, but where it carries a "sting and causes adverse, rather than sympathetic or neutral merriment, it becomes defamatory" (quoted in Moran and McGhehey, 1980, p.11).

Moran and McGhehey also point out that it is defamatory to say that a person "had attempted suicide, refused to pay his debts, was a homosexual, was a lesbian, ... was a drunkard, a crook, a bastard, a eunuch, etc. " (p. 10).

Self Assessment Exercise 4.1:

What is defamation? Explain the terms: Protected from a defamation action.

3.2 Defences in action of Defamation

There are two major defences available in torts generally (a) truth and (b) privilege. Other less special, are (c) fair comment (d) unintentional defamation and (e) consent.

3.2.1 Truth (or Justification)

In most countries, truth has always been an absolute defence in a defamation action; that is, if the defendant can show that the publication which he made was true in substance and fact, the person claiming to have been libeled cannot recover damages. For example, suppose Teacher A (or Principal A) maliciously publishes a statement showing that Teacher B (or Principal B) is a criminal, and it turns out that Teacher B (or principal B) is actually a convicted school fee embezzler, Teacher B (or Principal B) cannot recover damages from Teacher A (or Principal A). In some instances, however, B can sue A for the invasion of privacy (see *Kinsley v. Mac* 1980). Similarly, in some countries, even if the statement is true, it must be made with good intentions and for justifiable reasons. For instance, in *Mary Offor v. Lazarus Ofondu* (1977) Nigeria, the judge held that damages are recoverable for a spiteful, ill-motivated and wicked letter leading to loss of job and benefits.

3.2.2 Privilege

The defence of privilege is based on the premise that in order to further some interest of social significance, the defendant should be allowed to publish a defamatory statement. The defence of privilege is of particular importance to teachers and school administrators, because it might well be a teacher's or a Principal's defence should a civil action brought against him for defamation in matters related to students' affairs.

Privilege is of two kinds: absolute and qualified. Absolute privilege is applied to statements made innocently or maliciously by the following:

- (1) Statements made by federal or state legislators performing their duties in legislature. This implies that absolute privilege applies to speeches made by legislators in parliament and not outside parliament.

For instance, in *Hutchinson v. Proxmire* (1979), the defendant, Senator William Proxmire, a Wisconsin Democrat, was found guilty of libel by the United States Supreme Court. Proxmire had charged in a Senate Speech and in news releases and newsletters that the scientist, Dr. Ronald R. Hutchinson, had "made a monkey out of the American taxpayer". Hutchinson sued the senator for libel. Among others, the Supreme Court ruled that while the constitution protected Proxmire's speeches in the Senate, his press release describing the monkey research was not immune. Dr Hutchinson had received half a million dollars in federal funds to study aggression in monkeys. The purpose of the study was to help select crew members for submarines and space-craft.

- (2) Statements made by witnesses in legislative and quasi-legislative hearings.
- (3) Statements made in the court of judicial or quasi-judicial proceedings (civil or criminal) by judges, the parties, witnesses, advocates, or jurors.
- (4) Newspaper or broadcast reports of judicial proceedings provided they are, and appear at the time when the proceedings are taking place.
- (5) Legislative papers published on the authority of the house of legislature.
- (6) Any statement made by a Superior Officer of State or department to another in the exercise of their official duty (e. g., an official report sent by one civil servant to another).
- (7) Statement made with the consent of the defamed person.
- (8) Certain political broadcasts required by federal law.
- (9) Statement's made between husband and wife, lawyer and client, priest and penitent, etc.

The defence of qualified or conditional privilege covers statements made by one person to another, where the person making the statement had a moral, social, or legal duty to make statement to whom he made it, provided it was done without malice. Smith and his colleagues emphasized the point that this defence protects communication by one person who is interested in the subject with other persons who reasonably appear to have legitimate interests in receiving the information. The privilege may be lost if defamatory matter is published outside the interested group.

A qualified privilege requires that the statements be made in good faith and without malice, upon reasonable grounds and in answer to inquiry. Also it must be made with regard to assisting or protecting the interests of either party involved or in performing a duty to society. In other words, to claim qualified privilege, it is necessary for the person making the statement to believe, at the time he makes it, that the substance of what he says is true. To make a defamatory

statement, knowing it to be false, is patently malicious and unworthy of the protection of such a defence (Barrell and Partington, 1985).

A qualified privilege also exists to published defamatory statements about a public figure or official, and a defendant may not be held liable unless he acts with "actual malice", i.e., the defendant knows the statement to be false or shows a reckless disregard to the facts and truth of the matter. Principals, headmasters and teachers may be regarded as public officials.

From the above analysis, a teacher, a principal or an education official has a qualified privilege when acting in good faith and without malice in school matters in relation to students. As Barrell and Partington point out, this defence may be used, therefore, by school officials (teachers and principals) in the case of testimonials and referee reports, reports on children to parents or reports made by these officials to employment officers, and in other circumstances where there is a duty to pass on information received. However, if a teacher or principal abuses his or her conditional privilege, the student or plaintiff may hold him or her liable in action for defamation.

For instance, in a Texas case reported in Alexander (1980), the principal of a Commercial College was asked for information concerning a former student. He replied that the man had been a student at the institution but had not graduated. He related that, in fact, the student had been dismissed from school for stealing a typewriter and had been placed in jail. Consequently, the student sued for damages and was able to show that the statement was untrue. The principal could not show that the statement was not even substantially true; therefore, the case was decided in favour of the student. Thus, it is better to have your facts right about a particular student before writing a report on his behalf or not to write at all.

Where a teacher or principal or an education official is sure of the facts available to him and is requested by an interested public organization to write a report on a former student or employee, and if the facts lend themselves to providing a negative recommendation, the principal is entitled to a conditional privilege if he so recommended. In *Hett v. Ploetz*, for example, the Supreme Court of Wisconsin (1963) held that a critical appraisal and negative recommendation concerning a former employee made for the valid purpose of enabling a prospective employer to evaluate the employee's qualifications, was done without malice and therefore protected by a conditional privilege. Similarly, the presiding judge, Lord Blackburn in *Rude v. Mass*, said that:

Where a person is so situated that it becomes right in the interest of society that he should tell to a third person facts, then, if he bona fide and without malice does tell them, it is a privileged communication (p.329).

The defence of qualified privilege in a slander case was upheld in the case of *McLaughlin v. Tilendis* (253 N.E. 2d. 85, Ill. Ct. App. 1969) reported by Moran and McGhehey (1980, p. 10). In this case, a school administrator made statements (the publication) before the Board of Education to the effect that a certain teacher left the classroom unattended, lacked teaching ability, and did poorly in certain courses at college. The teacher brought suit for damages, alleging that the statements were untrue. Since these formed the basis for her discharge, they were defamatory in nature. The court held that as long as the administrator made the remarks (1) in the line of duty, (2) to persons having to receive the information and (3) without malicious harm, the statements were conditionally privileged and the publication was not slanderous.

Further more, letters about teachers or principals written by parents to the Local or State School Board are privilege, unless malice is proved. For instance, in Nigeria, in the case between *J. Dekey v. A.O. Odeniyi* (1960), the appellant, Mr. Dekey, instituted in a Senior Magistrate's Court, Ikeja, an action of libel against the respondent (Mr. Odeniyi) for writing a letter to the Chairman of the Education Committee of the Mushin District Council apparently at the request of the Chairman, concerning allegations of immoral behaviour between children and school teachers at schools in Mushin, and in particular against the appellant who was the headmaster of Odu Abore School. The Magistrate dismissed action and he, Mr. Dikey, appealed to the High Court of Justice, Lagos. Among others in dismissing the appeal, the High Court Judge held that the defence of qualified privilege would succeed as the respondent was under social and moral duty to have brought the facts stated in his letter before the Education Committee who controlled the appellant's school. Since the occasion of this publication was privileged, the onus was on the appellant to prove malice; and since he had failed to prove this, he was bound to fail in action.

In another case, *Mrs. Mwada Mshellia v. Gideon G. Barde and the Plateau Publishing Co.* (1978), the appellant, Mrs. Mshellia, a primary school teacher, was dismissed by her employer, the Bauchi Local Education Authority. The Education Secretary, Mr. Gideon Barde, of the Authority gave a press interview at which he explained in detail the reason for her dismissal. The Secretary said she neglected her duty and that she was incompetent. She then instituted an action in the High Court for libel and the action was dismissed. She appealed, but in dismissing the appeal, the Justices of Federal Court of Appeal, Kaduna, held, among others, that the article read as a whole could not be construed to be defamatory of the appellant.

3.2.3 Fair Comment

This is another defence open to a defendant in a case of defamation. The comment must be on a matter of public interest political issues, the conduct of Ministers and Commissioners or other public servants. These public figures must expect their conduct to be commented on; unless such comments are unfair, they have 'no cause for complaint (Redmond and others, 1979). Rogers (1979) has summarized the requisites of fair comment as follows:

- (a) The matter commented on must be of public interest.
- (b) It must be an expression of opinion and not an assertion of fact.
- (c) The comment must be fair.
- (d) The comment must not be malicious (evil motive).

The case of *Maria Omo-Osagie v. Taiwo Okutubo and Daily Times of Nigeria Ltd.* (1968) is a good case of libel and the defence of fair comment on a matter of "public" interest. The plaintiff brought an action against both defendants for libel contained in the Lagos Weekend of 12/7. The words complained of were: "Chief Justice tells a teacher: you are a bad woman". The plaintiff contended that the words were never spoken of her by the Chief Justice, that they were untrue, that they murdered her in her character, credit and reputation and in the way of her profession as a teacher and that they brought her into public scandal and contempt and that she had suffered damages. The defendant denied that the printing and publication was done falsely or maliciously, and further pleaded that the words complained of were in substance a fair and

accurate report of proceedings publicly heard, and the report was produced contemporaneously with the proceedings.

The judge, among others, held that the publication was not a fair and accurate report of what the judge actually said. He added that although a newspaper had a right to publish either verbatim or has an abridged and condensed report of what transpired in a court of justice, such a publication must be done fairly and honourably to convey a just impression of what has transpired. She awarded some damages.

In another case on teacher's libel, this time in Great Britain, Barrel and Partington (1985) reported that in May 1970, an anti-authoritarian publication called School Kids OZ appeared. It included a letter, signed by a pupil at Owen's School, Islington, in which it was claimed that one of the masters of the school liked caning people and that the writer had been caned by him.

The letter was headed SCHOOL ATROCITIES, and a large picture beside it contained unpleasant insinuations. The master issued a writ for damages for libel against the publishers, editor, distributors and eight other persons concerned with the publication. After the defendants had withdrawn the imputations, apologized for the embarrassment and humiliation caused, and agreed to pay substantial damages, the court gave leave for the record of the case to be withdrawn.

3.2.4 Unintentional Defamation

Some relief is given to a defendant who has innocently defamed another. Such a relief may take the form of an offer, e.g. a full apology to the person whose reputation may have been injured. Such an apology may also include a prompt notification of the falsity of the statement to the public to which it must have been made. The apology may be accompanied by a reasonable financial compensation.

Self Assessment Exercise 4.2:

- (a) Define libel and slander. Explain the difference between the two.
- (b) Identify and briefly discuss the elements to be proved in order to hold a defendant liable in action of defamation.

3.3 Invasion of Privacy

According to Hoerber and Others, (1982) the tort of invasion of privacy usually occurs in one of four ways:

- (1) The wrongdoer uses a person's name or likeness without consent for business purposes.
- (2) The wrongdoer unreasonably intrudes upon a person's physical solitude, e.g., illegal entry of one's home, illegal wire-tapping, an unauthorized investigation of one's bank, etc.

- (3) The wrongdoer makes public disclosure of private information about a person and which is offensive and objectionable. An example is publishing the history and the present identity of a reformed criminal without his consent.
- (4) The wrongdoer publishes information which places a person in false light. An example is attributing to a successful poet an inferior poem which he or she did not write. Another example of a case of an invasion of privacy is *Kinsey v. Macur* (1980).

The defences available to a defendant in an action of tort for invasion of privacy is the assertion that the person whose interest is being invaded is dead and therefore the plaintiff has no cause of action. The other defences include: consent (expressed or implied) and constitutional privilege, the right to give publicity to public figures or publish news or matters of public interest.

Although the 1989 Federal Republican Constitution provides for the right to privacy, and therefore students have the right to be free of unreasonable searches and seizures by school authorities, the courts have held that school officials may be obligated to inspect school lockers. The reason is that school authorities have an obligation to maintain discipline over students and can spot check lockers to ensure compliance with school regulations (*People v. Overton*, 1967).

Self Assessment Exercise 4.3:

- (a) Explain the terms qualified and absolute privilege.
- (b) How these privileges may be lost?

3.4 Cited Case Laws by Peretomode 1992

3.4.1 INVASION OF PRIVACY

KINSEY v. MACUR ***165 Cal. Repr. 608 (Cal. App. 1980)***

While Bill Kinsey was in the Peace Corps in Tanzania in 1966, his wife died when they were on a picnic. Kinsey was charged with her murder and spent six months awaiting trial. He was subsequently acquitted. The case attracted some notoriety, including articles published in Time Magazine. In December, 1971, Kinsey met Mary Macur at a cocktail party in San Francisco. At that time he was a graduate student at Stanford University and she worked at a medical institute. For the next five months Kinsey and Macur had a love affair. On April 5, 1972, Kinsey told Macur that he would no longer be seeing her since a woman was coming from England to be with him.

In the Fall of 1972, Kinsey accepted a job in Central Africa. He and Sally Allen went to Africa and were subsequently married. Shortly before they left the United States, each received a letter from Macur stating in graphic terms how Kinsey had maltreated Macur. During the time the Kinseys were in Africa they received more letters. Other letters were received by acquaintances of Bill Kinsey and forwarded to him. Some letters accused Bill of murdering his first wife, spending six months in jail for the crime, being a rapist, and other questionable behaviour.

On July 9, 1973, Sally and Bill Kinsey filed a complaint for invasion of privacy. On June 1977, after a trial without jury, judgment was entered for Bill Kinsey for £5,000. Macur appealed and the Appeal Court reaffirmed the judgment of the lower court.

**3.4.2 TORT -DAMAGES ARE RECOVERABLE FOR SPITEFUL,
ILL-MOTIVATED AND WICKED LETTER LEADING TO
LOSS OF JOB AND BENEFITS**

MARY OFFOR (Plaintiff/Respondent)

v.

LAZARUS OFODU (Defendant/Appellant)

Okigwe High Court (Ikwechegh, J.) July 4th, 1977 HO/2A/76

The plaintiff-respondent had sued the defendant-appellant in the Magistrate's Court, Okigwe claiming N600 damages. He alleged that the appellant had "willfully and maliciously and with full knowledge of the consequences of his conduct" written to the commandant of the Police Training College, Ikeja requesting her immediate removal from the College.

The defendant appellant, at the trial, denied liability contending that respondent was his wife and remained so but had deserted him several years earlier removing with her some of his property. It was allegedly on these grounds that he, a policeman, instructed his solicitor to write the alleged letter of complaint and report to the Inspector-General of Police.

The learned Magistrate found in favour of the plaintiff-respondent in that not having been properly married to the appellant and having left him lawfully and got gainful employment, she had been made to lose her job, benefits and prospects as a result of the appellant's letter to the Inspector-General of Police. He awarded her N450 damages, whereupon the defendant appealed against the decision and the question of damages.

HELD amongst others:

1. Since in a civil case, proof is by a preponderance of evidence, any admission of an opponent which sufficiently settles the issue in dispute makes unnecessary need of further proof.
2. Letters of infatuation written by a woman and signed "yours Wife" or "Mrs. X" cannot prove and establish a customary marriage; what does prove and establish such a marriage is the payment or waiver of bride price neither which is proved here.

Appeal dismissed.

3.4.3 NEGATIVE RECOMMENDATION IS PROTECTED CONDITIONAL PRIVILEGE

HETT Vs PLOETZ
Supreme Court of Wisconsin, 1963.
20 Wis. 2d 55, 121 N. W. 2d 270.

Hett brought this action to recover damages for injury to his professional reputation from an allegedly libelous publication by Ploetz.

From 1956 to 1959 Hett had been employed as a speech therapist in the school system of the city of Cudahy, Wisconsin. His schedule required that he travel to six different schools and teach those pupils who were in need of his specialty.

Based upon their analysis of Hett's qualifications, the principals of the schools in which Hett taught reported to Ploetz that they did not recommend renewal of Hett's contract for the 1959-1960 school year.

While the principals did not recommend Hett's retention for that year Ploetz decided that because he had been the superintendent for only six months it would be unfair to Hett to recommend his dismissal. Ploetz informed Hett that his contract was not going to be renewed and to him that it would be in his best interest to resign so that a dismissal would not appear on his record. Hett resigned.

On November 9, 1959, Hett applied for a position as a speech therapist at the Southern Wisconsin Colony and Training School, Union Grove, Wisconsin. In his application he stated that the reason he left the Colony school system was that there was a lack of advancement opportunities. He listed Ploetz as a reference and gave permission to the Southern Colony officials to communicate with Ploetz.

GORDON, Justice. The plaintiff contends that he was libelled by the defendant's response to an inquiry from a prospective employer of the plaintiff. Hett had not only given Ploetz's name as a reference but had also given express permission to the prospective employer to communicate with Ploetz.

We must resolve two questions. The first is whether any privilege insulates the defendant's letter; the second is whether an issue of malice exists for trial.

Conditional Privilege

It is clear that Ploetz's allegedly defamatory letter was entitled to a conditional privilege. Ploetz was privileged to give a critical appraisal concerning his former employee so long as such appraisal was made for the valid purpose of enabling a prospective employer to evaluate the employee's qualifications. The privilege is said to be "conditional" because of the requirements that the declaration be reasonably calculated to accomplish the privileged purpose and that it be made without malice.

Lord Blackburn has said:

Where a person is so situated that it becomes right in the interests of society that he should tell to a third person facts, then, if he bona fide and without malice does tell them, it is a privileged communication. (See *Rude v Mass*, supra, p. 329, 48 N.W. p. 557).

The public school official who expresses an opinion as to the qualifications of a person who has submitted an application for employment as a school teacher should enjoy the benefits of a conditional privilege.

The Absence of Malice

As previously noted, the employee had given Ploetz's name as a reference and had authorized that an inquiry be made on him. The letter contains certain factual matters as well as expressions of opinions. The factual portions are not contradicted by any pleading before this court. Thus, the following statement contained in the letter written by Ploetz stands unchallenged:

Last year, our six Principals and Elementary Coordinator unanimously recommended that he be no longer retained in our system as a speech correctionist. He, therefore, was not offered a contract to return this year.

The expression of opinion of which Hett complains is contained in the following portion of the defendant's letter:

We feel that Mr. Hett is not getting the results that WB expected in this very important field. I, personally, feel that Mr. Hett does not belong in the teaching field. He has a rather odd personality and it is rather difficult for him to gain the confidence of his fellow workers and the boys and girls with whom he works.

In our opinion, the record before us establishes that this expression of opinion is not founded in malice. The background of the relationship of Hett and Ploetz satisfactorily demonstrates that the latter's negative recommendation was grounded on the record and not upon malice. Ploetz was not an intermeddler; he had a proper interest in connection with the letter he wrote.

The plaintiff has failed to recite any evidentiary facts which are sufficient to raise questions for trial. His allegations that the letter contains defamatory material are mere conclusions. No presumption of malice has arisen; no showing of express malice has been presented.

Public policy requires that malice not be imputed in cases such as this, for otherwise one who enjoys a conditional privilege might be reluctant to give a sincere, yet critical, response to a request for an appraisal of a prospective employee's qualifications.

A thorough examination of the entire record compels our conclusion that the respondent is entitled to the benefit of a conditional privilege.

3.4.4 A LETTER TO THE CHAIRMAN OF AN EDUCATION COMMITTEE BY A PARENT ON REQUEST COMPLAINING IMMORAL BEHAVIOUR BETWEEN CHILDREN AND TEACHERS IN A SCHOOL DISTRICT IS PRIVILEGED.

W. DIKEY v. A. O. ODEN/YI
(High Court of Justice, Lagos: Duffus, J, 22/4/60)

Action for libel qualified privilege Onus of proof of malice Headmaster of a School is person in public authority.

FACTS: *The appellant, Mr. Dikey, instituted, in a Senior Magistrate Court, Ikeja, an action libel against the respondent (Mr. Odeniyi) for writing a letter to the Chairman of the Education Committee of the Mushin District Council, apparently at the request of the Chairman containing allegations generally as to immoral behaviour between children and teachers at schools in Mushin and in particular against the plaintiff who was the Headmaster of Odu Abore School.*

The appellant himself during the trial had admitted that he courted his present wife whilst she was a pupil at his school and also that he had had sexual-intercourse with her before marriage as a result of which she was pregnant. The respondent called no evidence but rested his case on that of the appellant. The Magistrate dismissed the action and it was against that order of dismissal that the appeal was brought.

HELD:

- (4) that as the headmaster of a school would come within the meaning of a person in public authority, it would be lawful in the public interest to lay a charge or complaint to the proper authority;
- (5) that the defence of qualified privilege would succeed as the respondent was under a social and moral duty to have brought the facts stated in his letter before the Education Committee who controlled the appellant's School; and
- (6) that since the occasion of this publication was privileged the onus was on the appellant to prove malice and since he had failed to prove this, he was bound to fail in this action.

Appeal Dismissed.

Ikeja Civil Appeal No. AB/19A/58.

**3.4.5 TORT DEFAMATION LIBEL ALLEGATION OF
INCOMPETENCE AT WORK MADE INTER ALIA
IN A NEWSPAPER ARTICLE**

MRS MWADA MSHELLIA (Appellant)

v.

1. GIDEON G. BARDE (Respondent)

2. PLATEAU PUBLISHING CO. LTD.

***Federal Court of Appeal, Kaduna Division. (Justices: Sunday James Ete,
Muhammadu Lawal Uwais, Adenekan Ademola). 6/11/78***

FACTS:

The appellant, a primary school teacher was dismissed by her employer, the Bauchi Dass Local Education Authority. The Education Secretary of the Authority gave a press interview at which he explained in detail the reason for her dismissal. The Secretary said she neglected her duty and that she was incompetent. She instituted an action in the High Court for libel and the action was dismissed on the ground that if read as a whole the article was not libelous. On appeal she contended that the allegation of incompetence is actionable per se and the learned trial judge should have read it in isolation of the rest of the article for the purpose of determining whether she was defamed. Dismissed the appeal.

HELD:

1. The principle for interpreting whether a publication is libellous is that the article including the caption must be read as a whole so that the context of the words complained of may be determined.
2. A sentence in a publication may be considered defamatory but there may be other passages which take away its sting.
3. The article read as a whole could not be construed to be defamatory of the appellant.

Appeal dismissed

Source: Plateau Law Reports, Vol. 1.

**3.4.6 TORT A TEACHER LIBELLED: NEWSPAPER BEING
SUED FOR LIBEL PUBLISHED IN THE LAGOS WEEKEND
ON THE 12TH JULY, 1968.**

MARIA OMO OSAGIE (Plaintiff)

v.

1. TAIWOOKUTUBO J

2. DAILY TIMES OF NIGERIA LTD (Defendants)

Source: 2 All N.L.R. 1969.

FACTS:

The plaintiff brought an action against both defendants for libel contained in the Lagos Weekend of the 12th July, 1968. The words complained of were; "Chief Justice tells a teacher: You are a bad woman".

The plaintiff contended that the words were never spoken of her by the Chief Justice, that they were untrue, that they injured her in her character, credit and reputation and in the way of her profession as a teacher and that they brought her into public scandal and contempt and that she had suffered damages.

The defendants admitted that they were the editor and proprietors of the Lagos Weekend. They however denied that the printing and publication was done falsely or maliciously. They further pleaded that the words complained of were in substance a fair and accurate report of proceedings publicly heard and the report was produced contemporaneously with the proceedings. They also pleaded that the words were not libelous of the plaintiff nor were they understood to impute incompetence in the profession or calling of the plaintiff.

The plaintiff was a respondent in a matrimonial case in which her husband was the petitioner. The case was tried by the Chief Justice of Lagos state who gave a written judgement. It was manifest in the judgement that the words were never used by the Chief Justice although he had occasion to make adverse comments on the plaintiff as a witness and a spouse.

The Chief Justice was of the opinion that the plaintiff was most untruthful and most unsatisfactory as a witness that she was a woman of no mean temper, that it was difficult to put down on writing a correct description of her misdemeanour, that he had never met a wife or respondent like the plaintiff in the witness box in many matrimonial cases he had presided over.

HELD:

The High Court, Lagos, gave judgement in favour of the plaintiff and was awarded some sum of money. The judge held:

- (1) That it is settled law that where an action for libel is tried by a judge alone without a jury, it is he who has to arrive at a single right meaning of the words complained of.

The judge therefore has to consider what is natural and ordinary meaning in which these words would be understood by reasonable men and to whom they were published.

- (2) Looking at the content of the words and the actual words used, the court came to the conclusion that the words complained of were defamatory.
- (3) To say of a woman, "You are a bad woman", would be received by the reasonable reader in a manner which would lower her in the estimation of such a reader.

- (4) It was not a fair and accurate report to attribute such words as "You are a bad ..." to the judge when he never said those words or even words which were in any sense close to them.
- (5) Although a newspaper has a right to publish either verbatim or an abridged and condensed report of what transpired in a court of justice, such publication must be done fairly and honorably to convey a just impression of what has transpired.

Self Assessment Exercise 4.4:

List and discuss other defences available in an action of defamation.

4.0 CONCLUSION

Defamation has very grave consequences. It is capable of upsetting any organisation and cause restlessness. Teachers at times cast aspersions on the students and label them as Goat Head, Dunce etc. Be informed that these can be defamatory and cause a child to seek redress in the court.

5.0 SUMMARY

In this unit, we learnt the concept of defamation, types of defamation and elements of defamation. Defenses such as truth, privilege, fair comment and unintentional defamation were discussed. Invasion of privacy was also discussed. Relevant cases were cited to buttress the fact that defamation could lead to litigation.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly explain the difference between libel and slander
2. What is invasion of privacy?

7.0 REFERENCES AND FURTHER READINGS

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UNIT 5

SCHOOL RECORD KEEPING

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1.0 INTRODUCTION

Schools are statutory bodies. Therefore, they are liable to be sued by individuals and groups. For effective administration of schools, it is imperative on educational administrators to keep school records as enacted by the Education Law of the former Western Region of Nigeria (1955), which is now referred to as Cap. 36 Laws of Oyo State (1978) and the former East Central State Public Education Edict (1974) and virtually in all States of the federation. Schools are becoming increasingly complex in terms of staff and pupil population, programmes and activities as well as increasing needs for accurate planning and improved output. It is therefore imperative on heads of schools to keep accurate information about the happening in the schools.

This unit will introduce you to concept of school records, methods of storing and retrieving records in schools, Problems and suggestions for improved record keeping

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- mention the classification of records;
- list statutory and non statutory records;
- explain the justification for keeping records in schools;
- describe the uses of records in schools;
- say the qualities of school records;
- list problems associated with record keeping in schools;
- suggest ways to improve record keeping in schools.

3.0 MAIN CONTENT

3.1 Concept of Record Keeping

Schools are becoming increasingly complex in terms of staff and pupil population, programmes and activities as well as increasing needs for accurate planning and improved outputs. The head of school therefore has the responsibility of seeing to the smooth running of a school. The extent to which he succeeds in carrying out this responsibility depends on a number of factors and one of them has to do with the records that he is expected to keep. This section presents you with the classification, qualities of school records and justification for keeping school records.

3.1.1 Classification of record

Basically, school records are divided into statutory records and non statutory records. **Statutory records are the records kept in accordance with the Education law and they must be produced on request by the agents of Ministry of Education on official inspection or investigative purpose.** Such records include (1) Admission/withdrawal register (2) Log book (3) Attendance Register (4) School time table (5) Diary of work (6) Visitors book (7) Examination record book (8) time/movement book (9) A copy of the national policy on Education (10) National Curricular on different subjects (11) Assignment book for teachers (11) Query book (12) School list (13) History of the school (14) Transfer certificate books (15) pupils individual files (16) sports and games record files (17) School clubs/societies (18) Annual leave roster (19) Teachers Annual Evaluation reports (20) Education Inspectors reports (21) Organizational Charts (22) Minutes books (23) Disciplinary Committee file (24) School Land Papers (25) Staff notice circular (26) Lesson plan/ notes for teachers etc

Non statutory records are school records kept for the purpose of administrative convenience. The records include (1) Stock book (2) Cash and Account book (3) School Calendar (4) Health book (5) Inventory book (6) Staff minutes book. (Sunmola, 2008)
The records are so numerous that it is impossible to run a school without them. If properly kept they will likely make the general school administration effective, efficient and progressive. In the event of litigation, the availability of relevant records will give facts about issues raised.

3.1.2 Qualities of School Records

According to Sunmola (2008) for a school record to be a reliable reference material, it should satisfy certain conditions such as the following:

- (a) Records must be complete if they are kept regularly. If they are not, the information will be incomplete. Such information may therefore be unreliable.
- (b) Records must be honestly kept. Information must not be distorted. Records must be a honest representation of facts. Events must be recorded as they occur and in their true perspective. Elements of personal biases must be removed

- (c) Records must be retrievable. Records that cannot be recalled will not serve a useful purpose to anyone. Retrieval of records must be easy so as to save time. To do this, the system of filing must be adequate. Filing cabinets must be employed and computers may be used where necessary.
- (d) Records must be useable. Records are kept for the purpose of future use. It is of no use keeping irrelevant records
- (e) Records must be backed up by original documents where necessary. Such documents include invoices, bills, cheques counterfoil and receipts

3.1.2 Justification for Keeping School Records

School record keeping is a very important aspect of school administration; it serves school administrators, not only to carry out management functions of planning, organizing, staffing, controlling, reporting and directing; but also to solve knotty educational problems. School records are therefore particularly important for the following reasons:

- (i) They keep the government and the society informed on the need or otherwise of further investment in education and the direction and dimension of such investment;
- (ii) Keeping records such as the attendance register can save a school from litigations connected with the law of liability (Ojede, 1998). This implies that the learner may hold the school liable for any injury sustained, inflicted on or otherwise during school hours (Ukeje, 1992);
- (iii) Nigeria being a country with problems of certificate racketeering, school records are useful in solving cases of forged certificates and testimonials brought before the courts by learners and schools;
- (iv) In these days of awareness, parents and guardians need school records to provide effective monitoring of the education of their children and wards
- (v) They provide a basis for the objective assessment of the state of teaching and learning in a school, including staff and student performance by supervisors and inspectors.
- (vi) The records are important source of statistics for educational planning and administration, particularly in the area of decision-making;
- (vii) They enable supervisors and inspectors of education to assess the performance of teachers in the school. They also enable auditors to check in detail the financial transactions of schools in order to prevent financial frauds;
- (viii) School records enable school heads to collate information on pupils and staff for decision making by higher authorities, the law courts, security agencies and other related government agencies when occasion demands.

- (ix) Schools records are used by education and social science researchers to advance knowledge through research.
- (x) They provide some security for the various facilities and equipment that are allocated to schools;
- (xi) Record keeping serves to ensure that pupils are not punished unjustly and by unauthorized persons.
- (xii) School records tell the history of the school and are useful historical sources
- (xiii) They facilitate continuity in the administration of a school
- (xiv) They provide information needed on ex-students by higher and other related institutions and employers of labour for admission or placement.

Self assessment Exercise 5.1

List the school records that you know under statutory and non-statutory records. Give five reasons why a school head should keep records.

3.2 Description and uses of school records

(i) Admission and withdrawal register

The admission register is a permanent records book and has vital information about individual pupils enrolled in a school: the sex, the names and addresses of parents or guardians, details of date of birth and date of admission, and where applicable, the name and address of the school last attended and the class attained in that school, details of transfer certificates from previous schools and records of progress and conduct year-by-year, in the present school.

This register has to be properly numbered so that each child is given a number of admission and no child is allowed to attend the school without being enrolled in the admission register.

The register must be kept up-to-date by the headmaster or principal. If properly kept, it enables the headmaster to see how children are progressing. It also reveals the population of the school, the number of pupils who have left and those who have been admitted.

The admission register will be very useful to the headmaster, particularly when some of the ex-pupils write back to school for letters of recommendation for appointments.

A space is generally provided in the register for general comments about the child's character, ability and responsibilities while a pupil in the school.

An example of an admission/withdrawal register is shown in table 5.1.

Table 5.1: Admission/withdrawal Register

Month & date	Name of pupils	Sex	Age	Admission number	Address of parents	Progress						Withdrawal (Reasons)
						(i)	(ii)	(iii)	(iv)	(v)	(vi)	
25/3/91	Yusuf Ali	Male	6yrs	324	Mandate Estate, Ilorin	1991	1992	1993	Withdrew	On account		of fathers transfer to Kano State
30/3/91	Alice Aina	Female	7yrs	6532	Taiwo Isale, Ilorin	1991	1992	1993	1994	1995	1996	

Source: Sunmola, R.O. Headmistress, Ajoke Model Nursery and Primary School, Ilorin
<http://www.kwsubeb.com/continuous-assessment/records-keeping-in-Nigerian-schools>

You can therefore see that the admission register is a historical and important legal school record that provides information for statistical data on the past and current number of students, their sex ratio and details of any withdrawals. Whenever there is doubt about a classic of having attended an institution and obtained certificate recourse is made to the school which in turn will check their admission register to verify the claim.

(ii) Attendance Register

Attendance register shows the daily record of attendance in each class in the primary and secondary schools. It is kept by the class-teacher, and must be marked up twice a day, at the beginning of the morning or first session and at the beginning of the afternoon or second session. The attendance register is required by law, and it is very helpful to the headmaster or principal. It enables the head of school to trace the attendance record of any child in the school, and where a child's attendance is poor, he arranges to visit or interview the parents.

At the end of every term, the class teacher makes a summary of attendance for the whole period, and the headmaster checks and initials it as a correct record.

Each class has an attendance register which the class teacher marks twice daily (morning and afternoon). Students who are present in the classroom are indicated by slanting a stroke (/) in blue or black ink in the column.

On the other hand, absence is indicated by O in the column while a late arrival before the register is closed is represented by a slanting stroke / in red. Public holidays are also indicated in the register.

In a co-educational school, the boys' names are written first in blue in alphabetical order, while the names of the girls follow in red ink.

Table 5.2: Specimen of Attendance Register Book

S/N	ADM. NO.	NAMES	DAYS					
			Mon.	Tues.	Wed.	Thur.	Fri.	
1.	58001	John Stephen \ / \ / \	/ \ / \ /					
2.	58002	Shade Badmus \ / \ / \	/ \ / \ /	/				
3.	58003	Ajao Jimoh \ / 00 \ 0	/ \ / \ /					
4.	58004	Yinusa Taiwo \ / \ / 00	00 00					
5.	58005	Abdul Gana \ / \ / 00	00 00					

Source: Sunmola, R.O. Ibid.

The marking of the class register is one of the responsibilities often abused by teachers responsible for such duty. The class register is so vital a record that it needs to be handled with utmost care. Some teachers are in the habit of giving the attendance register to the class monitor to mark. Others are in the habit of not marking it until the end of the day or several days only mark every member of the class present. Yet there are others who mark the register in the morning without a roll-call and even before the morning session begins. Few others are in the habit of marking the register in the morning immediately after assembly for both the morning and afternoon sessions. These practices are irregular and have moral, administrative and legal implications.

The nature of the class attendance register is such that it requires that a teacher in charge of class register visits the class at least twice a day to take the roll-call. If the school morning session starts at 8.00 a.m. it is preferred that the attendance register be closed at 9.00 a.m. students who had still not arrived by the time the register is closed marked absent. The register should be marked again at 12.00 noon or immediately after long-break and those who are present in class marked present.

The advantage of this procedure is that those who came late after the register had been closed in the morning session will be marked present in the afternoon session if they are present. On the other hand, those students who were present in the morning session but are not present in the afternoon session are marked absent. Once the register has been marked, it is advisable to restrict movement of the students outside the school premises. This is necessary to avoid a situation where a student who has been marked present is found injured and/or engaged in unholy practices during school hours off-campus.

If the register is marked once in a day, particularly in the morning session, it implies that a child who arrived class by the time the register was closed (say 8.30 a.m.) immediately after the register had been closed. If he is a persistent late-comer to class, then it is likely that he might be marked absent throughout the period of the term. This method of marking the register makes it difficult to distinguish between being actually absent from school and being unpunctual and this might have legal consequences for parents in situations where there is a compulsory school regular attendance of the child.

In most cases, compulsory education laws always stipulate a requirement of compulsory attendance laws which usually charge parents or guardians to cause their children or wards attend school regularly, unless there is a reasonable excuse for non-attendance. When it is found

out that a particular teacher arbitrarily marks the class register without actually visiting the class to take the roll-call, he could be warned and if he persists in the same wrongdoing, he could be disciplined by the employing Schools Management Board. The need to be very careful in marking of the class register is vividly illustrated by the following two incidents documented by Peretomode (1992).

In Mbaize, in 1987, two primary school pupils (girls) were walking to school in the morning as usual when they were attracted by beautiful objects floating on a pool of water. There had been a heavy downpour for two consecutive nights. Unknown to the little girls, the water was standing over a deep pit. One of the girls went closer and as she attempted to pick up one of the floating objects, the area caved in and she fell into the pit. As the second girl attempted to rescue her friend, she too fell into the pit and both of them drowned. Meanwhile, the class mistress had marked both pupils present in the class attendance register.

The parents of the children waited in the evening and when the two girls did not come home became apprehensive. They reported to their neighbours and a search for the children began. On the third day of the search, the two little girls were found floating in the pit. Till the third day when the bodies of the girls were found, they were still being marked present at school. The irate parents who found this out in the school beat up the teacher. They were of the opinion that she killed the girls. The police were called in and the class teacher was arrested and detained. The Nigerian Union of Teachers (NUT) intervened to try to settle the case out of court. Although this is a sad story indeed, the class teacher and others like her in the school will have to learn a lesson from it. They will now be more careful in handling the class attendance register. In the second incident, at Cameroun Road Barracks Primary School, Aba, an elementary two female teacher also ran into trouble as a result of the marking of the daily attendance register. A pupil whom she had marked present was knocked down by a tipper lorry at about 9.00 a.m. that morning as she was crossing the east end street of Ngwa road. The pupil died after a few hours at one of the general hospitals at Aba.

The teacher's statement that the child came to school and left the class after the roll-call without her knowledge was not enough excuse to pacify the parents who came to the school to beat both the head-teacher and in particular, the class teacher. The parents maintained that the teacher was careless to have not noticed the pupil he marked present leave the classroom, especially since the teacher claimed the pupil had complained to her that morning in class that she was sick. The head-teacher of the school reported the incident to the Local School Board who sent a team of investigators to the school to find out what actually happened. Meanwhile, the parents had dragged the class teacher and the head-teacher of the school to court for the school's negligence. However, the Nigerian Union of Teachers, Aba branch, waded into the matter to get the case settled out-of-court.

The two incidents aforementioned illustrate succinctly that the register is a very important record that should be carefully handled and kept by the teacher to whom it is entrusted for the marking of pupils' daily attendance.

We have devoted much time to discuss this attendance register because incompetency in its operation could result in a teacher's assault or litigation.

(iii) Logbook

The logbook contains all reports and important documents, and is mostly kept by the headmaster. It is an official record of events of significant importance which takes place when the school is in session. The logbook contains such information as periods of absence from duty by any member of staff, bad behaviour of any teacher, visits paid by important officials from the educational agencies like Ministry of Education, the results of the first public examination, records of deaths, and of important functions which take place in the school (for example: sports, etc.) and records of the proceedings of the School Board of Management.

The headmaster or principal has to keep this book under lock and key; the logbook should generally be regarded as confidential and should be so preserved. Aderounmu and Ehiamezor (1985) and Ofoegbu (2004) pointed out that the logbook tells the history of the school. All the important events that took place in the school during the years, right from its inception are recorded in the logbook.

Figure 5.3: Specimen of a Logbook

Date	Events Reported	Signature
6/4/1998	School football team won the Governor's Challenge Cup	
14/6/1998	Team of officials from the Ministry of Education, Science and Technology paid an advisory visit to the School	

Source: Sunmola, R.O. Ibid.

(iv) Staff Attendance Register

The teachers' time book shows how punctual and regular the teachers are. It is always kept in the school office where every teacher will see it, write his name, the time of his arrival and append signature; it also records the time the teacher leaves the school either before the school closes for the day or after. The headmaster checks the time book at the end of the day and enters his remarks. It serves to check on staff punctuality and regularity at work.

(v) Visitors Book

The visitors' book contains a record of visits of distinguished persons to the school. Such persons include officials from the Ministry of Education and the Inspectors; they enter their names, addresses and dates of visit in the book. In some cases, visitors summarise, in the form of brief notes appended, their impressions of the school at the time of their visits.

Table 5.4: Sample of Visit or Book

Date	Name of Visit or	Address	Purpose of	Visit	Remarks / Signature
4/9/98	Mr. Ade Adewale	Jamco Nigeria	Founders	day School	environment is good
12/9/98	Mr. Jide Salu	Ilorin West Local Govt. Area		Immunization against polio myelitis	All the pupils range from 0-5 were immunized
10/2/08	Alh. Abdul Gafar Alao	Chairman, KWSUBEP Ilorin		Pupils/teachers supervisor	Very satisfactory

Source: Sunmola, R.O. Ibid.

(vi) Lesson Note-books

The lesson notes are important. If the notes are badly prepared, the lesson is not likely to be well taught. Lesson notes are necessary, not because those who write and use them do not know their subjects, but because they are useful in guiding the teachers, particularly with regard to the coverage and delivery of the subject-matter.

In preparing notes of lessons, the following must be considered in relation to the subject: the aims or objectives, the contents, the class, the apparatus, the introduction, the procedure and evaluation.

(vii) Corporal Punishment Book

The corporal punishment book is kept to protect the child from unnecessary punishment from teachers and to exonerate teachers from unwarranted criticisms by parents or others as a result of fabricated reports by children of punishment given.

In the book, a record is kept of offences committed by pupils such as stealing, insubordination, fighting, and so on. The teacher who gives the punishment enters in the corporal punishment book the necessary details: the name of the offender, his or her age and class, the nature and date of the offence committed, and the nature and date of the punishment given. The teacher appends his or her signature, and the headmaster enters his remarks.

It should be noted that minor offences are not entered, and furthermore, no male teacher is allowed to give punishment to female students.

Corporal punishment is not commonly given; it is given only in exceptional cases and as a deterrent. It is usually administered when the offender is uncooperative and adamant. Corporal punishment tends to prevent students from committing any serious offence; it creates fear in the minds of pupils and reforms the offender because pupils generally do not like their names to go into such books.

Table 5.5: Sample of Punishment Book

Date	Pupil name	Sex	Age	Class offence	Offence	Punishment	By whom	Remarks / signature
1/3/2000	Abdulwahab Olowookere	M	9	Primary 4	Truancy	Six strokes of cane	Head master	
3/3/2000	Musibau Salam	M	11	Primary 6	Theft	Suspended for 1 week	Disciplinary committee	
3/3/2000	Omolu John	M	10	Primary 6				

Source: Sunmola, R.O. Ibid.

(viii) Teachers Weekly Diary

Every class teacher must keep a record of work showing what area of the syllabus in his subject he has covered. Such a record must be produced on demand.

Teachers records of work are helpful, particularly when a teacher is transferred and another has to takeover. The new teacher should know where to start and he can only know by going through the teacher's record of work.

It is most important and necessary that class teachers enter in the records weekly all the topics taught under each subject and submits to the head master who will go through them and check them before putting his signature and date.

(ix) Time-table

The time-table is regarded as the magic chart that regulates the pulse of the school; it decides when classes begin, when a break occurs and when a day's work is finished. The preparation of the school time-table is not an easy job. It is undertaken by only experienced teachers who are conversant with the curriculum development work in the school. Drawing up a good time-table calls for powers of imagination and a great deal of ingenuity.

There are general principles guiding the preparation of a time-table. The duration of each lesson should be based upon considerations of the age of the pupils and the nature of the subject-matter of the lesson. Young children, especially those in Primary I as well as in Primary II, are not capable of concentration for a very long time; therefore, their time-table must be made to suit their interest. The duration of a lesson should be about 20 minutes in the junior classes, and in the senior classes, 30 to 35 minutes.

The second principle relates to the number of lessons to be taught/treated/done in each subject a week; this should depend upon the relative importance attached to the subject.

The third principle concerns the distribution of lessons; this also depends upon the nature of the subject-matter of the lessons. There are some subjects (for example, mathematics and the languages) which make great demands on pupils and should be taught, as far as possible, in the

morning; subjects (for example, crafts and arts, writing, singing or music) can conveniently be taught in the afternoon.

The fourth principle deals with the succession of lessons, bringing about a change of lesson without loss of interest. The heavier and the lighter lessons should alternate. Two lessons involving a great deal of talking on the part of pupils should not follow each other and sedentary lessons, like silent reading and those involving physical activity, like craft, should alternate.

The time-table should give a summary of the various school activities (including the opening and closing ceremonies, registration and recreation) and the period devoted to each of these activities. The total number of hours in the week for these activities should be equal to the number of hours of the school session in the week.

The time-table has the following advantages:

1. leaves no room for waste of time and enables the teacher to come to school prepared for every lesson;
2. ensures that adequate time is given to the study of every subject;
3. promotes interest and attention and prevents, or at least reduces, both mental and physical strain.

It is a device, which tries to bring subjects, teachers, classes, rooms and school equipment together in the best possible permutations to achieve the educational aims of the school.

(x) Staff Record Book

The staff record book is a list of all staff members in a school with their biographical data. When a teacher joins the staff, his data (age, qualifications, experience, etc.) are recorded together with the date of assumption of duty, and when he resigns, the date and reason for his leaving is also recorded.

(xi) Stock Book

The book helps to keep a careful check on the supply and maintenance of equipment in the school. It is divided into two parts – one section for consumable items and the other for non-consumable items. The consumable stock covers the supply of articles such as chalk, blackboard, ruler, pens, dusters, chemicals etc which are constantly being used and have to be replaced when exhausted; the non-consumables are those things like furniture and durable items of equipment such as physical education equipment, buckets, bowls or basins, water stands, rediffusion box, tools, laboratory equipment, television sets, and so on.

The headmaster or principal makes use of this book when he wants to make a requisition for materials for the following year. It is essential that all equipment, books and other materials

bought for the school are entered in the stock record book with such details as date of purchase, quantity, type of article, date of issue and return.

(xii) Official Correspondence Files

Keeping official correspondence files is the responsibility of the headmaster or principal. He is directly in charge of the several files for all official correspondence concerned with the school. Such files contain official correspondence such as General Circulars from the Ministry of Education and letters and circulars from the School Management Board.

(xiii) Confidential Files

Confidential files are the files containing official correspondence meant to be kept secret and known only to the headmaster and the educational authorities. Such correspondence may include annual reports on teachers and evaluation of their performances, which are useful in determining promotion, awards, transfer and staff discipline.

Confidential reports must be handled with great care. There should be no prejudice or sentiments when writing reports on teachers. Headmasters must refrain from talking about these matters to anyone, not even their most trusted friends, since any leakage jeopardize both the security and the intent of such reports.

(xiv) Stock Cash-book

The cash book is necessary for every school. It should be kept by the headmaster who handles a lot of money in the course of the year and needs to record how the money comes in and how it is spent with receipts of articles bought preserved.

A cashbook will save the headmaster from difficulties that may arise through carelessness or otherwise. It will also give a clear picture of how the school is financed year-by-year.

Table 5.6: School Cashbook

<i>Income</i>	<i>Receipts</i>	<i>Date</i>	<i>Expenditure</i>	<i>Balance</i>	
N5.20	From Ministry of Education	2/2/76	N1.20	N4.00	—

Source: Sunmola, R.O. Ibid.

(xv) Inventory Book

This records the permanent and expendable equipment that have been issued to any staff or student from the stores and recorded in the ledger. The recipient of such goods usually signs for all the items.

(xvi) Cumulative Report Card

This is a continuous record or combination of records which contains comprehensive information about each pupil and which provides a summary of the pupils' career in the school. The cumulative record is confidential and should be kept in the filing cabinet in the office of the head-teacher and/or the school counsellor. The following information are required: date of admission, grades, family background and social activities. If a child goes on transfer to a school, his cumulative record can be sent to the new school, and this will help the new school to be abreast with up-to-date information about the child.

(xvii) Query Book

The query book is a record of queries sent to teaching and non-teaching staff. A school head can send queries to any member of staff:

WHO:

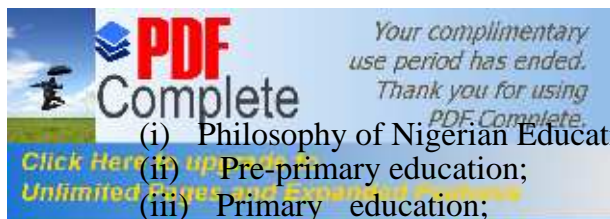
- (i) Goes late to classes;
- (ii) Does not attend morning assemblies regularly;
- (iii) Refuses to give assignments to students regularly;
- (iv) Refuses to carry out a duty assigned by the school authority;
- (v) Makes it habitual to leave his place of work before the close of the working day;
- (vi) Is rude to his superior officers (acts of insubordination);
- (vii) Does not keep necessary and important school records expected of them;
- (viii) Deviates from the teaching professional code of ethics; for example, inciting students and/or fellow staff against the College or government etc.

Copies of staff replies to such queries must be recorded in such query file. Every record query must have the following details:

- (i) date;
- (ii) name and rank of staff being queried ;
- (iii) nature of query;
- (iv) response to query by the concerned staff;
- (v) head-teacher's reaction to erring staff's response;
- (vi) further action taken by head-teacher;
- (vii) response from higher authority;
- (viii) final action taken on erring staff;
- (ix) name and signature of school heads.

(xviii) National Policy on Education Booklet

The national policy on education booklet is a precious document expected to be kept in a recognized school. It contains some vital information on the structure and policies of Nigeria's formal and non-formal education system. In general, the national policy on education booklet contains information on:



- (i) Philosophy of Nigerian Education;
- (ii) Pre-primary education;
- (iii) Primary education;
- (iv) Secondary education;
- (v) Higher education including professional education;
- (vi) Educational services;
- (vii) Administration and planning of education and financing of education.

The Federal Republic of Nigeria prepared the national policy on education booklet. As much as feasible this document should be made available to teachers in the school.

(xix) National Curricula on Different Subjects

The national curriculum for primary schools, junior secondary schools and for senior secondary schools book series have been prepared for use in schools by the Federal Ministry of Education. The books are prepared in volumes. A volume may combine two, three or more disciplines.

On each subject, the curriculum stipulated the philosophy and objectives of the subject, contents into each year of the primary school programme. The breakdown of the contents in each year of the course shows the following:

- (i) Topic;
- (ii) Performance objectives of the topic to be taught;
- (iii) Content to be taught;
- (iv) Activities to be discussed or carried out;
- (v) Facilities/equipment to use in teaching the topic;
- (vi) Assessment to be carried out after presenting the topic before the learners;
- (vii) Remarks/notes on the general presentation of topic and students reaction to the presentation.

The national curricula are very helpful to the subject teachers who are expected to breakdown subject syllabuses into scheme of work in termly, weekly, and daily basis.

(xx) Correspondence Files

A school must have updated and well kept correspondence files on:

- (i) Ministry of Education (MOE);
- (ii) State Universal Basic Education Board (SUBEB);
- (iii) Local Government Education Authority (LGEA);
- (iv) Zonal Inspectorate of Education (ZIE);
- (v) Parents Teachers Association (PTA);
- (vi) School Board of Governors (if any);
- (vii) School finances, Account and Auditing;
- (viii) Old Students Association;
- (ix) School Clubs and Societies;

- (x) School statistics;
- (xi) School Disciplinary Committee;
- (xii) Security in the School etc.

The contents of all correspondence files must be paged appropriately for easy references.

(xxi) School List

A school list is a document that contains the names of all the:

- (i) Teaching and Non-teaching Staff and
- (ii) Students in the School.

The names, sex, qualifications, local government and state of origin, subjects being taught, rank of and other duties assigned to each staff are included in the school list.

Similarly, information on students in the school list, arranged in vertical columns includes:

- (i) Admission number;
- (ii) Student's names, sex and religion;
- (iii) Class;
- (iv) Local Government and State of Origin;
- (v) Year of admission into the School.

The school list is of great importance, if properly prepared, to the parents in that children are not fully registered in the school can be quickly spotted out by the parents.

The public and the education authorities can pinpoint areas of need of the school in terms of need for classrooms, teaching staff and educational facilities.

(xxii) School Photo-Album

The history of the school can be written in form of photographs. The school head is expected to have photographs of events relating to staff, student, school surroundings and exhibitions taken during school festivals such as:

- (i) First year pupils first day at school;
- (ii) Inter-house athletics meeting;
- (iii) Competitions in sports and games;
- (iv) Literary and debating society activities;
- (v) Cultural displays;
- (vi) Meeting of clubs and societies;
- (vii) Religious group ceremonies;
- (viii) Environmental sanitation processes;
- (ix) Speech and prize-giving day ceremony.

(xxiii) Staff Responsibility List

The staff responsibility list shows, in clear terms, the primary and secondary assignments given to staff in the school. The teaching staff responsibility in the school includes that of the:

- (i) School head
- (ii) Vice school head (administration, academics and special duties)
- (iii) School guidance counsellor
- (iv) Class supervisor
- (v) Head of department
- (vi) Form master/mistress
- (vii) Class teacher/subject teacher
- (viii) Daily duty master/mistress
- (ix) Library master/mistress and assistant
- (x) Games master/mistress and assistant
- (xi) Coordinator of school clubs and societies
- (xii) Health master/mistress and assistant
- (xiii) Labour master
- (xiv) Staff patron/matron of school club and societies
- (xv) Staff Secretary

The non-teaching staff responsibility list shows the different responsibilities assigned to the non-teaching staff, such as:

- (i) Personnel assistants
- (ii) School bursar or finance clerk
- (iii) Library officer, assistant and attendant(s)
- (iv) Store keeper(s)
- (v) School driver(s)
- (vi) Typist(s)
- (vii) Messenger(s)
- (viii) Security guard(s)

The duties of these different staff responsibilities are updated to be spelt out in the scheduled duties of staff in the school. Every school head is expected to have the written duties scheduled to each staff position and committee.

(xxiv) History of the School

A school head is expected to keep a documented history of his/her school. The history of school contains the date of establishment, proprietors of the school, primary objectives for establishment of the school, record of the number of first set of pupils, students enrolment showing the number of male and female students, the number of the pioneering teaching and non-teaching staff, name and qualifications of the pioneering school head.

(xxv) Disciplinary Committee File

Disciplinary action is an important aspect of school life. A disciplinary committee made up of some teaching staff is established to consider cases of students' misbehaviour in the school, the extent to which a student's misbehaviour affects the image of the school, the decision taken on the possible ways of correcting the erring student and recommending how to prevent future reoccurrence of such erring behaviour.

The records of the proceedings or minutes of the disciplinary committee are expected to be kept neatly and securely in a file for future reference or recall if the need arises.

(xxvi) Staff Movement Book

During a working day, it may be necessary for a staff, teaching or non-teaching, to seek permission of the school head-teacher to move out of the school premises. This must be noted and recorded in a book specially designed for such event.

The staff movement book is a record that shows the whereabouts of a staff who reports in for school for duty, but for good reasons, has to move out of the school. Any staff may go out of the school during school hours with the head-teacher's permission.

The teacher must record in the staff movement book the following information arranged in vertical columns: date, name of staff, time of departure from school, reasons for moving out of school and destination, time of arrival (back to school) in the day, signature of staff, head-teacher's remarks and signature.

Staff movement book helps the school to have a knowledge of the whereabouts of a staff, recall the staff if urgently needed by inspector or visitor to the school, know where to look for or locate such staff in case of a suspected accident or mishap.

(xxvii) Transfer Certificate

A transfer certificate is a format obtained by a pupil leaving one school to another from the original school, showing that such a student is not, in any way, indebted to the original school. A transfer certificate has the feature arranged in horizontal columns.

Figure: 5.1: TRANSFER CERTIFICATE STATE MINISTRY OF EDUCATION
ORIGINAL

1. Name of pupil (in full) ..
2. Name of parent .
3. Native of
4. Year of birth (approximately) ...
5. Number on admission register ..
6. Name and address of the school issuing the transfer certificate ...
7. Standard last passed and date
8. Final position in class
9. Standard at present time
10. Date of late attendances at above school ..
11. Number of attendances made at this school this year ...
12. Number of attendances made at any other school this year ..
13. Any fee owing? If so, state the amount .
14. Conduct (if unsatisfactory, give particulars) .
15. Causes of leaving ..
16. Give list of former schools attended (with dates) as will be required for the pupil's school leaving certificate:

Dated this day of .. 19

**Signature (Head
Teacher)**

(xxviii) Sports and Games Activities and Facilities File

The curriculum of sports and games in primary schools is an important aspect of school life. A school is expected to establish and maintain facilities for sports and games in the school.

Some games and sporting activities common in schools are football, handball, table tennis, volleyball, basketball, athletics etc. Some schools have indoor games like: ludo, whot, scrabble, snake and ladder, computer games etc.

A school must have a record of names of games and sporting activities, facilities for games and sport in the school inter-class and inter-house competition, inter-school competition. Students who represent the classes, house and the school in different games and sporting competition, awards given to school and individual student in the field of games.

Individual student achievement in games and sports, students that represent the local government, states or the nation in different sporting activities and games. Competitions and audience's misbehaviours during competitions, newspaper cuttings, journals, and magazines on sports and games especially those relevant to the school games and sports.

(xxix) Annual Leave Roster

Teaching and non-teaching staff are entitled to annual leaves, the number of days entitlement depends on a staff salary scale, head-teachers are advised never to leave the school empty, devoid of all services. The administrative staffs have to update their school records. Head teachers therefore need to make sure that a time-table or roster is made for teaching and non-teaching staff going on annual leave. The annual leave for a staff may be spread through two or three end-of-term holidays. No staff is permitted to go on annual leave during learning activities. A file is opened for such staff annual leave roster for record purposes. Teaching and non-teaching staff who are not on leave during each end-of-term holiday is assigned some job in the school by the head-teacher. An annual leave roster contains: the names of the staff, their sex and subjects they teach (if teaching staff) or duty in the school (if non-teaching), period during which the annual leaves are spread, expected dates of resumption from such annual leaves.

(xxx) Teachers Annual Evaluation Reports

At the end of every year, an evaluation report is written on every teaching and non-teaching staff to determine the suitability of the staff for promotion purposes, if the staff is to be allowed to remain in employment, if he/she is on probation, or if the staff is to be invited for disciplinary measures, in case he/she is found wanting by his/her school.

A. PERSONAL DATA

The personal data of the teacher section requires the teacher's following details, namely: name, registration number, open file number assigned by the commission, age, home place, local government and state of origin, religion and denomination (where applicable), academic and

professional qualifications with dates, dates of appointment and years of experience, present substantive post, present salary, grade level and incremental dates.

Also, the following details should be included:

- (i) Courses, seminars, workshops attended;
- (ii) Subjects being taught, number of periods of teaching and duties performed during period of report;
- (iii) Days of absence from school that may be due to sickness, maternity leave, sick leave or without permission;
- (iv) Signature and date and the head-teacher's signature and date.

B. TEACHER'S ATTRIBUTES SECTIONS

In this section, there are eight major qualities under consideration, namely:

- (i) Classroom Teaching
- (ii) Teacher's efficiency and effectiveness
- (iii) Interest and attitude to work
- (iv) Sense of responsibility
- (v) Human relationship
- (vi) Executive and leadership quality traits
- (vii) Professional alertness and growth, and
- (viii) Personality of teacher.

(xxxi) State School Calendar

A state school calendar is the time-table of opening and closing periods for the three terms of the school academic session.

At present, the school calendar year runs from September of one year to July of the following year. A school calendar is divided into three terms: first, second and third terms. The first term of a school session is usually for 13 weeks; second term is made up of 13 weeks and third term about 14 weeks. The Ministry of Education sends out annually a state school calendar for school session. The calendar is usually the form below: 1st term September December 13 weeks.

End of first term and holiday period, December January 3 weeks

2nd term January April 13 weeks.

End of second term and holiday period, April April 3 weeks

3rd term April July;

End of third term and holiday period July September 6 weeks.

The calendar may vary depending on state policy on school holidays and some other national events.

Self assessment Exercise 5.2

Briefly describe the following school records:

- (a) Admission and Withdrawal register
- (b) Register of attendance
- (c) Log book
- (d) Corporal punishment book
- (e) School time table

3.3 Methods of Storing and Retrieving Records in Schools

There are two methods of storing information Manual and Electronic:

Manual storage system according to Shehu (2007) involves keeping school records in written form in the following formats: (a) Files (b) Shelves/Cupboards (c) Cabinets/Drawers

Information on students and other school personnel such as teachers and non-teaching staff, school facilities and programmes can be written or graphically presented on paper such as books, reports, ledgers etc and kept in files on shelves or locked cabinets in the office.

Electronic Storage System according to Alabi (2008) involves the use of electronic devices for storing school data either in written or graphic form. They have very large memories for storing information. Such devices include: (i) Handsets (ii) Computers (Desktops, Laptops, notebooks, Palmtops etc) (iii) Microfilms.

Handsets can be programmed to store important information on school personnel and can be set to reminder. The new Blackberry handsets are designed to help executives plan.

Computer hard disc has very large memory for storing data. In addition, removable media such as compact disk (CD) and flash drives can be used as backups to store relevant data for future use. Microfilms-important events and school activities can be recorded into tapes/films and stored for future viewing/projection. (Alabi, 2008).

Retrieval could also be manual or electronic.

Manually stored data are retrieved from files, cabinets and shelves by going through the papers filed either alphabetically or numerically.

Electronically stored data are retrieved by logging into the system to open the documents. data are then viewed/ accessed, used and saved back or deleted as required. The information could be printed out on paper. Recorded tapes can be viewed or projected using appropriate projector. Alabi (2008) pointed out that the use of computers and other electronic devices makes

school data better stored and processed into information that can be retrieved to assist the school in taking effective decisions. Graphical representations are also more accurately and easily programmed into the computer.

Self Assessment Exercise 5.3

List and explain the methods of storing and retrieving information about a school.

3.4 Problems associated with Record keeping in Schools

- (1) Many people are careless with data. Receipts and other documents are carelessly dumped under tables.
- (2) Many people are not computer literate and so avoid the use of computers.
- (3) Situations where the school personnel are aware of this modern facilities, the schools are not empowered to be able to purchase them.
- (4) There is not yet massive training of heads of schools and teachers in the use of computers. A knowledge that is necessary for storing and retrieving data.
- (5) Faulty cataloguing leads to poor storage, this makes retrieval difficult
- (6) Poor electricity provision has made the use of computers an expensive one. This is because in the absence of electricity, generators that are more expensive to operate have to be used power the computers.

Self Assessment Exercise 5.4

What are the problems associated with Record keeping?

3.5 Suggestion for improved Record keeping

- (a) Head of schools and teachers should be trained and retrained in the modern system of collection, analysis and storage. This will surely prevent poor cataloguing.
- (b) Computers need to be provided for use in the schools. For effective use the head teacher and teachers should be trained in the use of computers for school record keeping.
- (c) There is need for improvement in electricity output. There is also need for increase in subvention so that schools can afford to provide the use of generators

4.0 CONCLUSION

Law requires some of the records kept in the school, while others are not, but all the same, they are helpful if kept appropriately. These records give a lot of information about the school and will enable administrators to take decisions. Record keeping is essential in management of human and material resources. It promotes accountability, appropriate decision making, effectiveness and efficiency.

5.0 SUMMARY

In this Unit, we have learnt the classification and qualities of school records. Justification for keeping school records, methods of storing and retrieving, description, of school records was extensively discussed. Of noteworthy in this Unit, are issues on problems associated with record keeping and suggestions for improved record keeping in schools.

6.0 TUTOR MARKED ASSIGNMENT

List at least five justifications for keeping school records? Describe any four school records.

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