

## STATUTE 25 IN PERSPECTIVE

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### ABSTRACT

Law is an inescapable context within which we all live. This is the position whether we live in a Nation like Ghana or in an academic community like a University. So it comes about that the University of Science and Technology, Kumasi, apart from being enveloped by general public laws of Ghana, has its own laws, rules and regulations. One of such laws is Statute 25. The importance of this Statute as far as discipline in the University is concerned can hardly be doubted. But it does not appear that there is maximum comprehension of the express provisions, implications and ramifications of this law among the members and staff of the University commensurate with its importance. This paper therefore attempts to put this particular statute into perspective, for the elucidation and edification of all concerned. The aim in doing this is to press home the point that it is eminently desirable that we discharge our respective duties properly, competently and efficiently at all times.

### KEYWORDS

misconduct, Disciplinary Board, Penalty, Offender, Exculpate

### INTRODUCTION

That the University of Science and Technology, Kumasi, which is made up of Junior/Senior members and Junior/Senior Staff is a legal entity is very well known. Equally well-known is the fact that those who constitute the University have each a duty imposed upon him. What is probably not so well known is the other important fact that a failure to perform at all any duty so imposed or performing it in an improper manner may attract a sanction. "Proper manner" in this context connotes competence and/or efficiency. Thus, it is not simply a

failure to perform an imposed duty that may attract a sanction; a duty performed inefficiently or incompetently may equally attract a sanction.<sup>1</sup> The sanction may be as severe as an outright dismissal from, or complete severance of one's links with the University. Or it may be as mild as a gentle rebuke or warning. Between these two extremes lie categories of punishment that may be inflicted on an erring member or staff in appropriate situations by a designated authority.

The aim of this paper is to draw attention to these sanctions. In the process, it will be argued that apart from being a legal entity or statutory creature, this University is also an academic society. As a result, it cannot exist without law, rules and regulations. And it will be submitted that it is to instil order otherwise called discipline in our academic society that Statute 25 and Rules made thereunder are enacted.

### DISCIPLINE UNDER STATUTE 25

By Section 7(1) of the University of Science and Technology Kumasi, Act, 1961 (Act 80)<sup>2</sup> the governing body of the University is the University Council. The University Council may under Section 15(1) of the Act enact statutes for carrying into effect the general provisions of the Act, and in particular for:

*"regulating the appointment, conditions of service, termination of appointment, retirement benefits of the staff of the University, and for determining the persons who form the academic staff"*.

Pursuant to Section 15 of the Act, over thirty statutes have been enacted by the University Council since the coming into effect of the Act in 1961. Some of these statutes deal with University property,<sup>3</sup> the Vice-Chancellor,<sup>4</sup> the Registrar,<sup>5</sup> the composition, Functions Committees and Meetings of the Academic Board,<sup>6</sup> the Structure of Faculties, Departments and Institutes,<sup>7</sup> Welfare Service Board,<sup>8</sup> Examinations,<sup>9</sup> the Halls of Residence,<sup>10</sup> and so on. Statute 25 which deals with discipline within the University, deserves special study.

<sup>1</sup> For instance, a Lecturer who does not deliver lectures to his students will be as guilty as another Lecturer who delivers lectures that are incomprehensible to his students. Again a driver who failed to report for duty without a justifiable excuse on a particular working day is liable to be disciplined just as another driver who duly reports for duty but drives without due care and attention and involves a University vehicle in an accident thereby.

<sup>2</sup> Unless otherwise stated "ACT" in this paper means Act 80.

3	Statute 3	9	Statute 28
4	Statute 5		
5	Statute 7		
6	Statute 12, 13, 14, and 15		
7	Statute 16		
8	Statute 18		

## VICE-CHANCELLOR AS THE CHIEF DISCIPLINARY OFFICER

Within the University, and in accordance with rules formulated by the University Council, the Vice-Chancellor is by virtue of the provisions of Statute 25 responsible for discipline. Thus any misconduct on the part of any member or staff concerns the Vice-Chancellor. The Vice-Chancellor may in the discharge of his responsibility for discipline delegate any part of his authority to any body or persons as to him, the Vice-Chancellor, shall seem appropriate. This means that in the exercise of his powers as the Chief Disciplinary Officer, the Vice-Chancellor has a wide discretion, and may authorise others to act for and on his behalf. Even so, the Vice-Chancellor is precluded from delegating his authority in respect of certain penalties described as "major penalties". Such penalties can properly be imposed only by the Vice-Chancellor and no one else. Examples are: Dismissal, Termination of Appointment, Suspension for a stated period without pay, Reduction in Rank and Grade, Deferment of Increment, Stoppage of increment, Forfeiture of pay for stated period and Rustication. Withholding of increment, Reprimand and warning which are designated as minor penalties may very well be delegated by the Vice-Chancellor. It must be apparent that these penalties reflect the degree, seriousness or scale of the misconduct called into question or sought to be sanctioned.

In view of the fact that every member or staff of this University by virtue of his employment or admission knows the duties he is required to perform, or his obligations, it is considered unnecessary and indeed superfluous to attempt a particularisation of such functions here. Suffice it to say therefore that the consequence of a failure to perform one's duties or performing them improperly are the matters that are of moment to us in this paper. Thus, a staff who is dismissed for instance loses all entitlement; but one whose appointment is terminated may receive all or part of his entitlement. Yet the practical result, in either situation, is that his connection with the University is severed. The pay of a member or staff may be forfeited for a stated period, his increment may also be deferred or stopped depending upon the nature and circumstances of the misconduct in issue. Increment withheld cannot be for an indefinite period. It may be restored and in that case, it is considered, like a warning or reprimand, to be a minor penalty. A junior member, that is, a student, who is rusticated loses academic benefit for a period. This is a major penalty.

Any person whether a member or staff affected by any decision of the Vice-Chancellor or the person to whom or body to which the Vice-Chancellor has delegated his authority to punish has the right of appeal as prescribed by rules made under Statute 25.<sup>11</sup>

## RULES MADE UNDER STATUTE 25

Rules made under Statute 25 may be found in Schedule "F" annexed to the Statutes. These rules are referred to as the Disciplinary Rules. Except as otherwise provided the rules apply to all Senior and Junior members as well as all senior and junior staff of the University. Particular types of misconduct which may be punished under statute 25 are set out in Rules 3 and 4 of Schedule "F" to which attention will be drawn presently. But before doing so it is important to emphasise that Rule 2 of Schedule "F" is of such general import that its effect is not limited in any way by the provisions of Rules 3 and 4.

Says Rule 2:

*"Any act done without reasonable excuse by a person to whom these Rules apply which amounts to a failure to perform in a proper manner any duty imposed on him as such, or which contravenes any regulation, instruction or directive relating to employees and/or Junior members of the University, or which is otherwise prejudicial to the efficient functioning of the University, or tends to bring the University into disrepute shall constitute a misconduct; and the setting forth in Rules 3 and 4 of particular types of misconduct shall not be taken to affect the generality of this Rule."*

Quite clearly it can be seen that Rule 2 of Schedule "F" is so embracing that it deserves to be digested somewhat. In plain language the Rule is that with the exception of the Vice-Chancellor (and possibly the Pro-Vice-Chancellor) any Senior/Junior member or any Senior/Junior staff of this University who, without reasonable excuse, does any act:

- (a) which amounts to a failure to perform in a proper manner any duty imposed on him/her as such Senior/Junior member or such Senior/Junior staff; or
  - (b) which contravenes any regulation, instruction or directive relating to him/her; or
  - (c) which is otherwise prejudicial to the efficient functioning of the University; or
  - (d) which tends to bring the University into disrepute.
- shall be guilty of misconduct.

Thus, not only is any person falling under any of the categories specified bound to perform his duty simpliciter, he is also bound to perform it in a proper manner; and one is not only enjoined to observe regulations, directives, and/or instructions; one is also prohibited from contravening any. Above all, no act of a member or staff should in any way or under any circumstance prejudice the University, or expose it to contempt, hatred or ridicule. Indeed, whoever ignores the provisions of Rule 2 of Schedule "F" does so at his/her own peril. This is because conduct that may affect the efficient functioning of the University, for instance, can better be imagined than described. To attend a lecture late may amount to such a conduct. Similarly to fail to mark

10 Statute 29

11 See Schedule "F" of Statute 25

examination scripts on time may place an examiner in peril in this regard.

Now, particular types of misconduct set out in Rule 3 are:

- (a) to be absent from duty without leave or reasonable excuse.
- (b) to be insubordinate;
- (c) to use, without the consent of the appropriate Authority, any property or facilities provided for the purpose of the University for some purposes not connected with work of the University and/or within his scope of responsibilities.
- (d) to engage in any activity which is likely to bring the University into disrepute.
- (e) to engage in any gainful occupation outside the University without the consent of the Vice-Chancellor.

These types of misconduct are so clear in their meaning that an attempt to explain them further will be superfluous. Indeed, any person who is privileged to belong to this University can not pretend to be ignorant of how the reputation of this our academic society can be destroyed by acts which are *infra dignitatem*.

Rule 4 of Schedule "F" concerns students of the University. It provides that it shall be a misconduct for a Junior member of the University:

- (a) to be absent from the campus, without permission or reasonable excuse;
- (b) to be absent from lectures and other prescribed assignments without permission or reasonable excuse;
- (c) to be insubordinate, and
- (d) to indulge in any anti-social activities while in residence or outside the campus which tend to bring the University into disrepute.

The clarity of these prescriptions with the possible exception of (d) renders any comment thereon unnecessary and uncalled for. Applying objective rather than subjective criteria it should not be difficult to discern what activities are anti-social. By parity of the same reasoning a very high standard of behaviour is expected of every member or staff of this University and whosoever falls below this expectation whether inside or outside the University may be sanctioned by a reprimand or something more.

## DISCIPLINARY PROCEEDINGS

Any of the penalties specified under statute 25(c) may in appropriate situations, be imposed for breaches of any of the provisions of Rules 2, 3 and 4 of Schedule "F" in a disciplinary proceedings. Disciplinary proceedings involving imposition of minor penalties are required to be conducted summarily. Summary disciplinary proceedings are informal modes of finding and punishing misconduct. Where, however, in the opinion of the Vice-Chancellor a major penalty should be imposed in any disciplinary proceedings he shall appoint official(s) within the University above the rank of the person to be disciplined

to formally conduct an enquiry into the charges and make appropriate recommendations to him:

- (a) in the case of Junior Staff, the Vice-Chancellor shall appoint an Adhoc Committee on which a representative of the Junior Staff Association shall serve;
- (b) in the case of Senior Staff, he shall appoint an Adhoc Committee on which a representative of the Senior Staff Association shall serve; and
- (c) where the issue involves a senior member, the Vice-Chancellor is enjoined to refer the matter to the Disciplinary Board to conduct an enquiry into the charges and make appropriate recommendations to him.

Rule 10 of Schedule "F" expressly excludes Junior Members (students) from the purview of the provisions of Rule 7 which cover senior members and staff of whatever status. But under Rule 12, all major penalties imposed on Junior members, for example, "rustication" shall be subject to ratification by the Vice-Chancellor.

## DISCIPLINARY BOARD

The Disciplinary Board established under Rule 8 of Schedule "F" is composed of the Pro-Vice-Chancellor as Chairman and four members elected by the Council of Convocation two of whom shall be of the rank of Head of Department. The Registrar serves as the Secretary and the quorum for transaction of business is three. The Board may, at its discretion invite any other person to attend its meeting.

In all cases where a disciplinary enquiry is to be conducted formally, rather than summarily, it is mandatorily required that the person concerned be served with written charges, and given opportunity to state in writing the grounds upon which he proposes to exculpate himself. The person concerned may also be accompanied (if he so desires) to the inquiry by a friend, (usually a Lawyer). Further, he may call witnesses to testify on his behalf and to hear the evidence of any witnesses who testify against him. If within the time given no reply is received and/or no grounds are stated by the person concerned the Disciplinary Board may nonetheless proceed. Even this, notwithstanding the fact that the person concerned happens to be outside the country at the material time.

It is the humble opinion of the present writer that the use of the words "offender" and "against" and indeed, "exculpate" in the provisions above referred to is not a happy one. The words at first blush would seem to suggest that the Disciplinary Board does not follow the accusatorial, but rather operates under the inquisitorial, system of justice in its proceedings. This is because when the Board sits the person concerned is deemed *prima facie* guilty the moment he appears (or does not appear). Otherwise, he/she will not be described as an "offender" who must be proceed "against" unless he/she can "exculpate" himself/herself. It is respectfully submitted that a need exists for a second look to be taken at these three words in the statute with a view to amending them. This submission does not mean to condemn these

provisions as aberrations. For, however much one would have wished to read different words in their places in the statute, a parallel to this semi-inquisitorial brand of inquiry can be found in our Ghanaian legal system, which to all intents and purposes is accusatorial.

The parallelism referred to is the Corrupt Practices (Prevention) Act 1964 (Act 230). Under this particular Act, an adverse finding against any Public Officer of a certain standing by a Commission of Inquiry may be used by the Attorney-General to ground a charge against the person. This constitutes a *prima facie* case of guilt of the person concerned. The person does not plead and the prosecution does not lead evidence. The onus is straight away shifted upon him to satisfy the High Court why he should not be punished according to law for his corrupt practices as found by the Commission of Enquiry.<sup>12</sup>

Similarly, under our Statute 25 of this University a person who appears before the Disciplinary Board does not plead (guilty or not guilty) and there is no prosecutor. The person concerned described as the "offender" is required to "exculpate" himself or be punished.

The Disciplinary Board sits after a case has been referred to it by the Vice-chancellor. The Vice-Chancellor usually makes the reference after an adhoc committee has investigated the matter. So, before the person concerned is served with his charges to appear before the Disciplinary Board, adverse findings necessarily must first have been made against him. Hence the presumption of guilt against him and the requirement that he must exculpate himself or be punished according to Statute 25. In this wise Statute 25 and Rules made thereunder are an admixture of accusatorial and inquisitorial system of justice similar to Act 230.<sup>13</sup>

## CONCLUSION

The central theme of our discussion has been that a failure by a member or staff of this University to perform his duty at all, or improper performance or any duty imposed on him by reason of his employment or admission constitutes a misconduct; and depending upon the circumstances of the particular case, may attract a sanction in the form of a minor or major penalty. A penalty is not a thing relished by any one; and often the person administering it may even detest it. For order, discipline and happiness to prevail within this University, it has been suggested that the provisions of Statute 25 and the Rules made thereunder must be faithfully observed by all. In this regard, Rules 2, 3 and 4 of the Schedule "F" are crucial. Due observance of these rules will make the invidious application of disciplinary sanctions by the designated authority against members and staff, often with their concomitant unpleasantness for the recipients, wholly unnecessary. For, it is in such a civilised society as our University Community that to all intents and purposes the

Benthamite<sup>14</sup> aphorism that all punishment is mischief, and that punishment in itself is evil must have a meaning. Nothing but pleasure without pain will be our lot if we keep faith with the provisions of Statute 25.

12 See Republic v. Asafu-Adjaye (No. 2) (1968) GLR 567

13 P. K. Twumasi, Criminal Law in Ghana, pp. 515-516.

14 Bentham Jerome: Principles of Morals and Legislation, (1562-1925), Chapter 3, p. 39.