LEX AMICUS

Friends of the Law

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GREETINGS FROM THE OFFICE OF THE LEGAL ADVISOR, UiTM

Musrifah Sapardi
Chief Editor

Dear Readers,

We are excited to present our **Lex Amicus** bulletin.

The Office of the Legal Advisor/ *Pejabat Penasihat Undang-Undang* (PPUU) was established in 1997. It was manned single-handedly by Professor Dr Shad Saleem Faruqi (now Professor Emeritus Datuk Dr. Shad). Soon after, he was assisted by an Executive Officer to assist him with clerical matters. After more than a decade, the PPUU has grown many fold, not just in terms of manpower but also responsibilities. Today, it has two deputies and five legal officers to attend to legal matters ranging from the amendment of UiTM Act 1976, development projects, breach of scholarship contracts, disciplinary issues, parliamentary affairs, advisory opinions and many more.

It is our wish to inform and share with our readers the latest developments in PPUU. Among others, recently the PPUU organized a "Seminar Pengendalian Tatatertib Pelajar untuk Kes-Kes Akademik di Fakulti" at Anjung Sri Budiman, UiTM where the participants from all faculties at UiTM were able to hear about the importance of Act 174 and also to interact with the Legal Advisor and the Officers in charge on matters relating to student disciplinary issues.

In this issue, our contributors are able to contribute some articles which we feel are relevant to all readers on areas such as "Staff Subject to Criminal Proceeding", "Scholarship Contracts and the laws relating to them", "Plagiarisms", "Small Claims Courts", and "Student Discipline".

We truly hope, that **Lex Amicus** which means 'Friends of the Law' would be our readers' friend, where they could browse through it and learn from it.

Happy Reading!

CONTRACTS (AMENDMENT) ACT 1976 [ACT A329]: SOME LEGAL ISSUES ON SCHOLARSHIP CONTRACTS

by Shahrin bin Nordin[1]

INTRODUCTION

When it comes to scholarship contracts, not many relevant stakeholders know the existence of the Contracts (Amendment) Act 1976 [Act A329] (hereinafter referred to as "the Amending Act"). The Amending Act relates very closely with universities and higher learning institution. It is a specific law governing scholarship contracts albeit it is concise and short in nature. It came into force on 27th February 1976 as an Amending Act to the Contracts Act 1976 [Act 136]. Despite its standing as an amending act, it appears separately as an Appendix to its parent law, without any clear justification.

Since its introduction in 1976, there is not much writing on the Amending Act which could shed light on its workings. Towards enriching the knowledge on this very point, this write-up will render some aid on the workability of the Amending Act.

1 Legal Officer of UiTM.

APPLICATION OF THE ACT

The Amending Act has been enacted by virtue (or vice?) of the High Court case of *Government of Malaysia v Gurcharan Singh & Ors*[2], which held that the scholarship contract entered into by the First Defendant was void since the latter was still an infant at the material time.

Due to significant legal setback that could have befallen onto other government scholarship contracts, the Amending Act was introduced to cover the lacunae disclosed by *Gurcharan*'s case.

Despite generality of the definition of the term "scholarship agreement", its usage has been coupled with the word "appropriate authority" in a few sections of the Amending Act. Upon reading the Amending Act as a whole, it can be observed that the Amending Act is intended to govern "scholarship agreements"[3] given by the following bodies

2 (1971) 1 MLJ 211 (HC) and judgment by Chang Min Tat, J.

3 "Scholarship agreement" has been defined under section 2 of the Amending Act to mean :-

"...any contract or agreement between an appropriate authority and any person ... with respect to, any scholarship, award, bursary, loan, sponsorship or appointment to a course of study, the provision of leave with or without pay, or any other facility,

only[4], namely:

(a) Federal Government,
(b) State Government,
(c) statutory authority as established by any written law[5], and
(d) any institution or body declared as "approved educational institution" by the Minister of Education pursuant to section 3 of the Amending Act[6].

Hence, it can be said here that the Amending Act does not apply to scholarship agreements given out by the private sector, unless the said body has secured the label of "approved educational institution" as gazetted by the Minister of Education[7].

There is also the issue whether the Amending Act applies to public universities? If the answer is in the affirmative, then under what category do public universities fall? As far as public universities are concerned, the same may fall under the category of "approved educational institution". However, as at to date no declaratory gazette has been found to be issued conferring such status on public universities. Despite that, majority of public universities may also be applying this Amending Act pursuant to the category of "statutory authority", as most of them are indeed established pursuant to written laws[8].

With the introduction of the Amending Act, the ruling from the case of *Gurcharan*[9] is no longer applicable to scholarship agreements governed by the Amending Act.

DEVIATING FROM COMMON LEGAL PRINCIPLES

The Amending Act has accorded special privileges to scholarship agreements, in which situation some of the standard principles of law have been done away with.

One of such privileges is that scholarship agreement may stand as valid despite lack or no consideration at all. The general rule is that a contract without consideration is void[10]. This kind of situation normally happens in a scholarship agreement between the student and public university, when in actual fact the financier is a third party who is a non-party to the said agreement.

This instance is visualized in the case of *University of Malaya v. Lee Ming Chong*[11], whereby the scholar raised an argument on lack of consideration on the part of University of Malaya since the scholarship provider was the Canadian Government. In dealing with this very issue, Wan Hamzah SCJ asserted at page 152 that:-

> *"Even if there was no consideration on the part of the University, this cannot be a valid defence in view of section 4 of the Contracts (Amendment) Act 1976, which provides that notwithstanding anything to the contrary contained in the Contracts Act no scholarship agreement shall be invalidated on the ground that it lacks consideration."*

The other privilege accorded to scholarship agreement is that there is no minimum age limit for any party entering into a scholarship agreement[12]. This is in contrast with the basic rule under section 11 of the Contracts Act 1950 which prescribes that a party is competent to contract if he attains the age of majority, and section 2 of the Age of Majority Act 1971 stated that age of majority stands at 18 years old.

By virtue of this privilege, a minor can now sign up for any scholarship agreement without any legal hassle. As many of the scholars signing up scholarship agreements even before attaining age of 18, the privilege seems to be very much facilitative not only to the minor scholars but also to any governmental body and public university. Scholarship disbursements may then be done without any worry.

The third privilege provided by the Amending Act is the non-requirement to be bound by the laws on moneylenders[13]. It is understood that moneylending requirements under the Moneylenders Act 1951 is quite strict especially with its licensing regime.[14]. Doing away with such moneylending requirements would ease the scholarship process and procedure.

The other offering under the Amending Act is that scholarship authority may not be required to prove damages in order to demand compensation for breach

whether granted directly by the appropriate authority, or by any other person or body, or by any government outside Malaysia, for the purpose of education or learning of any description."

4 Section 2 of the Amending Act on the definition of "appropriate authority".

5 Section 2 of the Amending Act on the definition of "statutory authority".

6 Section 2 of the Amending Act on the definition of "approved educational institution".

7 Minister of Education must declare in the gazette that such body is an "approved educational institution" pursuant to section 3 of the Amending Act.

8 All public universities in Malaysia are either established under Universities and University Colleges Act 1971 [Act 30], University of Malaya Act 1961 [Act 682] or Universiti Teknologi MARA Act 1976 [Act 173]. Only International Islamic University of Malaysia is established pursuant to the Companies Act 1965. Note also the provisions of the Statutory Bodies (Discipline and Surcharge) Act 2000, definition of "statutory body" in section 4.

9 (1971) 1 MLJ 211 (HC).

10 Section 26 of the Contracts Act 1950.

11 [1986] 2 MLJ 148 (HC).

12 Section 4(a) of the Amending Act.

13 The main law on moneylenders in force at the moment is the Moneylenders Act 1951 [Act 400].

14 Licensing regime under section 9(1) of the Moneylenders Act 1951 requires that top officers of a moneylender to be fit and proper person, not involved in wound-up or dissolved moneylending body, not having bad character and never been convicted with any fraud or dishonesty case.

of contract. The general rule is that a party complaining of breach against the other party is entitled to receive such sum as compensation provided that the actual damages or reasonable compensation is proven. This principle has been established by *Hadley v Baxendale*[15] which is later followed by two Federal Court cases, namely *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy*[16] and *Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd*[17].

It is without doubt that the above Federal Court cases are decided based on the authority of section 75 of the Contracts Act 1950, which is the general provision on contract law. The Amending Act, being a specific law on scholarship agreements has provided a related provision in its section 5(a)[18]. Applying the principle of *generalia specialibus non derogant*, section 5(a) of the Amending Act shall take prevalence over section 75 of the Contracts Act 1950. It was also made clear by the elaborative words of Wan Yahya, FCJ, namely:-

> *"Where there are two conflicting provisions of the Legislature and the question arises which of the two should govern the case, it is the Court's duty to see the terms of which provisions are more appropriate in the circumstance of the case. The principle of linguistic cannons of construction on the use of legal maxim may provide the answer to our case. The relevant maxim in the present appeal is generalia specialibus non derogant - general statements or provisions do not derogate from special statements or provisions, or conversely, specialia derogant generalibus - special provisions derogate from general."*[19]

Under section 5(a) of the Amending Act, it is observed that upon the occurrence of a breach, scholarship authority is entitled to such damages or compensation if and when important elements existed therein, namely:-

(a) There is a named sum in the agreement (if no named sum, then section 5(b) applies);
(b) Joint and several liability of scholar and surety;
(c) Entitlement of the scholarship authority on such named sum;
(d) Actual damage or loss is immaterial; and
(e) Such named sum shall be claimable without deduction[20] even after considering period of bond served.

In the event no sum is being named in the agreement, then section 5(b) of the Amending Act shall apply, whereby amount of damages or compensation shall be taken based on the followings:-

(a) actual amount expended by the scholarship authority under the scholarship agreement; and
(b) such sum expended for engaging new person in place of the breaching scholar.

COURT JURISDICTION

Another issue that is worthy of discussion is on the court jurisdiction. Section 7 of the Amending Act has undoubtedly outlined that it is the Sessions Court (for Peninsular Malaysia) and Magistrates Court (for Sabah and Sarawak) that have jurisdiction to decide on cases pertaining to scholarship contracts. This means that, no matter how much the value of the subject matter of such scholarship case, the jurisdiction still lies at Sessions Court (for Peninsular Malaysia) and Magistrates Court (for Sabah and Sarawak).

Nevertheless, parties are not prevented to opt for High Court or Magistrates Court (for Peninsular Malaysia) as both of them still have jurisdiction by virtue of Courts of Judicature Act 1964 [Act 91] and Subordinate Courts Act 1948 [Act 92].

Section 23(1) of the Courts of Judicature Act 1964 provides that the jurisdiction of the High Court covers all civil proceedings. This would mean High Court can hear cases with unlimited value of the subject matter.

On the other hand, section 90 of the Subordinate Courts Act 1964 stipulates that Magistrates Court do have jurisdiction to try cases with value of subject matter up to RM100,000.00.

The question is how to harmonise between the three conflicting provisions of court jurisdiction. Upon reading section 7 of the Amending Act, we can observe that its wording does not really give exclusive jurisdiction to Sessions Court (for Peninsular Malaysia) and Magistrates Court (for Sabah and Sarawak). This is espoused further in the Supreme Court case of *Bank Negara Malaysia v. Gerald Glesphy G.M.Perara & Ors.*[21], wherein Harun Hashim, SCJ has opined that:-

15 (1854) 9 Exch. 341.
16 [1995] 1 MLJ 817.
17 [2009] 4 MLJ 445.

18 Section 5(a) of the Amending Act states that :-
"... if a sum is named in the agreement as the amount to be paid in case of such breach, notwithstanding anything to the contrary contained in the principal Act, the scholar and the surety shall be liable jointly and severally to pay and the appropriate authority shall be entitled to be paid the whole of such named sum whether or not actual damage or loss has been caused by such breach, and no deduction shall be made from the said named sum on account of any partial period or service performed by the scholar on completion of his course of study."

19 *per* Wan Yahya, FCJ in Director of Customs Federal Territory v. Ler Cheng Chye [1995] 3 CLJ 316 (SC).

20 Andrew Phang Boon Leong, *Cheshire, Fifoot and Furmston's Law of Contract*, 2nd Edition, Butterworths Asia, 1998, at page 1043.

21 [1992] 1 CLJ (Rep) 10 (SC).

> *"But is the jurisdiction exclusive to the Sessions Court? The plain wording of s. 7 does not say so. It merely says "the Sessions Court ... shall have jurisdiction ..." It would be different if the word "only" is added before the words "the Sessions Court" or by some other expressions like "to the exclusion of any other Court." The words, "Notwithstanding anything contained in any written law to the contrary" in this context, can only refer to s. 65 of the Subordinate Courts Act which limits the civil jurisdiction of the Sessions Court to claims not exceeding RM25,000 before 1976 and RM100,000 thereafter. Section 7 is therefore only permissive and not imperative in enhancing the jurisdiction of the Sessions Court."*

It was held further by Harun Hashim, SCJ in the same case that:-

> *"Section 23(1) of the Courts of Judicature Act 1964, provides inter alia:*
>
> *Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings ...*
>
> *The word "all" means any civil proceeding irrespective of the amount of the claim. To put it in another way, the High Court has unlimited jurisdiction to try all civil claims, including claims that may be made in the Sessions Court and the Magistrate's Court."...*
> *It follows that s. 7 of the Act read together with s. 23 of the Courts of Judicature Act does not oust the jurisdiction of the High Court to try scholarship agreement cases."*

Upon analyzing the reasoning given by Harun Hashim, SCJ, the same analogy could then be applicable to the Magistrates Court, whereby the jurisdiction of Magistrates Court under Subordinate Courts Act 1964 is not ousted, and still stands as the provision in section 7 of the Amending Act does not confer exclusivity to Sessions Court (for Peninsular Malaysia) and Magistrates Court (for Sabah and Sarawak). Section 7 of the Amending Act is therefore regarded as mere "*permissive and not imperative*" in giving such jurisdictional power.

LACK OF CONTRACT DOCUMENT

It is undeniable that in some cases scholarship documentations is not well-managed and this results in no contract document being signed or formalized. This situation may stifle scholarship authority if it wishes to pursue legal action in breach of contract cases. However, in the absence of a contract document, other documentary evidence may be sufficient for court purposes, especially documentation on the scholarship disbursements and correspondences leading to the scholar-scholarship authority relationship.

Hasnah, JC in the case of *International Islamic University Malaysia v. Omar Jamaluddin & Ors*[22]. has decided that :-

> *"...despite the Plaintiff not having signed the Agreement there was an offer which was accepted by the 1st Defendant. There was consideration i.e. the financing of the study leave by the Plaintiff. The fact that the Plaintiff has not signed the Agreement does make the Agreement void ab initio.*
> *...*
> *In the instant case there was an offer by the Plaintiff and there was an acceptance by the 1st Defendant and the 2nd Defendant. There was consideration and certainty. It is clear from the facts that the Parties were ad idem. Therefore I find that there was a valid and concluded contract between the Plaintiff and the Defendants."*

In such a situation, absence of a contract document may not be fatal, but it is a challenge to the Plaintiff's burden of proof. What matters most is establishing that there are offer, acceptance and disbursements made thereto.

CONCLUSION

The Amending Act is not a hot burning topic among legal writers. Perhaps this is due to the fact that it mostly involves public universities, and rarely any major legal issues arise thereon. The Amending Act does indeed provide some relief to the workings of a scholarship process based on several flexibilities as deliberated above by providing some exemptions from standard legal principles.

Notwithstanding the above, the relevant authority should also look into gazetting all government-linked educational institutions as "approved educational institution" pursuant to section 3 of the Amending Act, so that those institutions may enjoy the privileges offered by the law and also to avoid non-application of the Amending Act to them. Gazetting under section 3 will ensure protection of government interest in terms of scholarship rights and liabilities.

22 [2010] MLJU 1648 (HC)

STAFF FACING CRIMINAL PROCEEDINGS:

SOME CONSIDERATIONS

by Shad Saleem Faruqi[1]

INTRODUCTION

It is an unfortunate reality that now and then facts come to light involving strong suspicion of criminality on the part of our staff. Sometimes the complainant is an outsider. At other times, the complaint to the police or to the university authorities is filed by our own students or by other members of the staff. The police, in their discretion, question the accused and subsequently either close the file or arrest him and charge him in a court of law.

In relation to employees facing criminal proceedings, the University has powers, duties and disabilities. The powers and duties vary depending on the stage at which the criminal proceedings are. The main disability is that once a criminal proceeding is instituted, a disciplinary charge *on the same ground* as the criminal charge cannot be instituted till the employee is either acquitted, discharged or convicted: Statutory Bodies (Discipline and Surcharge) Act 2000 *[Act 605]*, Second Schedule, Regulation 29(1).

1 Emeritus Professor of Law, UiTM and Legal Advisor to the University

Definition of crime: "Crimes" are wrongs against the state for which the prosecution is commenced by public authorities and not private individuals. In strict theory, "criminal law" refers not only to the penal code, the law relating to drugs, corruption and arms control but also to the law relating traffic offences, littering and violations of health and environmental regulations. In theory syariah offences are also criminal offences. There is no dearth of cases involving staff in illicit sex relationships or staff accused of contracting marriages outside the local syariah courts.

Arrest: There is a difference between "being arrested" and "being charged". A person arrested may subsequently be released without any charge being laid against him. In cases in which an employee is arrested but not yet charged in a court of law, the university is not required to take any disciplinary action under Reg. 27(4).

What are the powers and duties of the university in situations in which its staff members are facing criminal charges? This note will provide an overview of the

following situations:

A. Reporting of the offence to the appropriate authorities
B. Non-disciplinary action against an officer who is the subject of a criminal proceeding
C. Administrative action of interdiction against an officer charged in a court of law
D. Action if officer is acquitted
E. Action if there is an appeal by the Public Prosecutor against acquittal.
F. Action if the acquittal is reversed on appeal (officer is convicted)
G. Action if there is an appeal against conviction
H. Action if officer is detained under a preventive law

A. REPORTING OF OFFENCE TO APPROPRIATE AUTHORITIES

In criminal cases the powers of the university are inadequate to handle the investigation and the charge. For instance, in cases of attempted rape, arson, theft, embezzlement, assault, corruption or drug peddling, the university is better advised to file a criminal report against its employee with the relevant authorities. In theory, we all have a duty to report a crime. In practice, discretion is used and most cases are handled administratively and are not handed over to the criminal law enforcement agencies.

However, there are several disadvantages of filing a criminal report:

- Whether our report will result in prosecution or not is outside our control. To the Public Prosecutor mere suspicion is not enough. If an investigation produces no evidence or insufficient evidence, the public prosecutor will not launch a prosecution.
- This means that till the police close the file, or till the case results in acquittal, discharge or conviction (a process that may take months or years), the university cannot launch its own disciplinary proceedings! This is a serious moral dilemma for the university authorities especially if the allegations are serious. In some cases, e.g. when an allegation is made that a lecturer sexually molested a student, immediate action is needed to remove the accused from the scene. Keeping him on duty may subsequently expose the university to a civil action in negligence by the parents of the student.
- Once criminal "proceedings are instituted", Regulation 29(1) of Schedule 2 of Act 605 mandates that no disciplinary action can be taken based on the same grounds as the criminal charge till the criminal case is completed. The words "where criminal proceedings have been instituted" do not refer to mere arrest. They refer to a person being charged before a court of law.

Due to the disability imposed by Reg. 29(1), we need to find alternative courses of action against an officer who is the subject of a (possibly dilatory) criminal investigation. The more serious the allegation, the more imperative it is for us to take some action lest we are accused of condoning his alleged wrongdoing. Our options are the following:

1. After making the police report, the university may leave the matter entirely to the police and take no further action till discharge, acquittal or conviction.

2. Alternatively, along with filing a police report, the university may immediately commence disciplinary action under Reg. 29(2) and/or a full-fledged investigation under Reg. 36. The disciplinary proceeding must not be on the "same grounds as the criminal charge". It must be for a different charge than the one the police are seized with. What is the meaning of the words "on the same grounds as the criminal charge" in Reg. 29(1) and "any other ground" in Reg. 29(2) is not explained in Act 605. Does it refer to "same facts" or "same offences"? It is submitted that in the light of Reg. 29(2), the words "same grounds" mean "same ingredients of an offence". Thus disciplinary proceedings can be initiated but only for a ground other than the one cited in the criminal proceeding. For example an officer reported to the police for theft, could be tried under Regulations 3(1)(d) or 3(1)(g) – bringing disrepute or acting irresponsibly.

3. If the police take no further action, the disciplinary proceeding can continue. But if criminal proceedings are instituted, the university will have to suspend the disciplinary trial, but only if the disciplinary charge was the same as or similar to the offence alleged in the court. This is because of Regulation 29(1) which states that where criminal proceedings have been instituted and are still pending, no disciplinary action can be taken against the officer *based on the same grounds* as the criminal charge.

4. Even if a criminal proceeding has been commenced, disciplinary action on other grounds is not forbidden. If the facts and circumstances surrounding the arrest are serious, it is permissible, in appropriate circumstances, to charge the employee under Akta 605, Jadual Kedua, Peraturan 3(d) with "berkelakuan dengan sedemikian cara sehingga memburukkan atau mencemarkan nama badan berkanun". Such a course of action should be

resorted to only in exceptional cases because the employee may object that he is being subjected to "double jeopardy". We can resist such an allegation on the ground that the disciplinary charge under Peraturan 3(d) and the criminal charge are not one and the same and, therefore, no double jeopardy results. It is notable that Peraturan 29(2) implies that disciplinary proceedings need not wait till after completion of criminal proceedings.

B. NON-DISCIPLINARY ACTIONS AGAINST OFFICER WHO IS THE SUBJECT OF A CRIMINAL PROCEEDING

Disciplinary action is only one of several options available to the university to deal with errant staff. Under Act 605 and the law of contract and the common law several other options are available to the employer. Among them are the following:

- Lateral transfer
- Reversion to former post
- Contractual termination of employment
- Non-confirmation of probationary officer resulting in his termination
- Termination in the public interest under section 9 Act 605
- Compulsory premature retirement under section 13 Act 605 and section 10(5)(d) of the Statutory and Local Authorities Pensions Act 1980 (Act 239)
- Invitation to officer to apply for optional retirement
- Imposition of an order of surcharge under sections 14-22 of Act 605.

Each of the above non-disciplinary measures merits separate and detailed discussion which is outside the scope of this article.

C. ADMINISTRATIVE ACTION OF INTERDICTION AGAINST AN OFFICER CHARGED IN A COURT OF LAW

Interdiction: Once criminal proceedings are instituted i.e. the officer is brought to court and the formal charge is read out to him, the university may, in its discretion, interdict the officer under Regulation 27(4) without disciplinary proceedings. The substantive law and the procedure are as follows:

- Interdiction means that though the officer is still on the pay roll, he is not allowed to report for duty: Reg. 27(2), 27(3), 27(4) and 46(6).

- If an employee has been charged for an offence and criminal proceedings have been instituted, the Head of Department concerned shall obtain from the relevant Court all necessary information and forward it to the appropriate Disciplinary Committee together with a recommendation as to whether the employee should be interdicted from duty: Reg. 27(2), 27(3) and 27(4).

- The appropriate Disciplinary Committee has the discretion whether to interdict or not: Reg. 27(4).
- Such interdiction can, in the university's discretion, be on full or half salary or some other proportion that is not less than half. Under Reg. 46(6), the officer shall be entitled to receive "not less than half" of his emoluments. This means that he could, in the discretion of the Committee, get anywhere from 50% to his full salary. The maximum cut is half his salary.

- Interdiction on the ground that a criminal proceeding has been instituted is regulated by Reg. 46. Under Reg. 46(2) the interdiction may be made effective from the date he was arrested or from the date the summons were served on him.

- Interdiction on this ground has no time limit. This is in contrast with interdiction for the purpose of investigation under Reg. 45(1). Under Reg. 45(1), interdiction is permissible for a period not exceeding two months to facilitate investigation.

Interdiction for purpose of investigation	**Interdiction in case of criminal proceedings or in case of disciplinary proceeding with a view to dismissal or reduction in rank**
Duration: Interdiction shall not exceed two months (Reg. 45(1).	**Duration:** Interdiction is not confined to any definite period
Emoluments: full emoluments during period of interdiction (Reg. 45(4).	**Emoluments:** The University may withhold no more than half of the emoluments unless the officer is suspended: Reg. 46(6).
Commencement: Interdiction under Reg. 45 can commerce on a date to be determined by the Disciplinary Committee.	**Commencement:** Interdiction in case of criminal proceedings under Reg. 46(1) may be effective from the date an officer is arrested or a summons is served on him: Reg. 46(2).
	Interdiction in case of disciplinary proceedings may be made effective from such date as determined by the Disciplinary Committee: Reg. 46(3).

Recall to duty: An officer under interdiction may be recalled to resume his duties: Reg. 46. In such a case he shall be paid his full emoluments from the date he resumes his duties. However, any emoluments not paid due to the interdiction, shall not be paid until the criminal proceedings have been completed and a decision as regards such emoluments has been made by the Disciplinary Committee.

Disciplinary proceeding: During the pendency of the criminal proceedings, the University is not barred from instituting disciplinary action: Reg. 29(2). But no disciplinary action shall be taken based on the same grounds as the criminal charge: Reg. 29(1).

D. ACQUITTAL

If an employee who is charged with a criminal offence is acquitted or discharged and there is no appeal by the Prosecutor, all rights of the employee are restored: Reg. 27(7). He may resume his duty. Emoluments withheld must be returned to him.

However, if the officer is acquitted in the criminal court, he may still be tried for indiscipline. This will not amount to double jeopardy provided that the disciplinary charge is not the same as in the criminal court.

E. APPEAL AGAINST ACQUITTAL

If there is an appeal against the acquittal, the Disciplinary Committee may, in its discretion, interdict or continue the interdiction of the employee: Reg. 27(8).

If on appeal, the employee is convicted, he shall be suspended: Reg. 27(10).

F. CONVICTION

If the officer is convicted, the following consequences ensue:

Suspension: The university shall suspend the officer: Regulation 27(6) and 27(10). Such a suspension will be on no pay with effect from the date of conviction: Reg. 27(6) and 27(10). Regrettably Reg. 47(1)(a) contradicts Reg. 27(6) and 27(10) by giving the University discretion in the matter of suspension. It is noteworthy that suspension, as opposed to interdiction, is on no salary: Reg. 47(3)(b).

No prior hearing needed: No disciplinary trial or prior hearing is required prior to the suspension as the court conviction is sufficient evidence of wrong-doing.

Recommendations from Head of Department: Subsequent to the conviction, the Head of the Department must make recommendations to the Disciplinary Committee whether the employee should be-

- dismissed
- reduced in rank
- subjected to some other punishment, or
- no punishment should be imposed.

The Committee may make any one of the above decisions.

Disciplinary proceedings: Disciplinary proceedings may be commenced: Regulations 27-28. In such a situation, we have to be careful not to violate the constitutional law "rule against double jeopardy". This means that the charge must NOT be the same as the charge in the criminal court. It must be a disciplinary charge under the Second Schedule - for instance a charge of acting irresponsibly or dishonestly or using our official position for personal advantage or bringing shame to the University.

The disciplinary punishment subsequent to a trial does not amount to double jeopardy provided that the charge is not the same as in the criminal case: *Mohamed Yusoff Samadi v AG Singapore* [1975] 1 MLJ l. Also Article 7(2) of the Federal Constitution.

> ...when a staff is facing a criminal investigation or trial, the university has many rights, duties and disabilities. Whether it should interpret the law literally or creatively depends on the factual matrix of each case.

G. APPEAL AGAINST CONVICTION

Acquittal on appeal: If an employee appeals and wins his case, all his rights are restored.

No bar to disciplinary proceeding: Even if on appeal there is an acquittal, there is no bar to subsequent disciplinary proceedings on other grounds: *Yusoff Samadi v A.G.* and Article 7(2) of the Federal Constitution.

H. DETENTION

Discipline: If an officer is subjected to an order of preventive detention, supervision, restricted residence, banishment or deportation, the University is permitted, without trial**,** to take the following actions against the officer:

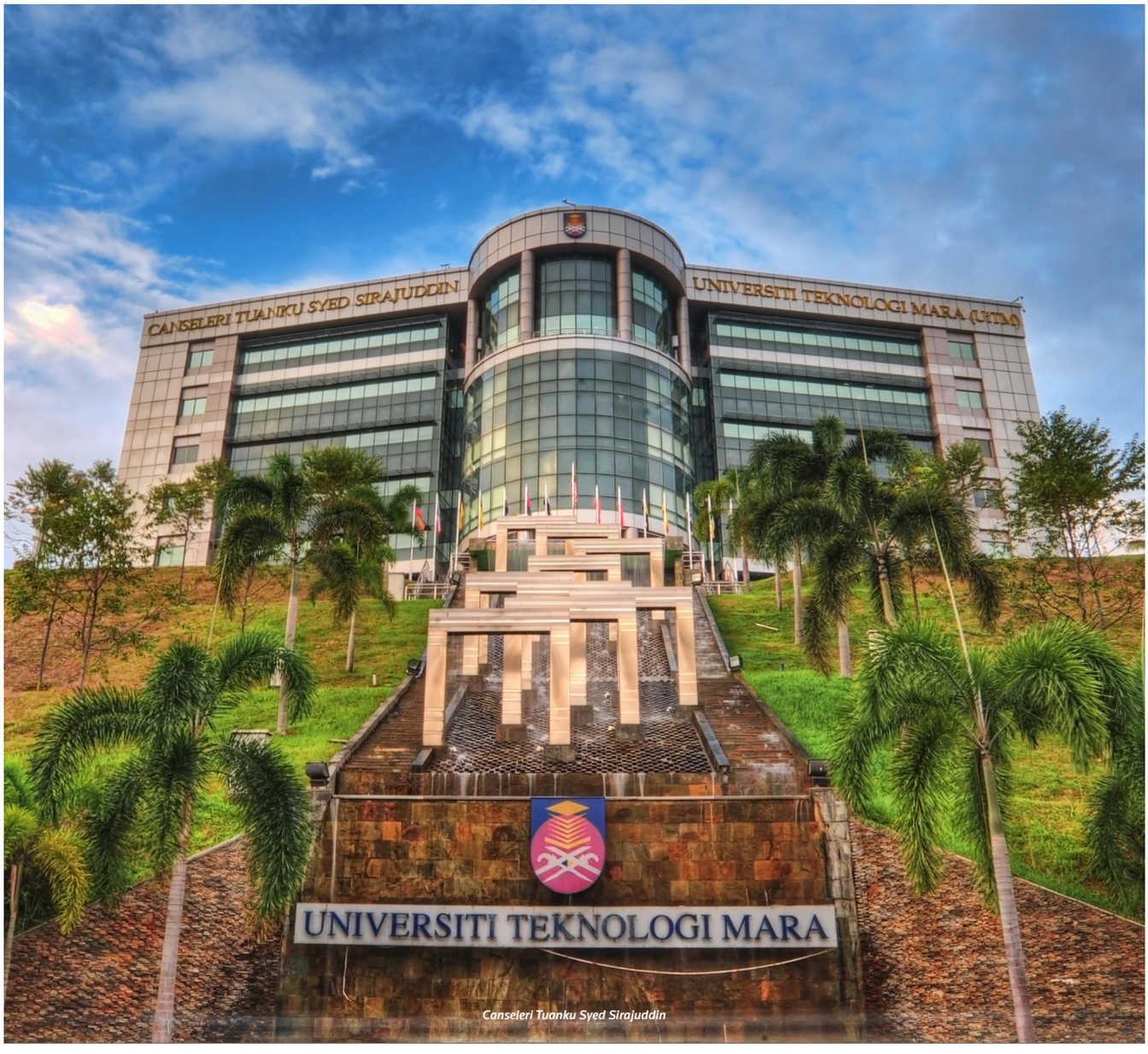
- dismissal
- reduction in rank
- imposition of a lesser punishment, or
- imposition of no punishment : Reg. 31 (2).

The exclusion of a right to a hearing is provided for by Reg. 32(2) (a).

Suspension: An employee may be suspended without disciplinary proceedings in two circumstances:

- If he has been convicted by a criminal court: Reg. 47(1)(a).
- If an order of detention, banishment etc. has been made against him under Regulation 31 and Reg. 47(1)(b). Suspension results in total loss of emoluments.

From the above it should be clear that when a staff is facing a criminal investigation or trial, the university has many rights, duties and disabilities. Whether it should interpret the law literally or creatively depends on the factual matrix of each case.



Canseleri Tuanku Syed Sirajuddin

"YOU QUOTE, YOU NOTE"

by Musrifah Sapardi[1]

INTRODUCTION

In a university environment, both academicians and students are required to read and write. The academicians have a duty to write research papers as part and parcel of their day to day work apart from their responsibility to teach. Students, on the other hand, must write project papers as partial requirement for obtaining their degree. In fulfilling these duties, all writers must adhere to the university's rules and regulations about ethics in writing. Whatever they have quoted from other writers in their writings, they must note or acknowledge, for purposes of avoiding plagiarism.

PLAGIARISM

In Regulation 6(1) of the *UiTM Guidelines for Postgraduate Thesis* issued by the Institute of Graduate Studies[2], plagiarism is defined as "passing off the ideas or words of someone else as though they were their own ... Candidates are responsible for writing their theses in their own words. Quotations from published or unpublished sources of any materials should be clearly cited and acknowledged ... Sources of visual presentations such as photographs or maps must also be clearly indicated".

With respect to academic integrity for academicians, it is implied in the provisions as embodied in the Second Schedule on Code of Conduct in the *Statutory Bodies (Discipline*

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2 The IGS is sometimes called IPSIS (Institute Pengajian Siswazah) UiTM. Its vision is to be at the forefront of scholarship that enhances academic advancement at the graduate level, in the pursuit of academic excellence and world class standards of graduate education.

and Surcharge) Act 2000[3]. This Act is commonly known as Act 605. Regulation 3(1)(f) of Act 605 stipulates that "an officer shall not be dishonest or untrustworthy". The word officer refers to academic and non-academic staff of the university. The words "dishonest or untrustworthy" under the regulations impliedly include plagiarism. It is important that all academicians act with integrity in relation to the production and representation of their academic work. In short, plagiarism is seen as academic dishonesty, and it is one of the serious disciplinary offences which are punishable under Regulation 40 of Act 605.

> This practice is not only ethical but most importantly, it will save us from being penalised for plagiarism, which may tantamount to a disciplinary offence under the university rules and regulations.

The above regulations strictly warn us (students and academicians) that we are not allowed to use the works of other writers without proper acknowledgement. This warning applies to the authors' entire work or part of their work which we rely on. This work could be in the form of writing, computer codes, performances, music or work of arts. In other words, plagiarism may be committed in a number of ways, namely: copying from other writers without acknowledgment or without proper attribution, copying from unattributed published sources without acknowledgment, copying from unpublished sources without recognition, and submitting previously submitted works of their own without proper acknowledgment[4].

Plagiarism is also known as "intellectual theft", which means a misuse of information ethics. Nowadays in the global era of internet, it has been recognized as a violation of copyright law. It is because many researchers and writers including students and academicians are using the web to do their research. With the abundance of information available, they are more prone to incorporate materials from others into their own work without acknowledging or attributing them. Simply put, like cheating, acts of plagiarism directly challenge the concept of intellectual property globally.

At UiTM, the Institute of Quality and Knowledge Advancement (InQKA) has been entrusted by our Vice Chancellor "with the task of instilling awareness of plagiarism among the academic community"[5]. The Committee has completed UiTM's policy on plagiarism for both students and academicians. It has finalised the Plagiarism Manual and the Guidelines for them, and the information is available on InQKA's and HEA's websites. In short, the UiTM academic community must bear in mind that it is required to be honest and responsible in acknowledging the contributions of others in their works.

OTHER BREACHES OF ACADEMIC INTEGRITY

Other unethical acts or conducts that may amount to academic dishonesty include putting a supervisor's name as a co-author in a research paper written by a student or students. Although the supervisor may have assisted the student in providing suggestions or proof-read the research papers, the authorship (and possibly the copyright) of the said research papers solely belongs to the student. The role played by the supervisor may be credited and inserted in a footnote or acknowledgement.

Such breaches of academic integrity are widespread. Some supervisors or academicians do not realise that putting their names as co-authors in the research papers written by their students (while the lecturers were still supervising them) amounts to an absence of academic integrity. If the students collect the raw data and later seek assistance for data analysis from their expert supervisor, this reliance on the supervisors' expertise does not by itself convert the supervisor into an author unless he/she substantially involves himself/herself in the writing. The proper thing is to

3 An Act to provide for matters relating to the discipline of, and the imposition of surcharge on, officers of statutory bodies incorporated by federal law, and for matters connected therewith.

4 For these offences, see examples in Famous Cases of Plagiarism, in Famous101.com*16/06/13 at 1:41 pmathttp://famous101.com/famous-cases-of-plagiarism*retrived on 3November 2014.

5 Institute of Quality and Knowledge Advancement (InQKA), Plagiarism, (Admin InQKA) Wednesday, 17 October 2012, at http://inqka.uitm.edu.my/v1/services/special-projects/plagarism.html, retrieved on 31 October 2014.

acknowledge the methodological guidance or insights of the supervisor in a footnote. Ethics is breached if the supervisor's or critic's name is written as co-author of the research paper. This conduct or 'piggy-backing' on a student's work and later claiming it as his own is unethical and may fall within the ambit of (being academically) "dishonest or untrustworthy" under Regulation 3(1)(f) of Act 605.

PUNISHMENTS

It is to be noted as a reminder to all students and academicians that "UiTM takes a serious view of plagiarism", not only for the sake of the university but also to safeguard the quality and reputation of its graduates and staff.

As far as students are concerned, examiners are empowered to penalise those who are found guilty of plagiarism. In addition there may be suspension or expulsion from the programme as clearly stated in Regulation 6(1) of the UiTM Guidelines for Postgraduate Thesis issued by IGS. In fact, upon submission of their project papers or theses, all students will have to fill up and sign a Declaration Form declaring that their works are "original and free from plagiarism". To date, there have been a few cases of students being suspended from their studies after they were found guilty of plagiarising others' works as their own by the Disciplinary Committee.

An example of plagiarism by a university academician is Marks Chabedi[6], a professor at the University of Witwatersrand, South Africa. He had plagiarised a work written by Kimberly Lanegran from the University of Florida. He copied the work almost word for word before submitting it as his doctoral thesis to The New School in New York City, USA. This act of dishonesty was discovered by Lanegran and she initiated an investigation against Chabedi. It was decided by the Disciplinary Board of the University of Witwatersrand that Chabedi was guilty of plagiarism. He was dismissed from his university and his professorship was stripped. The New School also revoked his PhD.

If a similar charge happened in UiTM, the accused academician will have to go through internal disciplinary proceedings based on Regulation 3(1)(f) of the Second Schedule of Act 605. If found guilty of such an offence, the said academician may be punished under Regulation 40 (a) to (e) depending upon the seriousness of the offence, namely; warning, fine, forfeiture of emoluments, deferment of salary movement, reduction of salary, reduction in rank or dismissal. In addition to this Code of Conduct under Act 605, all academicians in UiTM must adhere to the Academic Guidelines as envisaged in Buku *Nilai & Etika Pensyarah 2000*, which among others provides guidelines for academic integrity and work ethics.

Although plagiarism is often regarded as theft or stealing, yet to this day, it has never been prosecuted as a criminal matter in the court of law. Claims of plagiarisms are regarded as civil matters which include copyright infringement, unfair competition, and violations of the doctrine of moral rights. As mentioned above, the common punishments for intellectual theft are suspension, loss of one's job, loss of academic credibility and dismissal.

CONCLUSION

All students and academicians of UiTM are expected to act with integrity in relation to the production and representation of their academic works. Having said that it must be acknowledged that everywhere in the world and at all times in history, civilisational advance has involved us standing on the shoulders of others. Most of the time academic work draws upon the work of others or insights of scholars in the field. For purpose of academic integrity and to avoid plagiarism, all works that are relied upon and quoted must be honestly, properly and fully acknowledged or noted. In short, "You Quote, You Note". This practice is not only ethical but most importantly, it will save us from being penalised for plagiarism, which may tantamount to a disciplinary offence under the university rules and regulations.

6 See Bulicheka, Case Lawyers, posted on 12 August 2012. http://caselawyer.blogspot.com/2012/08/kimberly-lanegran-v-marks-chabedi.html. retrieved on 31 October 2014. Also see examples in Famous Cases of Plagiarism, in Famous101.com*16/06/13 at 1:41 pm at http://famous101.com/famous-cases-of-plagiarism*-retrieved on 3November 2014.

SMALL CLAIMS PROCEDURE IN MALAYSIA

by Nurfarizma Rahayu Mohd Annuar[1]

INTRODUCTION

The small claims procedure is a simplified and alternative method of commencing and dealing with a civil proceeding in respect of a small claim. The purpose of this procedure is to quicken the process of settlement of minor disputes in a cheaper way. Nonetheless, although the process is simpler than ordinary court proceedings, it can be quite complicated for one who is not familiar with legal jargon. Some of the examples of the claims that can be filed in the Magistrates Courts using the small claim procedure are: refund of money paid for goods which are defective, refund of salaries paid for work that failed to be carried out, claims for commissions due, and claims for payment on services, facilities or repairing work.

Although representation by a lawyer is not allowed but one may consult a lawyer pertaining to his case at his own cost. Also, a party to any suit in this Court shall not be represented by a lawyer except where the defendant is required by law to be represented by an authorized person. For example if the defendant who the plaintiff is suing is an artificial person e.g. a company, then the defendant can be represented by a manager or any staff authorized and working with the company.

In Malaysia, small claims procedure is governed by Order 93 of Rules of Court 2012. The proceeding is heard in the Magistrates' Court between an individual as a plaintiff (the proceeding is not applicable to a company or an agent or assignee of debts) and a defendant. According to Order 93 rule 2, the amount in dispute or the value of the subject matter should not exceed RM 5,000.

Before filing the claim, the settlement could be done in an informal way through a session between the parties including meeting up for a discussion or by sending a demand letter to the other party to resolve the claim or debt. After the limit time in the demand letter lapses, the case could proceed to the Court.

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THE PROCESS OF SMALL CLAIMS

For Plaintiff

1. Under Order 93 rule 3, the claim shall be made in Form 198 which could be obtained at the nearest Magistrate Court.

2. The plaintiff must fill in his particulars in the first part of the form (plaintiff's column).

3. In the second part, the plaintiff must fill in the full name of the defendant and his last known address (defendant's column).

4. In the third part, the plaintiff must indicate the exact amount claimed and it shall not exceed RM 5,000. The particulars of the claim must be included and must specify the relevant date and the basis of the claim (how and when the claim has arisen.

5. Upon completion of the filling in the particulars, the plaintiff must sign and thumbprint the form personally. The form must be filed in 4 copies in the Registry of the Second Class Magistrates' Court and the filing fee is RM 20. The Registry will put the seal of the Court on the four copies of the form together with a hearing date. Plaintiff and defendant need to appear on the hearing date that is stated in the form. A copy of the form will be returned to the plaintiff.

6. Plaintiff may serve the form to the defendant by personal service or by prepaid registered post addressed to the last known address of the defendant. It must be served as soon as possible to evade delay in the proceeding. At this stage, if the defendant offers any settlement terms or out of court settlement, the plaintiff can still withdraw his case, before the final hearing. The plaintiff should write to the defendant stating that he is accepting the offer, attend the court at the given date and inform the Magistrate.

7. The plaintiff must ensure his attendance at the trial because the plaintiff is actually initiating the case. If the plaintiff fails to appear, the Court will strike out the case unless the plaintiff is unable to attend due to a strong excuse (supported by evidence) or due to medical condition and produces the medical certificate from a government hospital or clinic. The plaintiff could also refile the case.

8. If the plaintiff wins the case, the Court may at its discretion award costs not exceeding RM100. However cost for advocacy is not allowed by the Court.

For Defendant

1. Order 93 rule 6(1) highlights that once the defendant receives the sealed form from the plaintiff, if the defendant disputes the claim, he must specify the defence in Form 199. The defendant must specify why he disputes the claim and if he has a counterclaim, the particulars and the amount must be stated in the form.

2. Upon completion of the filling in of the particulars, the defendant must sign and thumbprint the form personally. The defendant shall file it in four copies in the Court Registry within 14 days after the service of the claim.

3. Defendant may serve the form to the plaintiff by personal service or by prepaid registered post addressed to the plaintiff's address.

4. Where the defendant fails to show up during the trial, the Court may give judgment in default to the plaintiff. However if the defendant appears during the trial but did not file the defence form (Form 199), the Court may either give judgment in default to the plaintiff or in its discretion adjourn the hearing to allow the defendant to file the defence.

If the party sued fails to comply with the order or judgment (judgment debtor), the party who has obtained the judgment may file a notice to show cause and serve to the judgment debtor by personal service or by prepaid registered post and he has to pay up within 10 days from the receipt of the notice. If the defendant fails to pay, he has to appear in the Court to show cause. In accordance with Order 93 rule 16(2), the Magistrate may:-

i. order a writ of seizure and sale where a bailiff will assess the defendant's goods, seize them and auction them off. The proceeds will cover the debt;
ii. allow the defendant more time to settle the judgement or allow payment of debts by instalments;
iii. order the defendant to be imprisoned.

However if the defendant fails to appear on the date stated in the notice, a warrant of arrest will be issued by the Court.

Because the small claims procedure involves laymen who are usually unfamiliar with the legal jargon and the formality, the court will hold the session in a relaxed and informal manner. The normal rules of evidence are applicable whereby the Court shall consider the documentary or other evidence submitted by the parties. At the end of the trial, the decision of the Magistrate will come up as an enforceable judgment or order.

MEMORANDUM OF UNDERSTANDING WITHIN THE UiTM CONTEXT

by Azlena Khalid[1]

When people think of Memorandums of Understanding, they assume that it is a binding agreement entered into between two or more parties. However, such a preconception is a misnomer because Memorandums of Understanding (MoU) are generally statements to record the parties' willingness to co-operate on a mutual basis in commonly identified areas.

MoUs are drafted and signed by the parties in a format which largely appears similar to a standard term contract. However, what has to be borne in mind is that although MoUs in UiTM are drafted in such a manner, the articles therein contained are mere representations which are clearly denoted as non-legally binding in nature. The format and contents of a standard MoU in UiTM, largely adhere to the format and contents prescribed by the Attorney General's Chambers of Malaysia for all MoUs entered into between local public institutions of higher learning with either local or foreign partners.

Within the UiTM context, each faculty, branch campus or centre will identify and initiate collaboration with either an institution of higher learning, both local and foreign or with government or statutory bodies, industrial partners or private commercial entities. It is then up to that initiator to discuss with their identified partner all the pertinent areas of co-operation, duration of time of the MoU, confidentiality and other relevant terms.

Once the parties have mutually agreed on such terms, they will then proceed with the draft MoU which the *Pejabat Penasihat Undang-Undang* (PPUU) has prepared. The PPUU has issued copies of the standard format MoU including a checklist of all ancillary documents which are also required before a MoU will be approved. As a general rule, MoUs should not contain clauses which may result in financial implications for UiTM.

The standard clauses contained within a MoU are as follows:

1 Lecturer in Law and Deputy Legal Advisor, Pejabat Penasihat Undang-Undang, UiTM

1. Objective
2. Areas of Cooperation
3. Financial Arrangements, if any
4. Effect of Memorandum of Understanding
5. No Agency
6. Entry Into Effect and Duration
7. Revision, Variation and Amendment
8. Termination
9. Notices

In some MoUs, additional clauses are also included, depending on the nature of the MoU to be entered into. These additional clauses are:

1. Protection of Intellectual Property Rights
2. Confidentiality
3. Suspension
4. Settlement of Disputes

Some useful points for consideration are, when dealing with private commercial entities, the PPUU must be given a copy of these items:

1. Company profile
2. Company's registration number
3. Authorised capital
4. Paid up capital
5. List of company directors
6. Name and designation of the person(s) that will be the signatory of the MoU

The aforementioned documents and the draft MoU containing the names and address of all parties are to be given to the MoU for vetting and comments. Should there be any comments or enquiries by the PPUU, the draft MoU will be sent back to the initiator for review and feedback. This process may require the initiator to revert to the third party for their feedback and comments.

Once all issues are resolved, the initiator will then hand over all comments and feedback by the initiator and the third party back to the PPUU. This will be followed by a second vetting process by the PPUU. If there are no further comments, a Letter of Approval will be issued to submit the MoU to the *Jawatankuasa Eksekutif* (JKE) of UiTM for approval. Once the JKE endorses the MoU, the initiator will be subsequently notified and henceforth proceed with the signing of the MoU. According to an LPU decision, MoUs do not require the prior permission of the LPU unless they have financial implications. Unless there are financial implications, the LPU is merely informed of the MoU.

The authorised signatory of all MoUs is the Vice Chancellor of UiTM. However, in the event that the Vice Chancellor is unavailable to sign the MoU, the Dean/Rector/Director of the relevant faculty, branch campus/centre may make a written request to the PPUU, requesting to be the duly authorised signatory for that particular MoU.

What is more desirable that all activities envisaged in a MoU should be executed expediently and the MoU should be perceived as a precursor to a more conclusive and consequential subsequent agreement.

In the event that the MoU is rejected by the JKE or the LPU, the initiator will be required to take note of the comments made by the JKE or LPU and make subsequent improvements to the draft. A subsequent draft with amendments and revised clauses may be resubmitted for consideration.

Over the last couple of years, the PPUU has seen a multitude of submissions of draft MoUs between various faculties/branch campuses/centres of UiTM and a host of third parties. Although such efforts are lauded, the PPUU hastens to caution all parties concerned that concluding and signing MoUs are merely a first step in establishing UiTM as an active partner with industry and academic institutions. What is more desirable that all activities envisaged in a MoU should be executed expediently and the MoU should be perceived as a precursor to a more conclusive and consequential subsequent agreement.

STUDENT DISCIPLINE UNDER ACT 174:

SOME ISSUES

by Nor Azila Maharam[1]

INTRODUCTION

Discipline issues always catch the limelight. Tackling indiscipline has become more challenging these days because students nowadays are quite willing to challenge the university's powers on discipline issues. Students are becoming more vocal in demanding their fundamental rights. They are acquiring knowledge of the Constitution and of other laws and the scope these laws cover. Some students have everything on their fingertips, where they can just browse nearly every aspect of law through the internet. At the same time many students suffer from lack of legal literacy.

As before, our universities are unrelenting in emphasising the need for discipline. Types of student offences are expanding e.g. internet related offences. There are times when students commit acts without knowing that such acts are offences listed under the laws of universities. This happens frequently due to environmental influence and peer pressure without aforethought of the consequences.

THE EDUCATIONAL INSTITUTIONS (DISCIPLINE) ACT 1976 (ACT 174)

Applicable law: UiTM students as well as staff need to understand that our university is applying *Educational Institutions (Discipline) Act 1976 (Act 174)* as our law and we are not subject to the *Universities and University Colleges Act 1971 (AUKU)*. There are still a large number of students who are confused about the application of both Acts even though explanations about Act 174 have been given to them during their orientation session. Even our staff are sometimes confused about which law to apply.

Discipline officer: Before we discuss the issue of offences under Act 174, we should

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first discuss the jurisdiction and capacity of the legally authorized Students' Affairs Officers for Shah Alam campus as well as for all other campuses. According to Section 5(1) Part II of Act 174, the Minister may designate the Students' Affairs Officer. By virtue of this section of Act 174 read together with section 20(6) of the University Teknologi MARA Act (Act 173) , we can conclude that the Students' Affairs Officer is none other than our Vice Chancellor.

The Students' Affairs Officer under Section 5(3) of Act 174 may delegate his disciplinary functions, powers or duties to any member of the staff or any board of members of the staff. In UiTM, this section empowers the Vice Chancellor to delegate his function to a different Disciplinary Committee of UiTM.

Quasi-judicial function: As regard disciplinary matters, we must note that the function of adjudicating disciplinary matters is quasi-judicial one rather than like a strict court hearing. However, the university must respect the principles of *Natural Justice*. As a quasi-judicial body the disciplinary committee should be well versed with the principles of Natural Justice before they sit to try students in the disciplinary proceeding. The rules of hearing and the rule against bias must be observed. The disciplinary proceeding must be fair and transparent so as not to leave any room for errors

Declaration of interest: The Disciplinary Committee members should announce or declare their interest, if any, in any case where they sit to hear the case before the proceeding starts. For example, in the case of cheating during examination, a person who caught the student cheating in the examination cannot be allowed to be a committee member during the disciplinary proceeding of that particular student. If it happens, the proceeding is considered to be conducted in bias and therefore the appeal tribunal may reverse the finding or the courts may issue certiorari to declare the entire trial to be null and void.

Standard of proof: The standard of proof required is "*balance of probability*" and not "*beyond reasonable doubt*". For disciplinary cases, it is not necessary for the university to prove that the students involved are guilty beyond any doubt. The committee decides on the totality of the circumstances whether the student is guilty or innocent; and what is the suitable punishment available if the student is found guilty based on the facts of the case, statements by the student and witnesses as well as other evidence as a whole.

Multiplicity of committees: At UiTM Shah Alam, each faculty has its own Disciplinary Committee to handle academic cases. As for non-academic cases, they fall under the jurisdiction of the disciplinary unit under the Legal Office. For branch campuses, they have their own Disciplinary Committee for non-academic and academic cases.

Despite the detailed list of punishments in Act 174, the university is having difficulties to standardise the punishments between campuses and faculties. The main reason for this is that UiTM has a multiplicity of different committees both in Shah Alam and in its multiple campuses. Each committee has its own independent power to decide on the punishments.

Academic discipline: Examples of academic cases under Act 174 are conduct during the examination, plagiarism, attendance during classes and examination and forgery of medical certificate. Misconduct during examination is the most common case before the Academic Disciplinary Committees under the faculty or the branch campuses.

In academic misdemeanours like cheating in the examination, there is a flaw in the law. The disciplinary committee has no power to fail the student in the subject in which he cheated. For this reason, in each academic case referred to the Academic Disciplinary Committee, the results of the committee findings will be referred to University Senate. For example, in a case where the student is convicted for cheating or taking their notes to examination hall, the student's score for that particular course will be sent to the University Senate for approval. Only the University Senate can decide whether the student involved passes or fails for that course.

Non-academic cases: Meanwhile, for non-academic cases in Shah Alam, such as drugs, khalwat, smoking in the campus, gambling, obscene articles and other non-academic offences, the Disciplinary Committee is chaired by the Deputy Vice Chancellor of HEP. The UiTM Auxiliary Police will investigate these non-academic cases and the reports will be sent to Disciplinary Unit for the purpose of drafting a charge.

Political offences: In August 2012, Section 10 of Act 174 was amended pertaining to political issues. Before the amendment, students were not allowed to join any political party in or outside the campus. After the amendment, students are allowed to become a member of any political party and to participate in politics but only outside the campus.

PUNISHMENTS

For all type of offences that we discussed above, there are seven types of punishments stated under Rule 48, Second Schedule of Act 174.

A student who is found guilty of a disciplinary offence shall be liable to any one or any appropriate combination of two or more of the following punishments:

(a) reprimand;
(b) a fine not exceeding five hundred ringgit;
(c) suspension from using any or all of the facilities of the Institution for a specified period;
(d) suspension from following course of study at the Institution for a specified period;
(e) barred from sitting for a part or all of the examinations at the Institution;
(f) exclusion from any part of the Institution for a specified period;
(g) expulsion from the Institution, by the disciplinary authority.

Despite the detailed list of punishments in Act 174, the university is having difficulties to standardise the punishments between campuses and faculties. The main reason for this is that UiTM has a multiplicity of different committees both in Shah Alam and in its multiple campuses. Each committee has its own independent power to decide on the punishments.

The challenges are many but our university is progressing in trying to overcome obstacles that exist in the handling of disciplinary cases under Act 174. Our hope is that everyone will have better knowledge of disciplinary matters in the future, which will definitely help in minimising errors in disciplinary proceedings.

Masjid Tuanku Mizan UiTM Shah Alam

THE SAFETY OF THE PEOPLE SHALL BE THE HIGHEST LAW.

MARCUS TULLIUS CICERO

COMPROMISE IS THE BEST AND CHEAPEST LAWYER.

ROBERT LOUIS STEVENSON

IN CIVILIZED LIFE, LAW FLOATS IN A SEA OF ETHICS.

EARL WARREN

INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.

MARTIN LUTHER KING, JR.

MAKE CRIME PAY. BECOME A LAWYER.

WILL ROGERS

IF THERE WERE NO BAD PEOPLE, THERE WOULD BE NO GOOD LAWYERS.

CHARLES DICKENS

CHANGE IS THE LAW OF LIFE. AND THOSE WHO LOOK ONLY TO THE PAST OR PRESENT ARE CERTAIN TO MISS THE FUTURE.

JOHN F. KENNEDY

MUSIC IS A MORAL LAW. IT GIVES SOUL TO THE UNIVERSE, WINGS TO THE MIND, FLIGHT TO THE IMAGINATION, AND CHARM AND GAIETY TO LIFE AND TO EVERYTHING.

PLATO

ALL THE GREAT THINGS ARE SIMPLE, AND MANY CAN BE EXPRESSED IN A SINGLE WORD: FREEDOM, JUSTICE, HONOR, DUTY, MERCY, HOPE.

WINSTON CHURCHILL

LAWLESS ARE THEY THAT MAKE THEIR WILLS THEIR LAW.

William Shakespeare

PICTUREQUOTES.com

THE GOOD OF THE PEOPLE IS THE GREATEST LAW.

Marcus Tullius Cicero

PICTUREQUOTES.COM

THE LAW HAS NO COMPASSION. AND JUSTICE IS ADMINISTERED WITHOUT COMPASSION.

Christopher Darden

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